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Overview

The key factors which have shaped Estonian history are its geo-political location and small population. The Eastern-Baltic region with important ports has been highly coveted by all Northern European powers, especially since the thirteenth century.¹ Estonian history since the thirteenth century is a history of numerous conquests by Germans, Danes, Swedes and Russians who fought against Estonians and among themselves for the control over this territory, each one having a turn in ruling and consequently in influencing the development of Estonians. In fact, when Estonia declared its independence from the Soviet Union in August 1991 (marking the end of fifty years of Soviet occupation), for only the second time since the beginning of the thirteenth century, Estonian soil was free of foreign conquerors and its local inhabitants were able to determine their own fate.²

The independent Republic of Estonia was born in the aftermath of World War I (1914-1918). The date of Estonian independence is February 24, 1918. The outbreak of World War II disturbed the peaceful development of the country, which was subsequently occupied by the Soviet Union (1940-41, 1944-91) and Nazi Germany (1941-44). A resurgence of Estonian national identity began in the late 1980s, leading to independence in 1991.

At the beginning of the 1990s, the Estonian state clearly expressed its desire to join the EU. Estonia joined the EU on 1 May 2004.³ Estonia is also a member of many international organizations, including the United Nations, Council of Europe, Organization for Security and Cooperation in Europe (OSCE), North Atlantic Treaty Organization (NATO), and Organisation for Economic Co-operation and Development (OECD), and has ratified key conventions relating to the field of education and to protection of the right to education.

The current population of Estonia is approximately 1.3 million, with about 67.9% Estonians, 25.6% Russians, 2.1% Ukrainians, 1.3% Byelorussians, 0.9% Finns and 2.2% of other nationalities.⁴

Since regaining independence, after the collapse of the Soviet Union, education and its reforms have been high in the political agenda and a matter of continuous and often passionate debate. The situation has been often described as 'a permanent educational reform in Estonia'. Recently (February 2012), Estonia experienced a teacher strike, which was supported by many people from other areas of the workforce, both from the public and private sector. As could be expected in the current European economic climate, one of the reasons for the strike was a relatively small salary of teachers. However, the issue of teachers' salaries was a matter of debate long before the recent economic hardship. Perhaps this is one reason why it has been felt by many that the real reason for the strike was a lack of respect and value vested by the State, but also perhaps by society in the work of teachers. Whatever one thinks about these reasons, they need to be placed in a broader context of interrelated issues faced in the field of education and current (ongoing) educational reform in Estonia.

Firstly, one of the facts faced by the educational system is that the number of pupils going to school has been getting smaller every year. As a result, there is a need for optimisation of the school system in order to find the best ratio between the number of schools/cost of schools and the right to education/quality of schools and teachers. This problem affects different municipalities differently. The optimisation of the school system is also closely connected to regional development. For example, Parliamentary debates at the time of processing the new Basic Schools and Gymnasiums Act (adopted 09.06.2010, hereinafter BGS, *Põhikooli- ja gümnaasiumiseadus*)⁵, focused on regional development. Intensive debates were held on how the reform influences the survival of rural areas and the right to education of pupils.⁶ The tensions caused by the optimisation of the school system have already started to produce court cases. Recently, a group of parents disputed a local government decision to close one of the basic schools (or more precisely, amalgamate two small schools into one). This time the court of first instance ruled that the local government did not put enough thought and explanation into the

decision to close.⁷ There have also been major difficulties in achieving a political agreement regarding the re-organisation, number and location of gymnasiums (upper secondary schools) according to the new BGS.

Secondly, a very much related issue to the above is quality/qualification of teachers. Again, this problem has different regional significance. For example, in rural areas the average age of teachers is higher.⁸ There is a problem coping with the re-training needed to comply with new curriculum and technical advances used in the educational environment. Attracting young and highly qualified teachers to schools is a problem everywhere (with some exceptions in two biggest cities in Estonia (Tallinn and Tartu) and in North-East region of the country). As mentioned above it is not only related to small salaries, but also to the perceived significance (low prestige) attached to this profession. Similar to many other European states there is an imbalance in gender representation amongst teachers.

Thirdly, the content of education itself has been a matter of continuous debate. According to some estimations the curriculum is generally overloaded. It is also fact oriented, leaving little time for students to develop discussion skills and form their own opinion. Although reforming the educational system in Estonia has been slowly moving from a teacher centred to a student centred approach, the reform is still in progress. There is still also a problem with adequate teaching materials. It has been voiced that teachers have to spend too much time on preparation of their teaching materials.

Finally, one cannot overlook a specific and somewhat separate ongoing problem related to minority languages at schools. Due to the extensive in-migration administered by the government of the Soviet Union after the Second World War, Estonia is left with a considerably large Russian speaking minority.⁹ From the total population approximately one third are from an immigrant background. However, the exact numbers are debatable and depend on what is taken as a basis for determining the immigrant background today.¹⁰ The problem of minority languages at schools is a part of a larger problem related to integration, treatment of minorities and specifically the right to education of pupils from an immigrant background. It should also be put in the broader context of policies trying to preserve the Estonian language. Due to the limited scope of this paper, only a few specific problems closely related to the school environment can be highlighted here. Theoretically, a pupil finishing his/her studies at a basic school has to be fluent in Estonian (the official State language). This is necessary for continuing his or her studies in gymnasiums (upper secondary schools) where 60% of the curriculum is taught in Estonian and for pursuing higher education in Estonia. Currently besides Estonian speaking gymnasiums there are a few Russian speaking ones. According to the BGS all gymnasiums have to gradually become Estonian speaking by 1.09.2013 (BGS Art. 89

(4)). The school is considered Estonian speaking if 60% of the curriculum is taught in Estonian. Exceptionally, with the permission of the Government, it is possible to carry out teaching in some other language (BGS Art. 21). However, it has proven to be difficult to obtain the permission.¹¹ At the non-Estonian speaking basic school students have to start to study Estonian from grade 1. However, the level of Estonian (and teachers of Estonian) in Russian speaking basic schools, varies and is a problem especially in the North-East of the country where there is a higher concentration of Russian speakers (in urban areas). There are also limited opportunities to practice Estonian in everyday circumstances.¹² There have been some initiatives (immersion programmes, *keelekümblus*) to improve the situation. An option has been created in some basic schools to study some subjects in Estonian. The interest of parents is high. These programs may have somewhat improved the language skills of students. However, according to statistics parents tend not to be satisfied with the subject specific (e.g. maths) knowledge of their children. Students' achievement levels vary. The preparation and adequate qualification of teachers to carry out immersion programmes has also been acknowledged as a problem.¹³ Some parents enroll their children in Estonian schools. Schools are interested in growing numbers, because it means additional finances. However, once again, pupils' language skills and achievement levels vary. According to recent statistics there also seems to be a problem with teachers' abilities and qualification to deal with study needs of students from different language backgrounds.¹⁴ Although individual cases may vary, the above problems do have an effect on the prospects of Russian speaking students. Economic factors may also aggravate the problem if parents are not able to provide for extra language or subject specific tuition when needed. Recently the Advisory Committee on the Framework Convention for the Protection of National Minorities in its third opinion on Estonia (1 April 2011) has also pointed out that Estonia should ensure that the ongoing transfer to Estonian as the main language of instruction in Russian-language schools is implemented gradually and with due regard to the quality of education offered in Estonian as well as Russian language. It also emphasised the need to expand the availability of relevant teacher training courses including bilingual and multicultural education.¹⁴

The structure of schooling

The general education schools are basic schools and gymnasiums. Compulsory school attendance begins when a child reaches the age of seven. Article 9 (2) of the BGS sets forth: 'A person who has reached the age of seven years before October 1 in the current year is subject to the duty to attend school.'¹⁵ Basic education school is divided into three stages of study: stage I - grades 1-3 (7-10 year olds), stage II- grades 4-6 (10-13 year olds) and III - grades 7-9 (13-16 year olds). After basic school students may

attend upper secondary school (gymnasium), a secondary vocational school or enter a profession. Only basic school is compulsory.

The Estonian school system consists mainly of public schools (municipal and state schools). The majority of schools are owned by the municipalities. There are also a few state schools. For example, many special needs schools (e.g. for mentally or physically handicapped etc.) are State schools. In financial terms it means that the teachers' salaries schools' administration and textbooks for all schools, regardless of their ownership, up to the end of upper secondary (gymnasium) education are paid for by the State. Allocations from the State budget are made according to the number of students going to a specific school. All other expenses (e.g. school buildings, maintenance, salaries of non-teaching personnel (e.g. school nurse, cleaners etc.) are covered by the authority responsible for the school (for example, the State, a municipality or a private authority).

According to the Estonian Constitution (Art. 37), provision of education is supervised by the States¹⁶ Thus the national curriculum and standards are set by the State. It is the responsibility of the Government to establish the national curriculum for basic schools, the simplified national curriculum for basic schools (for pupils with learning difficulties) and the national curriculum for upper secondary schools. The national curriculum sets out the goals and objectives of studies, expected learning outcomes, assessment criteria and procedure, and requirements for the learning and teaching environment, organisation of teaching and education, graduation from school and school curricula (BGS, Art. 15 (1)). On the basis of the national curriculum every school adopts its own curriculum (school curriculum) (BGS Art. 17 (1)). The law is flexible allowing, specificity of a school to be taken into account and/or provide optional courses (BGS Art. 15), provided, of course, that there are resources available for that purpose. The curriculum of a school is established by the head of the school. The curriculum of the school and amendments to it are submitted to the board of trustees, student council and teachers' council for the expression of an opinion before enactment. Information about the curriculum of a school is registered in the education information system's sub-register of curricula and education licenses. Teaching and education in a school may also be carried out under the curriculum of the International Baccalaureate Organization and under the curriculum drawn up on the basis of the Convention defining the Stature of the European Schools (hereinafter international curriculum, BGS, Art. 16 (1)). No state supervision is exercised over the studies based on the international curriculum. In many respects the BGS does not apply to schools following the international curriculum.

The qualification of teachers is regulated at the national level. According to Art. 75 of the BGS teachers need to have higher education. However, the law allows the head of the school to appoint a lesser qualified person (with upper secondary school

education) for up to year if after a public competition there is no qualified candidate to appoint. The BGS has delegated the obligation to determine specific qualifications of different categories of teachers and school administration to the Ministry of Education and Research. The regulation (*Pedagoogide kvalifikatsiooninõuded*) adopted by the Ministry on 28 January 2010 (entered into force 01.09.2010)¹⁷ sets forth the detailed description of the qualifications needed. In most cases both pedagogical and subject and/or target group (e.g. special needs) specific preparation is needed. In some cases, the number of years of experience in teaching is also taken into account instead of pedagogical preparation.

The legal framework

As to the law on education, Article 37 of the Estonian Constitution¹⁸ creates the basis for the entire school system. Article 37 of the Estonian Constitution sets forth that:

- (1) Everyone has the right to education. Education is compulsory for school- aged children to the extent specified by law, and shall be free of charge in state and local government general education schools.
- (2) In order to make education accessible, the state and local government shall maintain the requisite number of educational institutions. Other educational institutions, including private schools, may also be established and maintained pursuant to law.
- (3) Parents shall have the final decision in the choice of education for their children.
- (4) Everyone has the right to receive education in Estonian. The language of instruction in national minority educational institutions shall be chosen by the educational institution.

In addition to the Constitution there are three principal laws that regulate provision of basic and upper secondary education in Estonia. Firstly, the Education Act (hereinafter the EA, *Haridusseadus*)¹⁹ sets forth the objectives and levels of education. It also determines the competences and responsibilities of the State and local governments in providing education. It also specifies the general division of responsibilities between legislative and executive authorities. Secondly, as mentioned above the new Basic Schools and Gymnasiums Act was adopted on 9 June 2010 (in force from 1 September 2010).²⁰ The BGS replaced the previous BGS adopted in 1993.²¹ The new BSG introduced a few changes to the school system in Estonia

generally. There are many aspects to this new law which are unclear and need to be tested out in practice. It is also likely that some further amendments to the law are needed. Thirdly, the Private Schools Act²² (hereinafter PSA, *Erakooliseadus*) regulates the establishment of private educational institutions including basic schools and gymnasiums. The BGS is applied to private schools to the extent the PSA does not regulate differently.

The BGS has delegated certain issues to be regulated at the Governmental level. The Ministry of Education and Research has adopted two important regulations on 06 January 2011: the National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*)²³ and National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*)²⁴. As mentioned above the Ministry of Education and Research has also adopted the regulation on qualifications of teachers.²⁵ There is a regulation on home schooling which was adopted by the Ministry of Education and Research (*Koduõppe ja haiglaõppe tingimused ja kord*) on 11.08.2010 (in force 01.09.2010).²⁶ There are also several other regulations, for example, regarding assessment of (exam) papers, provision of school meals, expulsion from a school etc.

Although this paper focuses on general education provided by basic schools and gymnasiums it may need to be mentioned that there are further four principal laws that regulate the field of education: the Pre-schools Act (*Koolieelsete lasteasutuste seadus*),²⁷ Hobby Schools Act (*Huvikooliseadus*),²⁸ Vocational Schools (Educational Institutions) Act (*Kutseõppeasutuse seadus*)²⁹ and Adult Education Act (*Täiskasvanute koolituse seadus*)³⁰.

The laws on general education are also shaped and influenced by political documents such as the Estonian Education Strategy 2007-2013 (updated version for 2011-2013) (*Üldharidussüsteemi arengukava aastateks 2007-2013“ perioodiks 2011- 2013*).³¹ This document takes into account strategies developed at the European and international level (e.g. Lisbon strategy, Education for All (EFA)-UNESCO, EU Strategic Framework for Education and Training (ET 2020), etc.).

Freedom to establish non-state schools

According to Art. 2 of the Private Schools Act³² a private school can be established by profit making and non-profit making organisations (including religious associations). There is no difference in treatment depending on the nature of the organisation. The owner of a private school has to have a separate budget for the private school which has to be kept apart from the accounts of other agencies and undertakings of the owner (PSA, Art. 22 (1)).

The PSA regulates the establishment of private educational institutions of all types at all school levels (pre-school, basic, secondary, vocational and higher education). These private schools need to obtain a license from the Ministry of Education and Research (PSA, Art. 5 (1)). As noted above, according to the Estonian Constitution (Art. 37), provision of education is supervised by the State. The license for pre-schools, basic schools and gymnasiums is issued for a certain period of time for up to five years (PSA, § 5 (21)). It is also important in order to apply for funding and projects financed by the State or municipal government.

As mentioned above, religious communities can set up private educational institutions. Only a very few religious organisations have established schools in accordance with the PSA. Currently there are two registered kindergartens (preschools), one run by Tallinn Toompea Kaarli Congregation of the Estonian Evangelical Lutheran Church and another run by the Catholic Educational Centre in Tartu. There are three basic schools, one run by the Word of Life (*Elusõna*) Tartu Congregation,³³ another one by the Society of Orthodox Education called 'Resurrection' and the third one by the Catholic community in Tartu. There is one gymnasium – Tallinn Jewish School (*Tallinna Juudi Kool*). There are also three professional higher education institutions (*rakendusõrgkool*) run by the Estonian Methodist Church, the Union of Free Evangelical and Baptist Churches of Estonia, and by the non-profit organisation Tartu Academy of Theology. The Estonian Evangelical Lutheran Church has one university in Tallinn.

There is no statistical information available as to the exact number of Sunday and Bible schools operated by religious organisations. The statistical information and documents of private schools (registered according to the PSA) can be obtained online.³⁴ Sunday or Bible schools run by churches or other religious organisations do not need the license to provide their courses. There are no Islamic basic or upper secondary schools established under the PSA. There are several Sunday schools. Especially after the re-gaining of independence from the Soviet Union, the Muslim community in Estonia has been more focused on their specific ethnic-cultural traditions rather than religion. As a rule, none of these Sunday schools specifically mention Islamic teaching. The focus is on teaching language, culture, history, traditions, dances, folk songs and even cuisine. They welcome students from different backgrounds. The aim is to spread knowledge about their culture and customs in Estonian society.³⁵ The majority of the Estonian Muslim community is still made up of individuals who came from the territory of the former Soviet Union. So far there has only been a limited number of new arrivals. They are from different regions globally, and do not form any significant ethnic religious communities. Estonia does not yet have any of the challenges related to the growing Muslim communities as experienced in other European countries.

Homeschooling

Home schooling is allowed in accordance with the regulations adopted by the Ministry of Education and Research (Art. 23 BGS). According to the regulation (*Koduõppe ja haiglaõppe tingimused ja kord*) adopted on 11.08.2010 (in force 01.09.2010³⁶) there are two types of home schooling: (1) home schooling resulting from a medical necessity and (2) home schooling resulting from parental wishes. In both cases a parent can apply for home schooling stating relevant reasons. In the first case, the counselling committee³⁷ makes a recommendation (Regulation, Art. 2 (3)). The decision itself is made by the head of the school. The school is responsible for arranging the home schooling in the case of the medical necessity. The schooling is publicly funded. The school, in cooperation with the parent, provides an individual work plan for the student. The work plan takes into account the suggestions made by doctors and the counselling committee. This type of home schooling can take place at all school levels, including gymnasium.

In the second type of home schooling the parent needs to state the reasons for home schooling and name the person who is going to carry out the teaching (Regulation, Art. 5 (2)). The law does not specify what kind of reasons should be given. It also does not say the reasons need to be substantial or backed up with evidence. The parent is responsible for managing and financing the home schooling. He or she is also responsible for the quality and results of teaching. The school provides books and other materials needed to cover the school curriculum (Art. 6 (1)). Home schooling is conducted in co-operation with the relevant school. The emphasis seems to be not on the reasons for home schooling but on the quality of home schooling, which can be assured in co-operation with the school, making sure that individual work plans and obligatory curriculum are followed. There have been no known cases in practice indicating a conflict of interest in this regard yet. The school's teachers' council can terminate the home schooling if during the assessment (arranged by the school twice a year) it appears that the student has significant deficiencies in achieving results specified in his/her individual work plan/curriculum (Regulation, Art. 8).

School choice not limited by family income

Tuition in public schools is free. Parents have a right to choose a (public) school. Public schools have an obligation to admit pupils from their area (school district) (BGS, Art. 10). If the school is oversubscribed it has a right to decline pupils from other school districts. However, the oversubscription problem is a specific problem only known in two (biggest) Estonian cities (Tallinn and Tartu). These two cities also have some public schools which do not have school districts, they have admission tests. Some of these schools have had

an image of good (elite) schools already during the Soviet time and even during the first independence period (1918-1940). The competition for admission to these schools is high. Usually the schools focus on specific subjects (sciences, music, language etc.). Some schools which have a school district have established specific fields of study for which they require admission tests to be taken. Some parents have been protesting about the admission policies based on tests and not on the school district. However, the attempt to establish school districts for all schools has not worked in practice because of the oversubscription problem. Parents from all over the country found loopholes in law to declare their residency in these school districts.

If a parent chooses a public school from other municipality the municipality of his/her residency has to contribute to the maintenance of the chosen school. The municipality provides transport to the school. The BGS also sets forth that a school may have boarding school facilities that constitute a structural unit of the school (Art. 40). The Ministry of Education and Research has to determine the number of state funded places in these boarding schools (including for students whose families have difficulties in the sense of the Social Welfare Act³⁸).

There are only a very few private schools in Estonia. The State supports private schools in the same way as municipal schools. The fees established by a private school normally cover extra tuition, optional courses and some of the maintenance costs. Thus, the possibility for parents with low incomes to send their children to private schools is to some degree limited. However, some private schools (e.g. Rocca al Mare) have set up scholarship funds to support students on the basis of economic need.

As pointed out by Ginter, the school choice may be limited indirectly. As mentioned above, some public schools are allowed to choose their students and have entrance examinations. The same applies to private schools. As the competition is very high students may need some extra tuition. 'Not all families can afford extra preparation or these examinations.'³⁹

School distinctiveness protected by law and policy

Distinctive character

According to the Estonian Constitution (Art. 37), provision of education is supervised by the State.⁴⁰ Thus the national curriculum and standards are set by the State. As mentioned above, it is the responsibility of the Government to establish the national curriculum for basic schools, the simplified national curriculum for basic schools (for pupils with learning difficulties) and the national curriculum for upper secondary

schools.⁴¹ The national curricula sets out the goals and objectives of studies, expected learning outcomes, assessment criteria and procedure, and requirements for the learning and teaching environment, organisation of teaching and education, graduation from school and school curricula (BGS, Art. 15 (1)). The national curriculum provides a list of compulsory subjects, specifies the content of those subjects and study time (number of lessons) for each subject. On the basis of the national curriculum every school adopts its own curriculum (school curriculum) (BGS Art. 17 (1)). The curriculum of a school is established by the head of the school. The law is flexible allowing to take into account specificity of a school/region and/or provide optional courses (BGS Art. 15), provided, of course, that there are resources available for that purpose. As mentioned above, some schools focus on specific subjects (sciences, music, language etc.). Some schools have established specific fields of study alongside mainstream curriculum provided by the school. The schools also have to decide which textbooks and other materials they use. The requirements for teaching materials are set by the Ministry of Education and Research.

Although schools have freedom to design their optional courses, the content of some optional courses such as religious education (hereinafter RE), is specified in the national curriculum adopted by the Ministry of Education and Research. The regulations specify that the syllabus for religious education has to follow the syllabus provided by the Ministry of Education. Religious education has been one of the most contested issues regarding religion and education in Estonia. The inclusion of the syllabus in the national curricula is a result of political consensus which was finally reached regarding the content of the subject. It is also an attempt to unify and establish control over the content of religious education nationally. Religious education is a voluntary, non-confessional (non-denominational) subject. Unlike other countries with non-confessional models of religious education, in Estonia religious education is an elective, not a required course. As to the typology of RE, it is intended to be a mix of teaching about religions and ethics.⁴² The type of RE reflects Estonian constitutional principles of neutrality/separation of the State and Church ('There is no State Church', Art. 40 Estonian Constitution), non-discrimination and freedom of religion and belief.⁴³ There is no legal basis to provide denominational education in public schools. In addition to the RE public schools may provide other courses related to religions (e.g. history of religions, art and religions) provided that they do not turn into indoctrination.

Private basic schools and gymnasiums have relative freedom as regards curriculum, ethos, admissions and also teaching methods/philosophy (e.g. there are several Waldorf schools in Estonia). On the basis of the national curriculum, the manager of a private school approves the school curriculum. The curriculum is entered into the Estonian Education Information System upon the issuing of a license (PSA, § 11 (2)). According to the amendments applicable from 1 September 2010, Art 11 (5) of the

PSA explicitly sets forth that it is allowed to provide confessional religious education in private educational institutions (previously there was no explicit mentioning of this, although it was not prohibited either).⁴⁴ This is a general provision which applies to all private schools, not just confessional ones. The PSA further states that confessional RE is voluntary. There is no difference in funding between private basic schools (confessional or non-confessional). As noted above, the State supports private schools in the same way as municipal schools. The fees established by a private school normally cover extra tuition, optional courses and some of the maintenance costs.

Decisions about admitting pupils

As noted above, the general rule is that a public basic school is obligated to admit all persons subject to the duty to attend school who have expressed such desire and for whom the school is the school of residence. Parents are free to choose a school for a person subject to the duty to attend school, if the desired school has vacant student places. The law allows, to some degree, to take the distinctive character of the school into account. As mentioned above, some schools have additional requirements (admission tests) and some schools which have a specific focus do not have an attendance, catchment area (school district, school of residence). In addition to the BGS the Minister of Education and Research has established some very general rules as to the conditions of and procedure for the admission of students to school (*Õpilase kooli vastuvõtmise üldised tingimused ja kord ning koolist väljaarvamise kord*, adopted 19.08.2010, in force 01.09.2010).⁴⁵ The regulation leaves room for schools to determine their own additional admission policies. The owner of a school or the head of school authorised by the owner of a school establishes the conditions of and procedure for admission to the school, including the procedure for the evaluation of knowledge and skills upon admission to upper secondary school (BGS, Art. 27 and Regulation Art. 2). The head of school also prepares the draft conditions of and procedure for admission to the school which he/she submits to the board of trustees for the expression of an opinion before establishment. The heads of school make decisions to enroll a person. Discrimination on the basis of religion or belief in the admission policies of a public (state or municipal) school would be contrary to Estonian Constitution (Art. 40 ('Freedom of Religion or Belief'⁴⁶) and Art 12 (non-discrimination⁴⁷) and would most likely cause public outcry.⁴⁸

Admission to a private basic school, upper secondary school, vocational educational institution, and an institution of professional higher education is subject to the admission conditions established by law for state and municipal educational institutions or universities in public law of the same type. However, the board of a

private school has the right to establish additional (other) requirements (PSA, § 12). Many private schools have admission tests. Although the law is not explicit about it, private schools can (are allowed) to discriminate on religious grounds. For example, Tartu Catholic School gives priority to members of the Tartu catholic congregation⁴⁹ and the Jewish School in Tallinn gives priority to students who are loyal to Jewish traditions, history and learning Hebrew.⁵⁰ There are no cases contesting these arrangements. There are no cases similar to ones, for example, in the United Kingdom⁵¹ and in the Netherlands.⁵² In fact, there are no cases concerning any schools with specific mission or ethos. It is likely that Estonian courts would follow the reasoning of the court in the Netherlands and not in the UK.⁵³ However, if a refusal to admit a pupil is solely (or indisputably) based on racial grounds, the law and the courts may need to react to it.

In many European countries, including the UK, faith schools have a significant role in providing education. The awkward question is to what extent should faith schools be required to give up their autonomy and ethos as regards admissions to meet the needs of the larger community. There is no similar debate going on in Estonia. Firstly, the number of basic schools and gymnasiums with religious ethos is very small in Estonia. As mentioned above, the Estonian school system consists mainly of public schools (municipal and state schools). Secondly, although schools with special mission receive public funding, it has not been seen as a possible reason to abandon prioritising at admission. There is no public debate on the issue yet. Furthermore, the right to collective religious autonomy is one of the principles underpinning the protection of freedom of religion or belief in the Estonian Constitution. In theory, this principle extends to schools with religious character. Thus, in the case of a dispute one needs to take into account this principle/right *vis-à-vis* the right to education. However, as mentioned, there is no debate or dispute on this matter and there are no cases to clarify how the balance would be drawn in the case of a conflict over the admission policies.

Decisions about staff

As noted before the qualification of teachers in basic and upper secondary schools is regulated at the national level (BGS⁵⁴ and the Regulation adopted by the Ministry of Education and Research⁵⁵). According to Art. 75 of the BGS teachers need to have higher education. In principle private schools with special ethos can select teachers on the basis of religious or philosophical conviction in addition to the general requirements (higher education and pedagogical preparation) set forth for the qualification of teachers by the Ministry of Education and Research. The Equal Treatment Act (*Võrdse kohtlemise seadus*)⁵⁶ and the Gender Equality Act (*Soolise*

võrdõiguslikkuse seadus)⁵⁷, which were adopted as a result of anti-discrimination legislation at the EU level leave room for schools with specific ethos to set up additional requirements to staff selection. However, the scope of the application of the current anti-discrimination laws to religious communities and their affiliated institutions such as schools is not entirely clear in Estonia. No disputes have risen so far. There is no case law to clarify the applicability of the law in such cases.

One can only mention a remotely related case from the practice of public schools. When schools became open to (non-confessional) religious education (teaching about religions) at the beginning of 1990s, many eager people without pedagogical experience and professional skills rushed to teach it. Sometimes religious education turned into confessional instruction in schools.⁵⁸ There were some cases, where teachers were fired for religious indoctrination, but not for the absence of qualifications per se. Although the shortage of well qualified religious education teachers in public schools is still a problem, the situation is much improved. There have been no analogous cases to the above recently.

Accountability for school quality

As noted above, according to the Estonian Constitution (Art 37), provision of education is supervised by the State.⁵⁹ In law there is no real difference in control over public and private basic or upper secondary schools.

One can differentiate between *ex ante* and *ex post facto* control over quality of schools. As to the *ex-ante* control, for obtaining the education licence both municipal and private schools need to submit certain documents, for example, the school curriculum, a certificate of the owner of the school regarding the existence of teachers complying with the qualification requirements, etc. (BGS, Art. 63). The Minister of Education and Research does not issue the licence if the information or documents specified in the BGS have not been appended to the application or if these do not comply with the requirements established by legislation and the material base of teaching and learning does not correspond to the needs arising from the school curriculum. The PSA also sets forth minimum capital requirements for of the owners of private schools.

When the school is already operational, the Ministry of Education and Research or, at the request of the Minister of Education and Research, the governor of the county of location exercises state supervision over teaching and education carried out by schools. The functions of officials exercising state supervision are as follows: (1) to

inspect the adherence to the requirements arising from the legislation regulating teaching and education; (2) to analyse problems in the implementation of the legislation regulating teaching and education. The BGS delegates details of the supervision to be worked out at the Ministerial level. These details are reviewed every year. For example, the Ministry of Education and Research has issued a regulation nr 12 on state supervision for 2011-2012 on 01.04.2011 (*Riikliku järelevalve prioriteetid, temaatilise riikliku järelevalve teostamise, selle tulemuste vormistamise ja tulemustest teavitamise kord 2011/2012. õppeaastal*)⁶⁰ The supervision methodology is specified in the regulation. Both ‘in- puts’ of schooling (such as staff qualifications, curriculum followed, resources, etc.) and results of external examinations, statistics etc. are taken into account in the assessment of the school (Art. 4).

In addition to the external evaluation schools conduct their own internal evaluation. Internal evaluation is an ongoing process aimed at ensuring the conditions supporting the development of students and the consistent development of a school. To that end the strengths and weaknesses of the activities of a school are identified and the action plan of the school is drawn up on the basis thereof. Following the goal, teaching and education and management is analysed and their effectiveness is evaluated in the course of internal evaluation. The head of a school establishes the procedure for internal evaluation of the school. Schools draw up an internal evaluation report at least once every three academic years.

Teaching of values

As noted above, Art. 2 of the EA⁶¹ sets objectives and levels of education, stating *inter alia* that: the fundamental principles of education are based on the recognition of universal and national values, of the individual and of freedom of religion and conscience. Article 3 of the BGS further specifies the framework of fundamental values of general education schools. The values arising from the ethical principles specified in the Constitution of the Republic of Estonia, the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the fundamental documents of the European Union are considered important. The BGS sets forth that the socialisation of the new generation is based on the traditions of Estonian culture, common European values, and the recognition of the main achievements of world culture and research. It further notes that people who have acquired general education should be able to integrate into society and contribute to the sustainable social, cultural, economic and ecologic development of Estonian society. Article 2 of

both the National Curriculum for Basic Schools⁶² and National Curriculum for Gymnasiums⁶³ adds that general education is based *inter alia* on the fundamental human values such as honour, care, dignity, justice, respect to oneself and others etc. and societal values such as democracy, freedom, respect to mother tongue and culture, patriotism, cultural pluralism, tolerance, economic sustainability, solidarity, rule of law, responsibility and gender equality.

Thus, it could be said that the State has broadly defined what sort of values should be taught both in public and private schools. There is also room for cultural and religious pluralism. Private schools are entitled to keep to their ethos and values within the given framework.

There are several compulsory subjects listed in the National Curriculum which are more related to teaching about values than others. They are categorized as social subjects (*sotsiaalained*): history (*ajalugu*), human science (*inimeseõpetus*) and civic education (*ühiskonnaõpetus*). The National Curriculum includes into this category an optional course on religious education (*usundiõpetus*). The aim of this subject category is *inter alia* to teach knowledge about and respect to human rights, democracy, civil rights and obligations, respect to cultural and religious differences etc. Some themes need to be integrated into different subjects throughout the curriculum (*lõimumine, läbivad teemad*).

Just to give some idea, for example, religious education in basic⁶⁴ and secondary schools,⁶⁵ is (or will be, as the laws take effect gradually) a mix of learning about religions and ethics (broadly defined). The aim is to give a non-confessional overview of world religions and to help students to understand the impact of different religions in world culture, and most importantly, to prepare them for life in a pluralistic and multicultural world. Not only are religious world views covered, but also non-religious views. Topics such as secularisation and the relationship between science and religion are also included. The syllabus seems to be aimed at teaching tolerance. It is intended to develop religious literacy and readiness for dialogue by introducing different world religions/views. An interesting aspect is that students are encouraged to recognize and understand religious discrimination and analyze both positive and problematic religious manifestation in context. Discussions are also held about existential questions. There are obviously differences in methods of teaching and learning according to the age of students. All in all, there is a strong emphasis on learning how to navigate in a multi-religious world, while remaining open minded and critical at the same time. Dialogue and respect seem to be the keywords which characterise both the curriculum of basic schools and gymnasiums.

The preambles of basic school and also upper secondary school's syllabuses emphasise that religious education is founded on the UN Declaration of Human Rights and that religious education is a precondition for protection of freedom of religion or belief. The aim of RE is to provide knowledge about religion in order to help students understand the world, its culture and the role of the religious dimension in human life. It also emphasises the importance of learning about local religions and cultural heritage. An important aim of religious education is to support the moral development of pupils and special attention must be paid to the problems they experience in everyday life, and answering their questions. RE is not about teaching into religion. No world view is presented to students as normative. The syllabus seems to take into account some of the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools adopted by OSCE/ODIHR in 2007.⁶⁶

As noted above, private schools can follow their ethos and values within a given framework. For example, they are entitled to provide confessional religious education (provided that it is a voluntary subject). There have been no reported conflicts of interests or concerns related to teaching these subjects in private schools or in Sunday or Bible schools. As noted above, there have been reported problems relating to RE in public schools.⁶⁷

One of the specific issues in the area of teaching of values is again related to linguistic and ethnic minorities in Estonia. For long there has been a (political and popular) belief that integration, identity/sense of belonging and also loyalty to the Estonian state are related to being fluent in Estonian language. Hence the transition to Estonian-medium education as discussed at the beginning of this paper. However, recent studies point out that knowledge of the Estonian language does not necessarily mean identification with Estonia. It is a broader problem related to integration questions. Regarding general education, Prof. Lauristin, rightly suggests that the focus should not be on language only, but on civic education and the quality of teachers.⁶⁸

Conclusion

The legal framework in Estonia provides a sufficient basis for guaranteeing the right to education. However, there are aspects to the new BGS which are unclear and need to be tested in practice. The implementation of the new BSG and National Curriculum is a complex process. The declining numbers of students, the need to improve the

quality of teachers and education generally and valuing teachers work are serious challenges in Estonia and a source for much public debate. The ongoing general education reform in Estonia is also very much connected to parallel reforms in the field of vocational education and higher education. Due to the limited scope of this paper these connections cannot be explored here.

Endnotes

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- ¹ For a more detailed overview of Estonian history see e.g. T. Raun, *Estonia and Estonians*, 2nd edn (Stanford: Hoover Institution Press, 2001), xviii.
- ² See also K. Sillaste, 'Conquest and Survival: An Outline of Estonian History', *World Affairs* 157, no. 3 (1995): 119.
- ³ Treaty of Accession, RT II 2004, 3, 8.
- ⁴ According to the Estonian Statistics Office (*Statistikaamet*) the Estonian population on 1 January 2012 was approximately 1, 339, 662 inhabitants. Estonian Statistics Office, <www.stat.ee>, accessed 1 Apr 2012. The data of the recent population census (2011-2012) will be available on the Estonian Statistics Office website from May 2012.
- ⁵ RT I 2010, 41, 240 (entered into force 01.09.2010, some provisions, however, enter into force at a later date).
- ⁶ See XI Riigikogu Stenogramm, V Istungjärg, 25.03.2009; XI Riigikogu Stenogramm, VI Istungjärg, 25.11.2009; XI Riigikogu Stenogramm, VII Istungjärg, 02.06.2010; XI Riigikogu Stenogramm, VII Istungjärg, 09.06.2010. Available at <www.riigikogu.ee>, 1 December 2010.
- ⁷ The Court found that the local municipality breached the requirements of the proportionality test. 'Pühajärve põhikooli juhtum – märgilise tähendusega debatt Eesti haridusmaastikul,' 8.03.2012, Sorainen 2012, Available at <www.sorainen.com>, accessed 4 April 2012.
- ⁸ A. Ots, K. Vaher, R. Sellio, P. Laanoja, *Ülevaade Eesti õpetajaskonnast* (Statistical overview, Tartu, 2008), pp. 6-10; Available at <<http://www.hm.ee/raamat2010-2011/opetajad.html>>, 10 April 2012.
- ⁹ The main groups are of diverse origins from various regions of the former USSR: ca 74% Russians, 18% Ukrainians and Byelorussians.
- ¹⁰ See e.g. M. Kiviorg & L. Roots, 'Immigration, Asylum and Religion Estonia', in *Immigration, Asylum and Religion in Europe*, ed. A. Motilla (Leuven: Peeters, forthcoming 2012).
- ¹¹ The application needs to be submitted by local government (BGS, Art. 21 (3)). The applications of two city councils (Tallinn and Narva) were declined by the

Government. These municipalities are going to take the matter to the court. Depending on the decision of the court they are also considering registering the Russian speaking gymnasiums as private schools, where the requirement of Estonian language does not apply. 'Kohtusse minek pole õpilast huvides', *Põhjarannik* 8.03.2012 and Narva läheb venekeelse õppe päästmiseks erakoolide teed Available at [www](http://www.pohjarannik.ee).

¹² See e.g also *Hilise keelekümblyuse mõju* (Tallinna Ülikool, Haridusuuringute keskus, Tallinn 2011), p. 59, Available also at Ministry of Education and Research, <www.hm.ee>, accessed 4 April 2012.

¹³ *Ibid.*, 60-63.

¹⁴ Council of Europe, ACFC/OP/III(2011)004 (Strasbourg, 7 November 2011), Available at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Estonia_en.pdf>, 10 April 2012.

¹⁵ BGS, Art. 9 (2).

¹⁶ See Art 37 of the Estonian Constitution.

¹⁷ RT I 2010, 6, 22.

¹⁸ RT I 1992, 26, 349.

¹⁹ RT I 1992, 12, 192; RT I 2010, 41, 240 (last amended).

²⁰ RT I 2010, 41, 240 (entered into force 01.09.2010, some provisions, however, enter into force at a later date).

²¹ RT I 1993, 63, 892; RT 2010, 22, 108 (last amended).

²² RT I 1998, 57, 859; RT I, 12.12.2011, 1 (last amended).

²³ RT I 14.01.2011, 1.

²⁴ RT I 14.01.2011, 2.

²⁵ RT I 2010, 6, 22.

²⁶ RT I 2010, 56, 367.

²⁷ RT I 1999, 27, 387; RT I 2010, 41, 240 (last amended).

²⁸ RT I 2007, 4, 19; RT I 2010, 41, 240 (last amended).

²⁹ RT I 1998, 64/65, 1007; RT I 2010, 41, 240 (last amended).

³⁰ RT I 1993, 74, 1054; RT I 2010, 41, 240 (last amended).

³¹ Ministry of Education and Research, Available at <
<http://www.hm.ee/index.php?03236>>, accessed 5 April 2012.

³² RT I 1998, 57, 859; RT I, 12.12.2011, 1 (last amended).

³³ *Tartu Elusõna Kogudus* is a sister congregation of the Uppsala *Livets Ord*.

³⁴ Eesti Hariduse Infosüsteem [Estonian Education Information System], 'Koolid', <www.ehis.ee/>, 1 December 2010.

³⁵ For a detailed account on religious education and Islam in Estonia see e.g. M. Kiviorg, 'Religious Education in Estonia' in G. Robbers (ed.) *Religion in Public Education* (University of Trier, 2011); M. Kiviorg, 'The Place of Religion in Education in Estonia', ELA, Conference 'Islam (Instruction) in State Funded Schools, 9-11.02.2012, Available at <<http://www.lawandeducation.com/main.aspx?c=.ELA&n=96055&ct=86719>>, 19 March 2012.

³⁶ RT I 2010, 56, 367.

³⁷ The counselling committee is formed according to Art. 50 of the BGS. It consists of various experts and representatives of a local municipality.

³⁸ RT I, 30.12.2011, 47.

³⁹ J. Ginter, 'Estonia' (2005 Reports, European Association for Education Law and Policy), Available at <<http://www.lawandeducation.com/main.aspx?c=.ELA&n=96055&ct=86719>>, 19 March 2012.

⁴⁰ See Art 37 of the Estonian Constitution.

⁴¹ See ‘The Structure of Schooling’ above.

⁴² According to the classification provided by C. Evans, it can be argued that RE in Estonia fits most comfortably within the category of ‘plural religious education’, in which students learn about the basic practices, beliefs, rituals etc of a variety of religions. They are presented with information about these religious traditions, but are not taught that any of them are true or untrue. The instruction also extends to philosophies and beliefs of a non-religious nature. C. Evans, ‘Religious Education in Public Schools: An International Human Rights Perspective’ HRLR 8 (2008) 461. Religion in Estonian schools is also taught within other subjects, for example, art, history and literature (Evans calls it ‘incidental RE’) to the extent necessary to understand certain topics or visual art.

⁴³ For a more detailed account on religion in Estonia see e.g. M. Kiviorg, ‘Estonia’ in R. Torfs (ed) *International Encyclopaedia of Laws: Religion* (Kluwer Law International, 2011).

⁴⁴ This provision was included by the new BSG which amended several paragraphs of the PSA (See Art 105 of the BSG).

⁴⁵ RT I 2010, 60, 408.

⁴⁶ Article 40 sets out that:

- (1) Everyone has freedom of conscience, religion and thought. Everyone may freely belong to churches and religious associations. There is no state church.
- (2) Everyone has the freedom to practise his or her religion, both alone and in a community with others, in public or in private, unless this is detrimental to public order, health or morals.

⁴⁷ The principle of equality is anchored in the first sentence of the first paragraph of Article 12 of the Estonian Constitution, which states that all persons shall be equal before the law. The second paragraph of article 12 of the Constitution sets forth the principle of non-discrimination, prohibiting discrimination *inter alia* on the basis of religion or belief.

⁴⁸ For a more detailed account on the constitutional principles related to freedom of religion or belief and non-discrimination see e.g. M. Kiviorg, *Religion and Law in Estonia* (Kluwer Law International, 2011).

⁴⁹ Tartu Katoliku Harisuskeskus, Available at < <http://www.katoliku.edu.ee/node/33>>, accessed 6 April 2012.

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- ⁵⁰ Tallinna Juudi Kool,
<<http://www.jkool.tln.edu.ee/JKOOL/images/stories/content/files/vastuvotukord.pdf>>, 6 April 2012.
- ⁵¹ See, for example, controversial case about admission policy of the Jewish Free School in the UK Supreme Court. *R (on the application of E) (Respondent) v. The Governing Body of JFS and the Admissions Appeal Panel of JFS and others (Appellants)* [2009] UKSC 15.
- ⁵² Netherlands: HR 22 January 1988, NJ 1988, 891. See also N. Doe, *Law and Religion in Europe* (Oxford University Press, 2011), p. 202.
- ⁵³ The Courts in the United Kingdom and the Netherlands on the basis of almost the same facts came to completely different conclusions. Both cases were sparked off by the fact that the Orthodox Jewish School denied a place to a boy following a different strand of Judaism. The Supreme Court in the UK controversially found that the Jewish Free School discriminated against him on racial grounds. The Supreme Court in the Netherlands, on the other hand, declined to interfere and decided that parental right in Art. 2 of the First Protocol of the ECHR does not apply to private schools.
- ⁵⁴ RT I 2010, 41, 240.
- ⁵⁵ RT I 2010, 6, 22.
- ⁵⁶ RT I 2008, 56, 315; RT I 2009, 48, 323 (last amended).
- ⁵⁷ RT I 2004, 27, 181; RT I 2009, 48, 323 (last amended).
- ⁵⁸ Valk, P., *Development of the Status of Religious Education in Estonian School. European and Local Perspectives*, Paper given at the Conference on Law, Religion and Democratic Society (Estonia, University of Tartu, 1999). Conference materials are available at the University of Tartu Faculty of Law Chair of Public International Law and EC Law.
- ⁵⁹ See Art. 37 of the Estonian Constitution.
- ⁶⁰ RT I 06.04.2011, 6.
- ⁶¹ RT I 1992, 12, 192; RT I 2010, 41, 240 (last amended).

⁶² RT I 14.01.2011, 1.

⁶³ RT I 14.01.2011, 2.

⁶⁴ National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*), RT I, 14.01.2011, 1, Lisa 9.

⁶⁵ National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*), RT I, 14.01.2011, 1, Lisa 8.

⁶⁶ *Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools* (Warsaw: OSCE 2007).

⁶⁷ See 'Decisions about staff' above.

⁶⁸ The study also suggests that there is a category of Russian speaking community who's Estonian language skills are minimal, but their identification with Estonia is strong. Lauristin suggests that there is a need to start to see differences within the immigrant community and address them accordingly. O. Kund, 'Lauristin: Eesti integratsioonipoliitikal tuleb kohaneda uue olukorraga', *Postimees* 20.03.2012.

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