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The Åland Islands Peace Institute

**Legal and Institutional Framework Analysis:**  
**Seto and Võro languages**

**eldia**

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# Foreword

The **Legal and Institutional Framework Analyses** represent the collected knowledge of the ELDIA-project in the field of law, politics and policies and of their institutional representations with regard to the languages studied in this research project. Each report examines one or two languages in their wider national and international context. The **core scientific questions** in the present law and policy studies are: What role is played by law in the use or non-use of different languages in different domains? What role is played by law in promoting or inhibiting language diversity as such? Finally, which factors related to legal and institutional matters influence language use, language maintenance and language diversity? Each study consists of three main parts: a) The **overall legislative and institutional framework**; b) **Languages and minority policies in practice** (a section which covers the discussions and the implementation, or non-implementation, of constitutional provisions, language legislation, education and media legislation) and c) an identification and analysis of **the legal actors**, i.e. persons, organisations, and public authorities engaged in the development, interpretation and monitoring (judicial and other) of the relevant legal frameworks. The law researchers involved in this part of the research have benefited greatly from the input of and interactions with the broad network of researchers represented in the project, and thus we are now even more convinced that contacts across scientific disciplines is a precondition for a deeper understanding of complex societal processes. The *Legal and Institutional Framework Analyses* shall form part of the background for the development of the comparative and interdisciplinary work that is currently taking place within the ELDIA-project.

The present study analyses the legal situation as of the end of the year 2011.

As all *Working Papers* published on the project website and within ELDIA, also these studies have been submitted to extensive project internal as well as external review under the supervision of Associate Professor, Jur. Dr., Sia Spiliopoulou Åkermark. The Åland Islands Peace Institute is responsible for this component of the ELDIA project. Any comments can be sent to [sia@peace.ax](mailto:sia@peace.ax)

We wish to thank all those that have kindly contributed to our work with their comments and advice.

Mariehamn in June 2012

**Sia Spiliopoulou Åkermark**

The Åland Islands Peace Institute

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## List of Abbreviations

CAC – Cultural Affairs Committee of the Parliament

ERR – *Eesti Rahvusringhääling* (Estonian National Broadcasting)

FCNM – Framework Convention for the Protection of National Minorities

MER – Ministry of Education and Research

MoC – Ministry of Culture

## Introduction

The Republic of Estonia is a multilingual and multinational country. Initially the territory that now is the physical territory of the Republic of Estonia was populated by Finno-Ugric tribes.<sup>1</sup> The current ethnic and linguistic composition of the population, however, is substantially more varied. This is mostly due to the history of occupations over the centuries but also due to normal migration as a result of trade and cultural relations. However, Estonians have remained a majority throughout history.<sup>2</sup> According to the census in 2000, the population of Estonia amounted to 1,356,931 comprising of 142 nationalities speaking 109 different mother tongues.<sup>3</sup> The largest ethnic group apart from Estonians is Russians (25.6%), followed by Ukrainians (2.1%), Belarussians (1.3%) and Finns (0.9%), while Tartars, Latvians and Polish each make up 0.2% and Jews, Lithuanians and Germans make up 0.1%.<sup>4</sup>

The Estonian language can be divided into several dialects, while the Estonian Literary Standard, approved by the Government as the correct written Estonian,<sup>5</sup> is formed based on these dialects. Dialects in Estonia can largely be divided into two major groups – the northern and the southern.<sup>6</sup> Seto and Võro, the languages covered in this analysis, are traditionally part of the southern dialects group along with Mulgi and Tartu. In various sources they are also called South-Estonian languages.<sup>7</sup> It is important to note here that linguists are divided in whether Seto and Võro are languages *per se* or dialects like Mulgi and Tartu.<sup>8</sup> For the purposes of clarity, the present analysis will refer to them as languages without intending to take a stand. The political discussions around the legal status of Seto

<sup>1</sup> See, e.g. Ministry of Education and Research (MER), Language education policy profile. Country Report Estonia, 2008, p 11, or European Commission, The Euromosaic study. Estonia: Country profile, 2004, para 1.1.

<sup>2</sup> Ministry of Education and Research (MER), Language education policy profile. Country Report Estonia, 2008, pp 11-12, or European Commission, The Euromosaic study. Estonia: Country profile, 2004, para 1.1.

<sup>3</sup> Statistical Office of Estonia, 2000 Population and Housing Census. Part I, 2001, p 12.

<sup>4</sup> Statistical Office of Estonia, 2000 Population and Housing Census. Part II, 2001, p 14.

<sup>5</sup> Procedure of Establishment of Estonian Literary Standard (RT I 2006, 40, 303). See the definition below in 1.8.

<sup>6</sup> See e.g. European Commission, The Euromosaic study. Estonia: Country profile, 2004, para 3.1, or Ministry of Education and Research, Development Strategy of the Estonian language 2004–2010, 2004, p 34.

<sup>7</sup> E.g. see the Research Centre of South-Estonian Language and Culture (*Lõuna-Eesti keele- ja kultuuriuuringute keskus*) at: <http://www.ut.ee/lekeskus/> (last accessed 13.05.2011).

<sup>8</sup> See, e.g. Kama, On law proposals of recognition of South Estonian, 2010. For opposing arguments see, e.g. Valge, Mida küll Võro murdega peale hakata?, 2007.

and Võro languages are still open-ended at the time of writing the report (see below in section 2.2).



Figure 1. Geographical area of dialects/languages within the South-Estonian dialect/language group<sup>9</sup>

The Võro language mainly exists throughout the so-called Vana-Võrumaa (Old Võru Land), which was an official administrative unit until 1920. Currently, this area is covered by four municipalities partly or fully): the Võru, Põlva, Valga and Tartu counties. The geographical reach of the Seto language spans the border of Estonia to Russia covering in part or in full three municipalities: Põlva and Võru county, and the Pechory District on the territory of Russia.<sup>10</sup> Both Seto and Võro speakers living in the Estonian territory are largely bilingual – speaking standard Estonian fluently.<sup>11</sup>

Both Seto and Võro have mainly been local vernaculars or *maakeel* (“country language”) and, as such, have been seen as less prestigious than languages used in formal settings.<sup>12</sup> According to the Eldia Case-specific Report written by Kadri Koreinik, the gradual decline of

<sup>9</sup> The figure is a modified version of that used in Koreinik, Case-specific Report on the Võro language, 2010, p 5.

<sup>10</sup> Koreinik, Case-specific Report on the Võro language, 2010, p 10.

<sup>11</sup> Koreinik, Case-specific Report on the Võro language, 2010, p 7.

<sup>12</sup> Koreinik, Case-specific Report on the Võro language, 2010, p 7.



the use of South-Estonian language started in the end of the 19<sup>th</sup> century with “the enforcement of the Estonian literary standard (ideology of standard language), growing urbanisation and mobility [...] South Estonian gradually disappeared from written secular use to be limited to the religious domain and was eventually abandoned by the church as well. [...] [T]he position of South Estonian oral varieties [...] weakened only after World War II and it has been preserved the best by Võro-and Seto-speakers.”<sup>13</sup>

The promotion of both Võro and Seto culture and language began in late 1980s although for different reasons. The so-called Võro Movement reflected the general Estonian independence movement in the end of 1980s.<sup>14</sup> Seto ethnic movement originates largely from the issues around the border with Russia. Since the Seto language area is divided between Estonia and Russia, the activists have advocated for simplified visa-rules and bordercrossings.<sup>15</sup> The Võro Movement achieved the establishment of the Võro Institute by the Estonian state in 1995 but has also continued its work in a less formal format – Võro Selts VKKF (see below in section 3.1.1). The Seto people have revived the Seto Congress, which now takes place every three years. Several organisations supporting the Congress and the Seto culture in general have also been formed (see below in section 3.1.2).

Initially, the speakers of Seto and Võro advocated their languages and cultures together but the differences in issues of concern were too obvious and the cooperation was soon abandoned.<sup>16</sup> Võro identity is not so much concerned with ethnicity or nationality as with language.<sup>17</sup> The Seto language group put more emphasis on their distinct culture and traditions. One example is the Seto Congress decision of 2002, which states that the Seto people and Estonians are ethnically different from each other.<sup>18</sup> The two language groups also have a different religious background, Võro language-speakers mostly have Lutheran and Seto language-speakers Orthodox background.<sup>19</sup> However, they are still cooperating in

<sup>13</sup> Koreinik, Case-specific Report on the Võro language, 2010, pp 7-8.

<sup>14</sup> Koreinik, Case-specific Report on the Võro language, 2010, pp 8-9.

<sup>15</sup> Koreinik, Case-specific Report on the Seto language, 2010, p 3.

<sup>16</sup> Kama, Võro asi, 2005, p 117.

<sup>17</sup> Ojar, Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele, 2004, pp 33, 55.

<sup>18</sup> Sarv, Õie, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 07.03.2011.

<sup>19</sup> Koreinik, Case-specific Report on the Võro language, p 13; also Koreinik, Case-specific Report on the Seto language, p 3.

issues of mutual concern, such as the promotion of the term “regional language” when referring to either Seto or Võro language.

## 1 The overall legislative and institutional framework

### 1.1 *The position of languages and minorities in the legal and political context of Estonia*

The question of language has always been an important aspect in the legal and political context of Estonia. The general belief among lawyers in Estonia is that language is at the heart of any nation and a basis of national culture.<sup>20</sup> The Estonian language is understood as an inseparable part of Estonian identity. Due to the history of occupations, Estonian has been considered the “symbol [...] of psychological resistance.”<sup>21</sup> After the end of the Soviet occupation, the Estonian language is also considered a state symbol.<sup>22</sup> Therefore, language is under strong protection both in legal and political discourse. The official position has always been that the main reason and goal of the state of Estonia was the establishment of Estonian as the state language and the maintenance of that language and Estonian culture.<sup>23</sup> The underlying principle of the language policy and legislation has always been the need to protect and develop the Estonian language as a language of a small nation.<sup>24</sup>

The position of the Estonian language in Estonia is clearly reflected in the Constitution of the Republic of Estonia.<sup>25</sup> Its Preamble states: “[The Constitution] shall guarantee the preservation of the Estonian nation, language and culture through the ages.” Therefore, significant effort is given to the protection of the language, specifically through elaborate

<sup>20</sup> Maruste, *Konstitutsionalism ning põhiõiguste ja -vabaduste kaitse*, 2004, p 232; Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 35; Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 34.

<sup>21</sup> Koreinik, *Public Discourse of (De)legitimation: The Case of South Estonian Language*, 2011.

<sup>22</sup> Maruste, *Konstitutsionalism ning põhiõiguste ja -vabaduste kaitse*, 2004, p 232; Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 35; Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 34.

<sup>23</sup> Tomusk, *Eesti keelepoliitika põhimõtted dünaamika eurointegratsiooni ning rahvusvaheliste inimõiguste kontekstis*, 2002, pp 19, 21-22.

<sup>24</sup> Ojuland, X *Riigikogu*, Shorthand record of VIII session 17.10.2006; Tomusk, *Eesti keelepoliitika põhimõtted dünaamika eurointegratsiooni ning rahvusvaheliste inimõiguste kontekstis*, 2002, p 22.

<sup>25</sup> Constitution of the Republic of Estonia (RT 1992, 26, 349 ... RT I 2003, 64, 429). Legal acts that are also available in English translation are indicated so in the bibliography along with the respective weblink. Note, however, that the translations might not be up-to-date.

and comprehensive legislation on the use of Estonian language in areas of public interest. E.g. the previous (hereinafter as Language Act 1995)<sup>26</sup> as well as the new Language Act (hereinafter as Language Act 2011)<sup>27</sup> states that measures supporting foreign languages can not be allowed to harm the Estonian language (§2(3) in both acts). Indeed, one of the definitive conditions in the naturalisation process is proficiency in Estonian language (Citizenship Act).<sup>28</sup> The Estonian language also has a state language position (§6 of the Constitution), giving this language priority in the public sector over any other language.

In principle the constitutional protection of the Estonian language also applies to regional varieties and possibly also to regional languages.<sup>29</sup> Regional varieties are considered a part of the generic Estonian language, next to the Estonian Literary Standard (see 1.8 on the definition) and the Sign language.<sup>30</sup> There have been several attempts by both Võro and Seto communities to have these languages defined as “regional languages,” a term used in the European Charter for Regional or Minority Languages,<sup>31</sup> but all the attempts so far have failed (see the discussion in detail in section 2.2 below). Subsequently, the status of these languages in Estonian political context is complex and unclear, and they are seen as something between a dialect and an independent language. Some linguists consider these languages dialects and others support the regional language notion. On a political level, the decision as to the position of these languages has remained unsolved.<sup>32</sup> Nevertheless, both on a legal and on a political level, neither Võro nor Seto are considered foreign languages.<sup>33</sup>

The position of foreign languages is clear. Every language other than Estonian is secondary. Unless expressly stated by respective laws, persons speaking a foreign language as a mother tongue do not have the right to demand its use in the public sector (see further on this below in section 1.9). However, the languages of national minorities are in a special position compared to other foreign languages. For instance, the Constitution provides the right to

<sup>26</sup> Language Act (RT I 1995, 23, 334 ... RT I 2010, 22, 108).

<sup>27</sup> Language Act (RT I, 18.03.2011, 1).

<sup>28</sup> Citizenship Act (RT I 1995, 12, 122 ... RT I 2010, 12, 65).

<sup>29</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 35; Riigikogu kultuurikomisjoni istungi protokoll nr 223, 15.11.2010.

<sup>30</sup> MER, Explanatory Note to the Language Act draft, 2008, p 8.

<sup>31</sup> European Charter for Regional and Minority Languages, 05.11.1992, in force 01.03.1998, entered into force in Estonia on 06.01.1997. Estonia has neither signed nor ratified the Charter.

<sup>32</sup> Kama, XI *Riigikogu*, Protocol no 223 of Cultural Affairs Committee, 15.11.2010. See more on that below in 2.2.

<sup>33</sup> See, eg. Riigikogu, Explanatory Note to the Draft Language Act (808 SE), 2011.

receive answers from public institutions in a national minority language or use it as a language of public administration, albeit only at a local level and subject to conditions (§§ 51, 52).

The Estonian legal system is mostly concentrated on the protection of national and ethnic minorities against discrimination.<sup>34</sup> The Constitution also recognises the individual right to preserve one's national minority identity (§49) and provides for the collective right to form cultural autonomies in accordance with the conditions laid down by law (§50). The latter, specifically, is further developed in the National Minorities Cultural Autonomy Act.<sup>35</sup> Minorities and their languages are considered secondary to Estonian ethnic culture and language and their promotion does not find much support in law. E.g. the Constitution only mentions the preservation of Estonian ethnic culture and language as an obligation of the state. The Ministry of Culture (MoC) does, however, have programmes with the aim to support the cultural movement of different minorities (see below in section 2.6).

## ***1.2 Language as an area regulated by law***

Language is an area regulated by law. This is clearly demonstrated by the Constitution, where the references to language go beyond merely specifying the state language. Regulations concerning language and its use in specific areas of life are detailed and concern essentially every aspect of person's life, starting from the language use in public offices, in school, at work, in court, and to a certain extent in the private sector. The first Language Act was already adopted in 1934, in order to assert Estonian language as the main language of communication, in reaction to the previous situation whereby the main languages were either Russian or German.<sup>36</sup> The Estonian SSR Language Act from 1989, and the Language Act of 1995 were adopted with the same goal in mind.<sup>37</sup>

During the drafting of the new Language Act (adopted on 23.02.2011 and entered into force on 1 July 2011),<sup>38</sup> the discussions mainly concerned the content of the draft and the scope of

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<sup>34</sup> Constitution, §12; Equal Treatment Act (RT I 2008, 56, 315 ... RT I 2009, 48, 323).

<sup>35</sup> National Minorities Cultural Autonomy Act (RT I 1993, 71, 1001 ... RT I 2002, 62, 376).

<sup>36</sup> Language Act (Riigiteataja 1934, No 93, Art 744, pp 1615-1617).

<sup>37</sup> MER, Language education policy profile. Country report Estonia, 2008, p 13.

<sup>38</sup> Parliament, Seaduse eelnõu 808 SE III [Draft Act 808 SE III], 2010.

its regulation. There were only a few opinions expressed with regard to the necessity of such a law.<sup>39</sup>

In addition to the Constitution and the Language Act, other main acts including references to languages or language minorities are: the National Minorities Cultural Autonomy Act, acts of court procedures,<sup>40</sup> the (Personal) Names Act,<sup>41</sup> and the Place Names Act.<sup>42</sup> In addition to the aforementioned acts there are several others that include minor references to languages, including regulations of the Government and Ministries specifying parliamentary acts.

### ***1.3 Language diversity and multilingualism***

The Preamble of the Constitution sets the tone for the view the Estonian state takes on language diversity by stating that the state's aim is to protect Estonian language together with nationality and culture. The Constitution emphasises the concept of nation state, which today is relatively rare elsewhere in the world, where more emphasis is given to pluralism and the rights of national minorities.<sup>43</sup> It has actually been suggested that if any legal act or action would contradict the principle of maintaining Estonian language and Estonian culture, it might be possible to declare it unconstitutional.<sup>44</sup> This has never been attempted though.

Multilingualism is a controversial concept in Estonian legislation. Even though in a limited number of occasions multiple linguistic or national identities are recognised as a possibility, the legal system mostly presumes that a person has only one nationality and one mother tongue. For instance, the census form distributed in Estonia in 2000 did provide the possibility to indicate having Estonian citizenship while having Ukrainian nationality and Russian as mother tongue but there was no possibility to claim having two mother tongues or nationalities. According to Koreinik, the Estonian language is "often depicted as a homogenous [...] language [and] is the iconic representation of Estonians' essence."<sup>45</sup> Koreinik also states that "those who want to imagine themselves as "true Estonians" may

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<sup>39</sup> E.g. Ummelas, Igasugune "keeleseadus" on muutunud barbaarseks ja natsionalistlikuks terroriks, 2009.

<sup>40</sup> Code of Civil Procedure (RT I 2005, 26, 197 ... RT I, 14.03.2011, 2); Code of Administrative Court Procedure (RT I 1999, 31, 425 ... RT I, 23.02.2011, 3); Law of Criminal Procedure (RT I 2003, 27, 166 ... RT I, 21.03.2011, 2).

<sup>41</sup> Names Act (RT I 2005, 1, 1 ... RT I 2010, 1, 1).

<sup>42</sup> Place Names Act (RT I 2003, 73, 485 ... RT I 2010, 22, 108).

<sup>43</sup> Annus, Riigiõigus, 2006, p 117.

<sup>44</sup> Maruste, Konstitutsionalism ning põhiõiguste ja –vabaduste kaitse, 2004, p 92.

<sup>45</sup> Koreinik, Public Discourse of (De)legitimation: The Case of South Estonian Language, 2011.

want to get rid of other linkages such as multiple identities, historical linguistic diversity or non-standard languages.”<sup>46</sup>

On the one hand, the government has always encouraged the learning and speaking of foreign languages. Already from the start of the Estonian independence from 1918, the learning of foreign languages was highly valued.<sup>47</sup> Since 1961 “the learning of two foreign languages (mother tongue plus two foreign languages) has been compulsory.”<sup>48</sup> The Ministry of Education and Research (MER) continues to encourage the learning of foreign languages and has developed the Strategy of the Estonian Foreign Languages, which aims to raise the motivation to learn foreign languages and to create an environment for that.<sup>49</sup>

Yet, on the other hand, multilingualism as a concept has been seen as a threat to Estonian culture and language.<sup>50</sup> For example, the Strategy for Estonian Language 2004–2010 specifically pictured foreign languages, as well as immigration of persons speaking foreign languages and emigration of Estonians, as threats to the Estonian language.<sup>51</sup> Even though the director of the Language Inspectorate has assured that the aim of the Language Act is not to prohibit other languages but instead to protect the Estonian language, the fear of foreign languages and the will to inhibit them is evident.<sup>52</sup> As already mentioned, the current and the previous Language Act state that measures supporting foreign languages may not harm the Estonian language. Moreover, Tõnu Tender, an academic and long-time public official in the Department of Language in the MER, has pointed out in his doctoral thesis that the strategies for language policy are adopted on different levels of the legal and political hierarchy. Thus the Strategy for Foreign Languages (approved by the Minister of Education and Research) is on a lower hierarchical level than the Strategy for Estonian Language (approved by the Government of the Republic). The principle “one state – one nation – one

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<sup>46</sup> Koreinik, *Public Discourse of (De)legitimation: The Case of South Estonian Language*, 2011.

<sup>47</sup> Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 26.

<sup>48</sup> MER, *Language education policy profile. Country report Estonia*, 2008, p 52.

<sup>49</sup> MER, *Strategy of the Estonian Foreign Languages 2009–2015*.

<sup>50</sup> See on that Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 35.

<sup>51</sup> MER, *Development Strategy of the Estonian language 2004–2010*.

<sup>52</sup> Tomusk, *Kakskümmend aastat eesti keelepoliitikat*, 2009.

language” is obstinately resistant in Estonian political thought, preventing languages other than Estonian language from being considered equally important.<sup>53</sup>

#### ***1.4 The languages studied by the ELDIA project in Estonia***

The Seto and Võro languages are generally considered to be important parts of the generic Estonian language.<sup>54</sup> It is also agreed upon that the Seto and Võro languages deserve protection and research is encouraged, something that the Language Act 2011 also confirms (§3(3)).<sup>55</sup> The problems, however, arise with regard to the issue of their status. As long as they are looked at as dialects, these languages prove to be uncontroversial because dialects have no status in the Estonian legal system, with the exception of the Place Names Act that allows place names to be in a local dialect.<sup>56</sup> The Language Act and its regulation of language on public signage could also be mentioned here, although it refers to a “regional variety of the Estonian language” rather than a dialect.<sup>57</sup> The Seto and Võro communities, however, advocate for the taking into use of the notion of regional language. This has strong opposition. The argument seems to be that regarding Võro and Seto as regional languages would disrupt the understanding of the concept of the Estonian language.<sup>58</sup>

#### ***1.5 Political and legal tradition in dealing with minorities and language***

Estonia has always been a multilingual and multinational society. The number of languages and national or ethnic minorities is high, although the Estonian language and ethnicity have maintained the majority position throughout the centuries.<sup>59</sup> Therefore, there is a long tradition of dealing with minorities in Estonia. During the first period of Estonia’s

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<sup>53</sup> Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, p 69.

<sup>54</sup> Koreinik, *Public Discourse of (De)legitimation: The Case of South Estonian Language*, 2011.

<sup>55</sup> Allik, *Protocol no 1, Expert commission for the determination of the legal status of South-Estonian language*, 5.02.2004, para 2.17.

<sup>56</sup> *Place Names Act* (RT I 2003, 73, 485 ... RT I 2010, 22, 108).

<sup>57</sup> §23(2) of the *Language Act 1995* states as follows: “A regional variety or translation into a foreign language may be added to the Estonian text of public information however, the text in the Estonian language shall have precedence and must not be less visible than the regional variety or translation into a foreign language.” The *Language Act 2011* includes more references to the “regional variety” but also removing the obligation to translate public signage into Estonian as long as it is not an official use by public authority in administration.

<sup>58</sup> See, e.g. Jüvä, *Võro keel eesti keele arendamise strateegias*, 2007.

<sup>59</sup> Tomusk, *Eesti keelepoliitika põhimõtted dünaamika eurointegratsiooni ning rahvusvaheliste inimõiguste kontekstis*, 2002, pp 21-22; Tender, *Mõnda 1934. ja 1995. aasta keeleteadusest: ühist ja erinevat*, 2008.

independence the protection of minorities was provided at a constitutional level as well as at the level of ordinary law (in the Language Act of 1934).<sup>60</sup> The same approach was adopted for the second period of Estonia's independence following the Soviet occupation from 1940 to 1991. The Constitution now includes a number of provisions on the protection of national minorities. The National Minorities Cultural Autonomy Act, modelled after the same law from the first period, was adopted in 1993.<sup>61</sup>

Language has also been regulated in Estonia for a long time, mostly with the aim to promote and protect the Estonian language. This was the case during the first period of Estonia's independence and has remained the same (*see* section 1.2 above and section 1.6 below).

### ***1.6 Changes over time in legal and political thinking on minorities and languages***

Due to the turbulent history of Estonia, first as an independent state from 1918 to 1940, then occupied by the Soviet Union for 50 years until the independence was restored in 1991, the political and legal practice in dealing with minorities and languages has changed significantly over time.

When Estonia gained independence in 1918, the language policy adopted followed the language construction model (i.e. building up a language as a central language in the state).<sup>62</sup> In accordance with the model, the aim was to bring the Estonian language to the position of a state language. Previously Estonians had been subject to both Germanization (most of the people in positions of power were German-speakers) as well as Russification (Estonia was part of the Russian Empire before becoming independent) and the subsequent language regulation was greatly affected by that experience.<sup>63</sup> The 1934 Language Act mostly concentrated on regulating the use of national minority languages since they were not considered a threat to the Estonian language and nationality.<sup>64</sup> During the Soviet occupation

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<sup>60</sup> Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, pp 26-27.

<sup>61</sup> Lõhmus, *Shorthand record of the extraordinary session, VII Riigikogu*, 28.06.1993.

<sup>62</sup> Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, p 21.

<sup>63</sup> Koreinik, *Public Discourse of (De)legitimation: The Case of South Estonian Language*, 2011.

<sup>64</sup> Also see Tender, *Mõnda 1934. ja 1995. aasta keeleteadusest: ühist ja erinevat*, 2008.



the language policy can be described as totalitarian – the Estonian language was pushed to the background and the preferred language was Russian.<sup>65</sup>

In 1989, the SSR Language Act was adopted, which changed the course of language policy. Although the Act stipulated a transition period, where the Russian language was retained as a language of public administration, its main purpose was to prepare the society for the Estonian language becoming the main language.<sup>66</sup> In 1992, the Constitution affirmed the Estonian language as a state language and in addition to this set the preservation of the Estonian nation and culture as the main purpose of the state. As a result, in the public sphere, i.e. in public offices, persons must use the Estonian Literary Standard while in the private sphere it is mostly up to the individuals to choose their own language (see the division of the public and private in language legislation below in section 1.9.2).

After the regaining of independence in 1991, the political and legal thinking in regard to minorities is based on the shared understanding that they have the right to preserve their national identity. This was asserted in the Constitution providing that under certain conditions, national minorities can use their language in local governments as well as form their own cultural autonomies. At the same time, the state has made significant efforts to integrate these minorities into the society.<sup>67</sup> Unlike the 1934 Language Act, which mostly concentrated on the regulation of the use of national minority languages, the 1995 Language Act concentrates on Estonian language proficiency and requirements to the use of Estonian.<sup>68</sup>

In recent years, Võro and Seto language communities have attempted to bring about change in the status of their respective languages. Until now these languages have had the status of dialects under the Estonian legal system. As such, they were referred to already in the old

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<sup>65</sup> Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, pp 21, 23; Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 27.

<sup>66</sup> Koreinik, *Public Discourse of (De)legitimation: The Case of South Estonian Language*, 2011; Tomusk, *Eesti keelepoliitika põhimõtted dünaamika eurointegratsiooni ning rahvusvaheliste inimõiguste kontekstis*, 2002, p 25; Tomusk, *Kakskümmend aastat eesti keelepoliitikat*, 2009; Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, p 22.

<sup>67</sup> See, e.g. the two consecutive integration strategies (see below 2.6) or Language Study Strategy of Population of Other Languages directed towards the integration of non-Estonians (reference to the strategy can be found in *Õispuu, Võrkeelte strateegia eesmärgid ja vision*, 2005).

<sup>68</sup> Tender, *Mõnda 1934. ja 1995. aasta keeleseadusest: ühist ja erinevat*, 2008.

Place Names Act from 1996.<sup>69</sup> Later their status in political and legal discourse was changed to “regional variety of Estonian language,” this being something between a dialect and a language.<sup>70</sup> At the same time both Võro and Seto language communities have advocated for the change of the status of both languages to that of regional language since 2004 (see further below in section 2.2). The taking into use of the term “regional varieties of Estonian language” could be contributed to the advocacy, as it occurred in 2006, two years after the communities started to actively push for the notion of regional language.<sup>71</sup>

### **1.7 Characteristics of the legal system**

The legal system regulating languages and language use has been turbulent over the years. The Constitution has changed a couple of times, with one change directly concerning the Estonian language (see below in section 1.9.1). The Language Act 1995 has been amended 20 times since 1995. Many of the changes within the first ten years resulted from the pressure from international organisations, such as the OSCE and the Council of Europe. The numerous changes were, in fact, one of the main reasons for drafting the new Language Act.<sup>72</sup> The new Act is intended to address many of the gaps and controversies of the current Act. Although the Act is not meant to change much but mostly to reorganise the previous Act, it still brings with it several new developments. Therefore more examples of legal practice are needed to determine the actual impact of the new law.

The director of the Language Inspectorate has criticised Estonia for not having a clear unified language policy since regaining independence.<sup>73</sup> He notes that the policies are formulated by different interested parties and applied by them accordingly. The stakeholders involved have been linguists, government that have been influenced by conditions set by the EU and the OSCE (in previous years), and political parties, whose views depend on whether the party is in the governing coalition or opposition. This might explain the constant amendments to the

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<sup>69</sup> Place Names Act, wording of 1997 (RT I 1997, 1, 3 ... RT I 1999, 10, 155). Replaced by Place Names Act (RT I 2003, 73, 485 ... RT I 2010, 22, 108).

<sup>70</sup> First referred to in the National Programme for Estonian Language Technology Support 2006–2010 and later already in the Language Act upon its amendment in 2007 (see the discussion over the amendments in 2007 further below in 2.1.2).

<sup>71</sup> When the term was inserted in the Language Act 1995, the discussion in the Parliaments Cultural Affairs Committee (CAC) clearly reflects that conclusion.

<sup>72</sup> MER, Explanatory Note to the draft Language Act, final version, 2008, p 1; also see Estonian Language Council, Protocol of the meeting, 22.07.2007, para 8.

<sup>73</sup> Tomusk, *Eesti keelepoliitika põhimõtted ja nende rakendamine*, 2003, p 4.

Language Act since its adoption in 1995. The director of the Language Inspectorate in this regard noted that these numerous changes in law have prevented proper planning and setting of aims.<sup>74</sup>

The institutional framework has been more constant. Issues concerning language have always been in the competence of the MER and the *Keeleinspektsioon* and its predecessor *Keeleamet* (both translated in English into Language Inspectorate), which fall under the competence of the MER. Minorities and their integration issues, however, have been moved around between the MoC and the Office of the Minister of Population (minister without portfolio – first 1990–1995 and then 1997–2009).<sup>75</sup> One constant actor has been the Integration and Migration Foundation Our People since 1998, which is in the area of competence of MoC (see below in section 3.5).<sup>76</sup> The institutional framework can be said to have been under change, yet not to the same extent as the legislative framework.

### 1.8 Languages covered by legislation

Legislation in Estonia regulates first and foremost the Estonian language. The Constitution, the Language Act and, in smaller scale, other relevant legislative acts, such as acts on court procedures, law on media, education among others protect mainly the Estonian language. According to the Language Act, the term “Estonian language” can be broken down into several sub-sections, covering the Estonian Literary Standard (in Estonian: *eesti kirjakeele norm*), the Sign language (in Estonian: *viipekeel*) and “regional varieties of Estonian language” (in Estonian: *eesti keele piirkondlik erikuju*). The Estonian Literary Standard is the system of norms and recommendations on orthography, grammar and vocabulary (Language Act 2011, §4(2)). Its implementation is imposed by Government’s regulation.<sup>77</sup> Regional varieties of Estonian language are not defined in law *pers se* though references to the term can be found from different policy documents and discussions.<sup>78</sup> It is said to refer to dialects (in Estonian: *murre*) historically spoken by people living in the specific regions, such as Võro

<sup>74</sup> Tomusk, *Eesti keelepoliitika põhimõtted ja nende rakendamine*, 2003, p 12.

<sup>75</sup> See on that e.g. Past, *Rahvastikuminister Palo töökohustused jagatakse*, 2009.

<sup>76</sup> See the homepage of the Foundation: <http://www.meis.ee/about-the-foundation> (last accessed 13.05.2011).

<sup>77</sup> Procedure of Establishment of Estonian Literary Standard (RT I, 14.06.2011, 3); previously the Procedure of Establishment of Estonian Literary Standard (RT I 2006, 40, 303).

<sup>78</sup> E.g. MER, *Language education policy profile. Country report Estonia*, 2008, p 15.

people in South Estonia and Seto people in Southeast Estonia.<sup>79</sup> The Language Act 2011, on the other, equates “regional varieties” of Estonian language with “dialect languages” (in Estonian: *murdekeel*), which also is not defined (*see more* below in section 1.9.2).

In addition to the Estonian language and its varieties, the legislation also covers foreign languages. According to the Language Act 2011, foreign language is every language other than Estonian language and its different varieties (§2). National minority languages are a sub-section of foreign languages and are defined in the Language Act 2011 as “a language of a national minority, which Estonian citizens who belong to a national minority have historically used as their mother tongue in Estonia” (§5(2)). The term “national minority” has different meanings in different legal acts. It was not defined in the Language Act 1995 and the definition provided in the instrument of ratification of the Framework Convention for the Protection of National Minorities (FCNM) was used instead.<sup>80</sup> There, national minorities are defined as Estonian citizens who live in Estonia, who have had long-term, sound (i.e. real as opposed to fictitious) and permanent ties with Estonia, differ from Estonians also by his or her ethnic belonging, cultural characteristics, religion or language and is led by his or her wish to collectively maintain cultural customs, religion or language, which are the basis for his or her common identity with other members of the same national minority. The Language Act 2011, however, includes an independent definition and defines the term for the purposes of that act in a less strict way. Accordingly, a person of national minority is an Estonian citizen who has long-term, sound (i.e. firm) and permanent ties with Estonia and differs from Estonians by his or her language (§5(3)).

## 1.9 Regulation in relation to minorities and languages

### 1.9.1 Constitutional provisions

As already discussed above, the preservation of the Estonian language is a constitutional aim that must be implemented by appropriate laws and protected by public authority. In addition to reference to the Estonian language in its Preamble, the Constitution includes several other references to languages. First and foremost it establishes the Estonian

<sup>79</sup> E.g. MER, Language education policy profile. Country report Estonia, 2008, p 15.

<sup>80</sup> Ratification Act of the Framework Convention for the Protection of National Minorities (RT II 1996, 40, 154). Tomusk, Interview with Ilmar Tomusk, director of the Language Inspectorate, 9.03.2011.

language as the state language<sup>81</sup> of Estonia (§6). Therefore, “[e]veryone has the right to address state agencies, local governments, and their officials in Estonian and to receive responses in Estonian” (§51). However, the use of Estonian as a state language is not absolute and the Constitution provides for several exceptions. First, in criminal procedure, everyone has the right to “be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights” (§21). Second, an educational institution may choose its own language of instruction (§37). Third, “[i]n localities where at least one-half of the permanent residents belong to a national minority, everyone has the right to also receive responses from state agencies, local governments, and their officials in the language of the national minority” (§51).<sup>82</sup> Fourth, national minority language can be used, “to the extent and pursuant to procedure provided by law,” as an internal working language in local governments, when the particular national minority fulfils the aforementioned conditions (§52). Finally, use of languages other than Estonian is possible in state agencies and in court and pre-trial procedure when provided by law (§52).

It is doubtful that these provisions could have much relevance for the Võro and Seto language. There is a clear distinction made between them as regional varieties of Estonian languages and minority languages (see above 1.8). The case would be different with regard to Seto people if they would decide to pursue the idea of registering a national minorities autonomy for Setos (discussed below), in which case their language might also be classified as a national minority language (on their attempts to form the autonomy see below in 2.4.1). So far, however, they have joined with the Võro people in their attempt to get a status of regional language (see on that below in 2.2).

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<sup>81</sup> It must be explained that in Estonian the terms state language and official language have different meaning, although in many times translations confuse them. The Estonian term “*riigikeel*” should be translated into state language, while “*ametlik keel*” means official language. “*Riigikeel*” refers to the particular legal status of a language while “*ametlik keel*” refers to the language use in and by public institutions, agencies, positions etc. Also important is that the concept of “*ametlik keel*” is not used in legislation, instead the terms “*ametlik kasutus*” [official use] or “*ametlik keelekasutus*” [official language use] are used. “*Riigikeel*” in Estonia is by default also “*ametlik keel*” while other languages or language varieties can also be used as “*ametlik keel*” in accordance with law – Tomusk, *Riigikeel* on riigi keel, 2002, pp 10–15.

<sup>82</sup> Note that the provision only gives the right to receive responses and not to submit questions in the language of national minority. Maruste, *Konstitutsionalism ning põhiõiguste ja -vabaduste kaitse*, 2004, p 584; Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 393.

The Constitution also recognises the right of national minorities to establish self-governing agencies in the interest of their national culture as specified in the National Minorities Cultural Autonomy Act (§50). The aforementioned act defines the concept of national minorities, and this definition is applied throughout the Estonian legal system, unless otherwise specified in a specific act. According to the definition, “a national minority [signifies] Estonian citizens who: reside in the territory of Estonia; have long-term, sound and permanent ties with Estonia; differ from Estonians by their ethnic belonging, cultural characteristics, religion or language; are led by their wish to collectively maintain their cultural customs, religion or language which are the basis for their common identity” (§1). The Act provides the right to form cultural self-governing agencies only to German, Russian, Swedish and Jewish minorities or if the members of a national minority amounts to 3000, in the least (§2). Currently, there are two such self-governing entities (for Ingrian-Finns and Swedes in Estonia).

Two additional provisions of the Constitution are important to mention, although they do not expressly mention language. Paragraph 45, providing freedom of expression, clearly also includes the right to express oneself in a language of a choice subject to appropriate restrictions.<sup>83</sup> Another provision implying language is §49 providing the right to preserve one’s national identity. It is believed that a national identity cannot be preserved unless a person can use the respective language or if the existence of that language is in danger.<sup>84</sup> This provision is in fact the basis for §37 (right to choose the language of instruction) and §§ 50–52 (on national self-governing entities and the use of a national minority language) discussed above.

In addition to provisions regulating to the use of languages, the Constitution also provides for protection against discrimination based on language. Paragraph 12 of the Constitution thus prohibits discrimination based on nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds (§12). It has been noted that the term “language” refers not only to foreign languages but also to dialects or regional varieties, such as the Võro and Seto languages.<sup>85</sup> The same paragraph also

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<sup>83</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 390.

<sup>84</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 390.

<sup>85</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 144.

prohibits incitement of national, racial, religious or political hatred, violence or discrimination.

### **1.9.2 Language legislation**

Estonia has an extensive and detailed legislation on language, regulating the use of the state language, the language proficiency required in specific areas and the instances where languages other than the state language can be used. The main act in this area is the Language Act and the different regulations adopted on the basis of that.<sup>86</sup> The new Language Act entered into force on 1 July 2011.

The new Act is not designed to change the language policy but only to reorganise the current law to make it clearer and fill in gaps. Accordingly, the Act includes a provision expressing its aim, which is the development, preservation and protection of Estonian language and maintaining its use as the main communication language in public life (§1). In certain circumstances the law will also affect private sector, specifically when it is justified with the public interest<sup>87</sup> (Act 1995, §2<sup>1</sup>(2); Act 2011, §2(2)). The Language Act 2011 adds another legal basis for interfering into language use in the private sector – the protection of constitutional rights. The Explanatory Note to the draft clarifies that this concerns situations where lack of knowledge in the Estonian language could result in a person not understanding or not being able to realise one's rights in Estonia.<sup>88</sup> It is unclear how this provision will be put into practice, therefore the subsequent practice will be paramount in understanding the effect of this amended provision.

Both the old and the new Language Act confirm Estonian as the state language (Act 1995, §1(1); Act 2011, §3(3)). Yet, the new Act has made it clearer when language use is required to correspond to Literary Standard and when not. It divides the regulation of language use into two areas – official use, and other texts directed at the public (§4), whereas the Literary Standard applies only to the first category. The provisions regarding official language use concerns only public authority, either on state or local level. Other public texts, for example those in private sector, must merely comply with the “good practice” of language use (see

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<sup>86</sup> Such as Procedure of Establishment of Estonian Literary Standard.

<sup>87</sup> Public interest is defined as “public safety, public order, public administration, education, public health, consumer protection and occupational safety”.

<sup>88</sup> MER, Explanatory Note to the draft Language Act, final version, 2008, p 3.

section 2.2 further below). If the language used must comply with the Literary Standard, this is stated explicitly (e.g. above-mentioned “official use”). In all the other cases, the use of Estonian language is less strictly regulated and the so-called “regional varieties” can also be used.<sup>89</sup> This is a significant development since until then “regional varieties” could only be used on public signage provided there was a similar text in the Estonian language on at least the same terms (Language Act 1995, §23(1)).

The new Act includes a reference to “regional varieties” (in Estonian: *piirkondlikud erikujud*) of the Estonian language, which has not been legally defined (§3(3)).<sup>90</sup> The Act does however state in the same paragraph that “regional varieties” is to be understood to mean the same as “dialect language” (in Estonian: *murdekeel*), which is a new term in legislation. No explanation is given on that term either. The explanatory note to the draft Act does refer to the Võro and Seto languages as an example.<sup>91</sup> The new Act includes two new provisions relating to “dialect language”. First, the state is required to support the protection, use and development of the regional varieties of the Estonian language (§3(3)). Second, in the area where the dialect language has historically been spoken, the official texts can, in addition to language use complying with the Literary Standard, also be written in that dialect language (§4(1)). This possibility was completely excluded by the Act of 1995. Although nothing prevented public authorities to create such texts written in the regional variety, they could only be regarded as unofficial documents that could not be used in public affairs.

In official use, the Estonian language must correspond to the Literary Standard, which is approved by the Government.<sup>92</sup> The current Act does not define “official use.” The new Act does, stating that it is the use of language in documents, websites, signs, signposts, and announcements by state agencies, local government agencies, notaries, bailiffs, sworn translators and their offices and other agencies, unities or persons exercising public

<sup>89</sup> MER, Explanatory Note to the draft Language Act, final version, 2008, p 8; *Riigikogu*, Explanatory Note to the Draft Language Act (808 SE), 2011, pp 3–4; Tomusk, Interview with Ilmar Tomusk, Director of the Language Inspectorate, 9.03.2011.

<sup>90</sup> Küntsler, Pealend, 2010.

<sup>91</sup> *Riigikogu*, Explanatory Note to the Draft Language Act (808 SE), 2011, pp 1–2.

<sup>92</sup> Procedure of Establishment of Estonian Literary Standard.



authority (§4(1)). Previously this definition was formed based on characteristics provided in other relevant legal acts.<sup>93</sup>

The new Act also retains the provision that the language of public administration in state agencies, local governments and the Estonian Defence Forces is Estonian (Act 1995, §3(1); Act 2011, §10(1-2)).<sup>94</sup> It adds, however, that the requirement to use Estonian extends to companies, foundations and non-profit associations where state is a majority holder. It also adds that in Estonian media civil servants must speak in Estonian. The Estonian language is also the working language in courts, albeit with some notable exceptions covered further below.<sup>95</sup>

Due to the language requirements for employees within the public administration, civil servants must fulfill certain language proficiency standards. In general, “[p]ublic servants and employees of state agencies administered by government agencies and of local government agencies, and employees of legal persons in public law and agencies thereof, notaries, bailiffs and certified interpreters and translators and the employees of their bureaus must be able to understand and shall use Estonian at the level which is necessary to perform their service or employment duties” (Act 1995, §5(2); Act 2011, 23(1)). The same applies to private sector matters if it is in the public interest. This is mostly determined by law, e.g. the Consumer Protection Act states specifically that certain information must be provided in Estonian (see below). The Language Inspectorate will be the last institution to determine whether the provision was fully complied with (Act 1995, §6<sup>2</sup>(2.5); Act 2011, §31(2.6)). Specific rules on language requirements are provided in the regulation by the Government.<sup>96</sup> This regulation also states what is required from the members of the Defence Forces.

<sup>93</sup> Tomusk, *Riigikeel on riigi keel*, 2002, p 12.

<sup>94</sup> Also affirmed by Administrative Procedure Act (RT I 2001, 58, 354 ... RT I, 23.02.2011, 3), §20; Local Government Organisation Act (RT I 1993, 37, 558 ... RT I, 18.03.2011, 1), §41; Defence Forces Act (RT I 2000, 28, 167 ... RT I, 21.03.2011, 2), §10; Public Service Act (RT I 1995, 16, 228 ... RT I, 21.03.2011, 1), §14.

<sup>95</sup> Code of Civil Procedure (RT I 2005, 26, 197 ... RT I, 14.03.2011, 2), §32; Code of Administrative Court Procedure (RT I 1999, 31, 425 ... RT I, 23.02.2011, 3), §5 and 10(9); Code of Criminal Procedure (RT I 2003, 27, 166 ... RT I, 21.03.2011, 2), §10.

<sup>96</sup> Requirements to Proficiency in and use of Estonia Language of Public Servants, Employees and Self-Employed Persons (RT I, 27.06.2011, 1; RT I, 29.12.2011, 138), previously Requirements to Proficiency in and use of Estonia Language of Public Servants, Employees and Self-Employed Persons (RT I 2008, 26, 176 ... RT I, 06.01.2011, 5).

Significant changes can be found in regard to the language requirements for public information and provision of services. First, from 1 July 2011, the information that is “placed in public” and must be in Estonian is the following: public signs, signposts, type of company (e.g. café, store, restaurant, hotel etc),<sup>97</sup> outdoors advertising<sup>98</sup> (with special reference to political agitation), and announcements by legal person (Act 2011, §16(1); only slightly different from the Act 1995 §23(1)). What has remained the same is that the public information could also be in a foreign language as long as it is accompanied with a text in Estonian that has precedence and is not less visible (Act 1995, §23(2); Act 2011, §16(2)). The second significant change is two new provisions in the new Act – the trade mark used in outdoor advertising and including essential information in foreign language must be translated into Estonian (§16(3)), and homepages of private legal persons that are in foreign language must have at least a summary in Estonian (§16(4)). Still, public events<sup>99</sup> (at least the essential information about them) must still be interpreted into Estonian (Act 1995, §23(3); Act 2011 §16(5)). The Literary Standard is a guide to the use of the Estonian language in public information and provision of services.<sup>100</sup> How this will be applied to the use of “regional varieties” of the Estonian language, such as the Võro and Seto languages, is not clear. The main purpose of the provisions seems to be to avoid extensive use of foreign languages which is perceived as being a disadvantageous for the general public. However, the provision stating that Literary Standard guides the use of language in public information is general in nature and could potentially, have impact on “regional varieties” as well.

There is no mention of “regional varieties” in more specific situations, such as in consumer relations or in court proceedings. In short, language requirements in consumer situations are largely regulated by the Consumer Protection Act<sup>101</sup> (Language Act 1995, §16; Language Act 2011, §17). This Act requires all the essential information on a good or a service to be provided at least in Estonian and it must be “understandable” (e.g. §4(4), §5(6), §6(3)). Non-compliance with these requirements is punishable by fine (§47). Acts on court proceedings

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<sup>97</sup> Examples are from the Explanatory Note to the draft law – MER, Explanatory Note to the draft Language Act, final version, 2008, p 6.

<sup>98</sup> Advertisement Act (RT I 2008, 15, 108 ... RT I, 06.01.2011, 1), §2(1.8) – “advertising located in a public place or advertising which can be watched from a public place.”

<sup>99</sup> Definition of public event is provided in the Maintenance of Law and Order Act (RT I, 22.03.2011, 4).

<sup>100</sup> Procedure of Establishment of Estonian Literary Standard, §1.

<sup>101</sup> Consumer Protection Act (RT I 2004, 13, 86 ... RT I 2010, 77, 590).

have several provisions on the use of foreign language.<sup>102</sup> The use of the Estonian language in court is defined as official use and must thus correspond to the Literary Standard (Language Act 2011, §4). The acts mention nothing more specific.

The language legislation has a separate regulation in regard to a specific group of foreign languages – those used by national minorities. The definition and regulation of the national minority languages has largely remained the same. A national minority language is a historical language used in Estonia by a national minority (Language Act 1995, §2; Language Act 2011, §5). The new Act adds a definition of national minority for the purposes of the Act: “An Estonian citizen who has long-term, sound and permanent ties with Estonia and differs from Estonians by language” (§5(3)). The right to use the minority language in local government has essentially remained the same, with one small addition: whereas previously inhabitants of municipalities where at least half of the permanent residents<sup>103</sup> belonged to a national minority only had a right to *receive* answers in their minority language, now they have a right to *turn to* the local government in their language (emphasis added by the author) (Act 1995, §10; Act 2011, §9). This is important since the Constitution only guarantees the right to receive responses (§51). The condition for using a national minority language as an internal working language in a local government has remained the same – the government must take a decision on this upon a suggestion from the local government (Acts 1995 and 2011, §11).<sup>104</sup>

Personal names and place names are regulated by separate legal acts. The Names Act regulates the assigning and application of names of natural persons. The Act is specifically concerned with the orthography of personal names, requiring names to be written in Estonian-Latin letters and symbols. In case of non-Estonian names specified transcription rules are used (§5(1)).<sup>105</sup> In particular, “[t]he spelling of an Estonian personal name shall be

<sup>102</sup> Code of Civil Procedure (RT I 2005, 26, 197 ... RT I, 14.03.2011, 2), §§ 33, 34; Code of Administrative Court Procedure (RT I 1999, 31, 425 ... RT I, 23.02.2011, 3), §10(9); Code of Criminal Procedure (RT I 2003, 27, 166 ... RT I, 21.03.2011, 2), §§ 10, 144.

<sup>103</sup> Permanent resident: “person who is an Estonian citizen, a citizen of the European Union [and his or her family member – added by the new Act] or an alien residing in Estonia on the basis of a long-term residence permit whose permanent residence, the details of which have been entered in the Estonian population register, is located in the corresponding rural municipality or city” (Act 1995, §10(2); Act 2011, §9(2)).

<sup>104</sup> Local Government Organisation Act (RT I 1993, 37, 558 ... RT I, 18.03.2011, 1), §41.

<sup>105</sup> The list of Estonian-Latin letters and symbols used upon assigning and application of personal names and the transcription rules for non-Estonian personal names] (RT I 2005, 16, 98).

in accordance with the rules of orthography of the Estonian language. The spelling of a non-Estonian personal name shall be in accordance with the rules of orthography of the relevant language” (§5(2)). Paragraph 7 of the Names Act provides for specific requirements for names. For instance, given names in foreign language must be in use as a given name in the respective country. Unconventional given names, which have a complex spelling or pronunciation and do not comply with the general language use, are not allowed without a good reason. The paragraph does provide for exceptions as a result of citizenship, family relations, nationality or other personal connection to a name tradition from another language,<sup>106</sup> provided the name complies with the traditional name in that language. In principle, this means that personal names in distinctly the Võro or Seto language could be allowed (see further below in section 2.4.2).

Regulation of place names is governed by the Place Names Act and regulations adopted based on that Act.<sup>107</sup> It regulates the establishment, usage and supervision of place names (§1).<sup>108</sup> Authorities responsible for the establishment of place names are the state government, ministers and local government. The Place Names Board of Estonia (*Kohanimenõukogu*) consults them, especially in cases of dispute, and guides and coordinates the activities in regard to place names.<sup>109</sup> This 15-member-Board was established on 17 June 1997 and is within the competence area of the Ministry of Interior Affairs.

The institution that is responsible for the approval and official registration of place names depends on the object. First, names of administrative units (counties, towns and rural municipalities) can be proposed by the Government of the Republic as well as local government. The Government however takes the decision although there is an obligation to

<sup>106</sup> The Act uses the term “*muukeelne*” and not “*võõrkeelne*”. The former meaning literally “in a different (or other) language”, the latter meaning “in foreign language”.

<sup>107</sup> Auch as the Procedure of determining whether place names are in Estonian (RT I 2004, 51, 36); Procedure of Submitting Data to Place Names Registry (RTL 2004, 133, 2053); Character tables regulating the transcription and transliteration of place names (RTL 2008, 96, 1323).

<sup>108</sup> Statutes of the Maintenance of the National Place Names Registry (RT I 2004, 67, 461 ... RT I 2008, 26, 175), §3. Homepage: <http://xgis.maaamet.ee/knravalik/>. Responsible institution on the place names registry is the Ministry of Interior Affairs and, since 1 July 2008, the authorised processor is the Land Board.

<sup>109</sup> Päll, *Kohanimeseadus ja selle eesmärgid*, 1996; and Kikas, *Kohanime määramine ja kohanimeregistrisse kandmine*, 2009. Statutes of the Place Names Board (RT I 2004, 55, 395). Homepage of the Board: [www.eki.ee/knn/](http://www.eki.ee/knn/).

consult with the local government and the Place Names Board.<sup>110</sup> Second, names of settlements and urban regions are proposed by local governments and city councils and approved by the Minister of Regional Affairs while the County Governor and the Place Names Board is also heard. It is important to note here that this group also includes towns and other bigger settlements that are not separate municipalities in themselves but form a part of other bigger municipality.<sup>111</sup> Third, names of rural municipality districts, city districts, public transport stops, streets and other features located in a municipality are established by the respective local government (§6(4)). Fourth, specific place names may fall within the sole responsibility of the Government or a specific minister, e.g. the Minister of Environment establishes the names of natural objects and the Minister of Culture establishes the place names of cultural heritage. In any case, when the Government or a minister decides the place name, the local government as well as the Place Names Board must be consulted (§6(3)).

The main objective of the Place Names Act is to ensure a unified usage of Estonian place names and to guarantee the protection of place names that are historically and culturally valuable (§1(2)). Thus, for example, place names may be changed when the aim is to restore a historical Estonian place name (§7(2)), which mostly means names in local dialects (see below in section 2.4.2). Place names must mainly be in Estonian,<sup>112</sup> although, if it is historically or culturally justified, they can also be in another language. In the latter case, the name must be approved by the Minister of Regional Affairs based on advice from the Board (§6(6)). The decisive aspect here is the language used by the residents in the area in question on 27 September 1939 (i.e. before the Soviet occupation) in order to prevent ruining of or arbitrary changes to historical place names (§9). There is also the possibility to establish an alternative place name. In that case the place has two official names although one of them has to be the principal name (§11). The establishment of an alternative name must be approved by the Minister of Regional Affairs on the advice from the Place Names Board (§6(7)).

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<sup>110</sup> Place Names Act, §5(2); Territory of Estonia Administrative Division Act (RT I 1995, 29, 356 ... RT I 2010, 72, 543), §§6-7.

<sup>111</sup> Place Names Act (RT I 2003, 73, 485 ... RT I 2010, 22, 108), §5(3); Territory of Estonia Administrative Division Act (RT I 1995, 29, 356 ... RT I 2010, 72, 543), §6(5); Basis and procedure of designating the type, name and dividing borders of settlements (RT I 2004, 82, 550 ... RT I 2006, 54, 404).

<sup>112</sup> Procedure for determining whether place names are in Estonian (RT I 2004, 51, 360).

The regulation of place names is important from the perspective of the Võro and Seto languages as many of the place names are or used to be in these languages. The Place Names Act recognises this and, thus, provides that the spelling of a place name must follow Estonian orthography although it may reflect the local dialectal sound structure of the name (§10). It is specifically provided that Estonian dialects, with or without its own orthography, are considered to be part of Estonian language for this purpose (§1(4)).

In summary, language legislation is a complicated and highly technical area. In addition to the main acts, such as the Language Act, the Place Names Act, the Names Act and others mentioned above, there are numerous regulations adopted by the Government based on these acts. All this creates a considerable body of law, of which the practical impact is difficult to assess for someone who is not working with it on a daily basis. This is especially the case in relation to the Võro or Seto languages as their status is still unclear under the language legislation (see the discussion below in section 2.2). There is no significant practice in the implementation of the regulation on these languages (see more below in section 2.4.2).

### **1.9.3 Education legislation**

The Constitution recognises everyone's right to education (§37). This is affirmed in the Child Protection Act,<sup>113</sup> specifically recognising that a child's right to "general education in his or her national culture" from birth is essential to the development of child's identity (§9). The right to education is elaborated further in the Act's §39(2), which states in particular that "[e]very child has the right to an education, which develops the child's mental and physical abilities and forms a healthy personality, including [...] develops respect for the child's native language, the Estonian national culture and other languages and cultures [...]". According to the Constitution, it is for the parents to make the final choice of education for their children (§37).

In addition to the right to education, the Constitution also includes a provision on compulsory school attendance (§9(2)) for every child residing in Estonia from seven years of age up to finishing basic education or upon reaching the age of seventeen.<sup>114</sup> Thus, there is a

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<sup>113</sup> Republic of Estonia Child Protection Act (RT 1992, 28, 370 ... RT I, 21.03.2011, 3).

<sup>114</sup> Basic Schools and Upper Secondary Schools Act (RT I 2010, 41, 240 ... RT I 2010, 41, 240), §21.

corresponding constitutional obligation of the state and local governments to maintain the appropriate number of educational institutions (§37).

The provision of education is based on the Education Act of the Republic of Estonia.<sup>115</sup> The Act provides for the general principles, structure and organisation of Estonian educational system, types of education etc. Specific aspects of education are regulated by specific acts – Basic Schools and Upper Secondary Schools Act, Vocational Educational Institutions Act, Institutions of Applied Higher Education Act, Universities Act, Pre-school Child Care Institutions Act, Hobby Schools Act, and Private Schools Act.<sup>116</sup> The requirements for each level of education are set in the National Standard of Education, which is provided in national curricula (Education Act, §2(6)).

Public authorities on all levels are involved in the education area (Education Act, §§ 5–7). The *Riigikogu* (Parliament) develops the national educational system and its principles of development, which is reflected in the above-mentioned legal acts. The government adopts national strategies of development, while Ministry of Education specifically develops and supervises the implementation of the national strategies. The Ministry also coordinates and guides local governments in the administration of education and directs the development of the national curricula, programmes and materials of public educational institutions. Local governments plan the development programmes for education within their respective territory. Mostly their role is limited to the provision of resources and study environments for students (e.g. premises and appropriate equipment).

Legal acts on education, including the national curricula refer to national and ethnic minorities and their cultures very briefly. The Education Act does state that one of the purposes of education is to “create favourable conditions for the development of the individual, the family and the Estonian nation, including ethnic minorities, and economic, political and cultural life in Estonian society and also nature conservation, within the context of the global economy and global culture” (§2(3.1)). The Basic Schools and Upper Secondary

<sup>115</sup> Republic of Estonia Education Act (RT 1992, 12, 192 ... RT I, 25.03.2011, 1).

<sup>116</sup> Respectively, starting from the Basic Schools and Upper Secondary Schools Act (RT I 2010, 41, 240 ... RT I 2010, 41, 240), Vocational Educational Institutions Act (RT I 1998, 64, 1007 ... RT I 2010, 41, 240); Institutions of Professional Higher Education Act (RT I 1998, 61, 980 ... RT I, 08.11.2010, 4); Universities Act (RT I 1995, 12, 119 ... RT I, 03.03.2011, 4); Pre-School Child Care Institutions Act (RT I 1999, 27, 387 ... RT I, 14.03.2011, 1); Hobby Schools Act (RT I 2007, 4, 19 ... RT I 2010, 44, 262); Private Schools Act (RT I 1998, 57, 859 ... RT I, 25.03.2011, 1).

Schools Act additionally require the basic schools to create a learning environment that would support among other things also the development of every pupil's social and cultural identity (§4(2)). The national curricula for different levels of education concentrate mostly on the teaching of Estonian language based on the Literary Standard, while emphasising the need to familiarise the pupils with Estonian cultural traditions.<sup>117</sup> The curricula regulate in detail the teaching of Estonian language and culture in educational institutions, whose main language of instruction is not Estonian. The curricula do require the teaching of basic values, which also include cultural diversity and tolerance. However, in practice there have been no concrete steps taken to implement this requirement.

The Estonian educational system is flexible in regard to the language of instruction in individual educational institutions. The Constitution states that although everyone has the right to be taught in Estonian, the language of instruction of the particular educational institution is within the discretion of that institution (§37). The state has a corresponding obligation to provide possibilities to acquire education but it is only obliged to provide it in Estonian and not in any other language.<sup>118</sup> The discretion to choose the language of instruction, however, can only be exercised upon the approval of the local government or the Minister of Education and Research (depending on whether the school is owned by the state or by a local government).<sup>119</sup> A language other than Estonian can be used as a language of instruction either for the whole school or for individual classes. Private schools do not need permission to teach in a language other than Estonian, they must merely state the language of instruction in the Statutes (Private Schools Act, §15). In these schools, Estonian must still be taught on a level that would allow the pupil to switch, if he or she so wishes, to a school with Estonian as a language of instruction.

An additional possibility in basic schools for pupils, whose mother tongue is not Estonian, is to have their school to organise study courses of their mother tongue and their ethnic culture (Basic Schools and Upper Secondary Schools Act, §21(5)). This is an alternative in

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<sup>117</sup> National Curriculum of Upper Secondary School (RT I, 14.01.2011, 2); National Curriculum of Basic School (RT I, 14.01.2011, 1); National Curriculum of Pre-school Child Care Institution (RT I 2008, 23, 152 ... RT I 2010, 60, 407); Standard for Hobby Education (RTL 2007, 27, 474).

<sup>118</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 346.

<sup>119</sup> Basic Schools and Upper Secondary Schools Act (RT I 2010, 41, 240 ... RT I 2010, 41, 240), §21; Pre-school Child Care Institutions Act (RT I 1999, 27, 387 ... RT I, 14.03.2011, 1), §8.



cases where the school maintains Estonian as a language of instruction in all its classes. This possibility is for students who at home speak a language (mother tongue of at least one parent) other than the language of instruction in school.<sup>120</sup> A school is under obligation to provide such education when at least ten parents (with the same mother tongue) so request. The pupils can be from different levels of study as well as from different schools.<sup>121</sup> The school must organise the language and culture lessons as an optional course with a minimum of two lessons per week. If the request is made by less than ten parents, the school may provide such a programme in cooperation with the local government.

In addition to compulsory education, pupils can also acquire hobby education,<sup>122</sup> which could concentrate on a person's own mother tongue and culture. Municipally owned institutions are governed by the Hobby Education Act and private institutions by the Private Schools Act. The latter is also governing education facilities created under the National Minorities Cultural Autonomy Act that provide intensified study in their national culture and language (§4).

No references can be found in any of the legal acts in education area to specific Estonian local or regional cultures or languages (such as Seto or Võro). But the system of electives on all levels and the possibilities to choose additional fields of study on secondary school level provide the schools with the possibility to provide the Seto or Võro language and culture education if it wishes to. Also the content of hobby education is completely free in regard to the subject matter. This practice has been used widely in the Seto and Võro languages areas (see more below in 2.4.3).

### **1.9.4 Media legislation**

Media in Estonia is subject to very little regulation. Print media is completely self-governed with the exception of one provision in the new Language Act requiring media publications to follow at least the “good practice” of language use (§4(3), see below in section 2.2). Audiovisual and audio media is regulated mostly in regard to the procedure of providing

<sup>120</sup> Basic Schools and Upper Secondary Schools Act (RT I 2010, 41, 240 ... RT I 2010, 41, 240), §21(5); Keele- ja kultuuriõppeks võimaluste loomise tingimused ja kord (RT I 2010, 60, 405).

<sup>121</sup> Conditions and procedure for establishing opportunities for language and culture study (RT I 2010, 60, 405), §4(2).

<sup>122</sup> This is referring to extra-curriculum activity for youth.

media services, requirements for the providers, and procedure for issuing licences. This is governed by the Media Services Act,<sup>123</sup> which recently replaced the former Broadcasting Act. State-owned media service provision is governed additionally by the Estonian National Broadcasting Act.<sup>124</sup> Media providers are largely free to choose the content and placement in time of its programme (§13). One of the few regulations set by the state is the prohibition of “the incitement to hatred on grounds of sex, racial or ethnic origin, beliefs or religion [...]” making it punishable by fine (§§ 19 and 57).

The Estonian National Broadcasting (*Eesti Rahvusringhääling* – ERR), however, has additional requirements for the content deriving from the obligation to assist in fulfilling the aims of the Constitution. Henceforth, ERR must produce and broadcast programmes that, among other aims, “support the development of the Estonian language and culture,” and “enhance the guarantees of the permanence of the Estonian state and nation, and draw attention to the circumstances which may endanger the permanence of the Estonian state” (§4). At the same time, ERR must “guarantee the availability of the information needed by each person for his or her self-realisation” (§4). Among the tasks listed for ERR in §5(1), two in particular are worth a mention: an obligation to “distribute the programmes and media services introducing Estonian culture and society all over the world” and an obligation to “transmit programmes which, within the limits of the possibilities of the National Broadcasting, meet the information needs of all sections of the population, including minorities” (§5(1)). Of some importance from the perspective of minorities and language is the structure of ERR that includes Ethics Advisor (§31) and the Public Advisory Board (§29). In particular, the Advisory Board, composed of persons from different interest groups and areas of life, is tasked to give advice to the Management Board on the programme and development plan.

Several media institutions have agreed to the Code of Ethics,<sup>125</sup> which is the main act that governs the content of media products. The Code is implemented by two different self-regulating media bodies – *Avaliku Sõna Nõukogu*<sup>126</sup> and *Pressinõukogu* (both translate into

<sup>123</sup> Media Services Act (RT I, 6.01.2011, 1).

<sup>124</sup> Estonian National Broadcasting Act (RT I 2007, 10, 46 ... RT I, 6.01.2011, 1).

<sup>125</sup> *Eesti ajakirjanduseetika koodeks*, available both at: <http://www.asn.org.ee/koodeks.html> and <http://www.eall.ee/eetikakoodeks.html> (both last accessed 13.05.2011).

<sup>126</sup> Homepage: <http://www.asn.org.ee/index.html> (last accessed 13.05.2011).

English with the same title, “Estonian Press Council”).<sup>127</sup> The latter is only dealing with disputes concerning printed media while the previous deals with all media, including printed.<sup>128</sup>

### **1.10 Other legal areas of particular importance**

The non-discrimination principle laid down in the Constitution is reiterated in different acts. The Equal Treatment Act prohibits discrimination on the basis of a person’s national or ethnic origin (§2(1)). The Public Service Act also prohibits discrimination on the basis of nationality (or ethnic origin), among others, and also language proficiency although the latter is with reservation allowing discrimination when foreseen by law or the Language Act (§36<sup>1</sup>). In addition, the Advertisement Act prohibits advertisements that “contain denigration or discrimination on the grounds of nationality, [...] language, origin, [...]” (§3(4.10)). Infringement of this prohibition is punishable by fine.

Another area of law, where language plays an important part, is in relation to citizenship. The Citizenship Act lays down the conditions and procedure for granting citizenship. One of the essential conditions for acquiring Estonian citizenship through naturalisation is the knowledge of the Estonian language (§6(.3)). Specific requirements for the knowledge of Estonian, which will be tested on an exam, are provided in §8.

The population census is regulated by §§ 21–24 of the new Official Statistics Act, adopted on 10 June 2010.<sup>129</sup> The types of data collected for the census have changed, but nationality (or ethnicity) and mother tongue are still in the list (§22(1.3); in the former Act, §9(.3)). Instead of the proficiency in and use of Estonian language, the census now covers the proficiency in languages other than mother tongue in general. The law does not specifically require the collection of data on dialects or “regional varieties” of Estonian language and, thus, there are no exact numbers as to the amount of the speakers of dialects or regional varieties in Estonia. The next census will take place in January–March 2011.<sup>130</sup> The pilot census

<sup>127</sup> Homepage: <http://www.eall.ee/pressinoukogu/index.html> (last accessed 13.05.2011).

<sup>128</sup> As a background information: the only reason there are two bodies of self-regulation, is the crisis in the governing body of *Avaliku Sõna Nõukogu* in 2001, which resulted in Estonian Newspaper Association leaving the Council and established its own dispute-resolution body.

<sup>129</sup> Official Statistics Act (RT I 2010, 41, 241 ... RT I 2010, 41, 241). Previously the census was covered by Population and Housing Census Act.

<sup>130</sup> Statistical Office of Estonia, Population and Housing Census in 2011, 2011.

conducted between 31 December 2009 and 31 March 2010 included neither questions on dialects nor the possibility of indicating multiple mother tongues or ethnicities.

### ***1.11 The relation between national and international law in the domestic legal order***

Paragraph 3 of the Constitution states that universally recognized principles and norms of international law are an inseparable part of the Estonian legal system. In cases where Estonian laws or other acts are in conflict with international treaties ratified by the Parliament, the articles of the international treaty are applied (§123). Therefore international law takes precedence over non-constitutional domestic law in case the two are in conflict.<sup>131</sup> The Supreme Court has on many occasions also referred to treaties that the Parliament has not yet ratified as well as various recommendations and declarations.<sup>132</sup> According to court practice, non-binding international instruments have some impact on Estonian law, albeit mostly as a tool for interpretation.

Estonia is a monist state. This means that the ratification of a treaty by the Parliament does not entail rewriting the treaty into domestic law but rather, its articles are domestically applied as norms of international law.<sup>133</sup> While neither the Constitution nor other laws clearly express this, it has been generally accepted also through the case law of the Supreme Court that direct applicability of international treaties in Estonian legal system is possible.<sup>134</sup> The direct applicability is mostly dependent on the quality of the particular provision, its clarity and explicitness. Therefore it is also possible for everyone to appeal to a court to claim rights ensuing from international treaties.<sup>135</sup>

The general understanding among academics and legal practitioners is that the Constitution itself is superior to international treaties while other legal acts are inferior. The Constitution does not allow for any change of its basic principles as a result of international treaties. Therefore international treaties or its provisions therewithin that are found unconstitutional

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<sup>131</sup> Annus, *Riigiõigus*, 2006, p 204.

<sup>132</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 548, and Annus, *Riigiõigus*, 2006, p 205. See, e.g. judgment of the Supreme Court no 3-4-1-7-03 (21.01.2004) or judgment of the Supreme Court no 3-4-1-13-05 (01.09.2005).

<sup>133</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 547.

<sup>134</sup> E.g. Supreme Court, judgment no 3-3-1-58-02 (20.12.2002), para 11.

<sup>135</sup> Albi, *Rahvusvaheliste lepingute iserealiseeruv olemus ja otsekohaldatavus*, 1998, p 39.

cannot be applied. In that situation, the state authority responsible for signing must initiate either denunciation from the treaty or appropriate amendments to the treaty.<sup>136</sup> This has never happened. The presumption is that the Government only signs treaties that are in compliance with the Constitution.

The following conventions and treaties concerning minority languages are ratified by Estonia:

- The Framework Convention for the Protection of National Minorities was ratified in 1996 and entered into force in Estonia in 1998.<sup>137</sup>
- The Convention for the Protection of Human Rights and Fundamental Freedoms was ratified in 1993 and entered into force in Estonia on 1996. Estonia has ratified all the Protocols with the exception of Protocol 12 on the general prohibition of discrimination.<sup>138</sup>
- The International Covenant on Civil and Political Rights was ratified in 1991 and entered into force in Estonia in 1992.<sup>139</sup>
- The International Convention on the Elimination of All Forms of Racial Discrimination was ratified in 1991 and entered into force in Estonia in the same year.<sup>140</sup>
- The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions was ratified in 2006 and entered into force in Estonia in 2007.<sup>141</sup>

Estonia has not signed the European Charter for Regional or Minority Languages. The Charter has been a subject of discussion for several years now. It has been found that the

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<sup>136</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 612.

<sup>137</sup> Framework Convention for the Protection of National Minorities, 01.02.1995, in force 01.02.1998, entered into force in Estonia on 06.01.1997.

<sup>138</sup> Convention for the Protection of Human Rights and Fundamental Freedoms and Optional Protocols nos 1-14bis. Dates of adoption and entry into force available at: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG> (last accessed 13.05.2011).

<sup>139</sup> International Covenant on Civil and Political Rights, 16.12.1966, in force 23.03.1976, entered into force in Estonia on 21.10.1991.

<sup>140</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 07.03.1966, in force 04.01.1969, entered into force in Estonia on 21.10.1991.

<sup>141</sup> Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20.10.2005, in force 18.03.2007, entered into force in Estonia on 18.12.2006.

Charter is not problematic as to its content; in fact, most of the requirements and conditions set in the Charter are already in place in Estonia.<sup>142</sup> Yet the attitude of the public authority has still been dismissive. Reasons put forward have been several: the abstract nature of the text, the possible threat of separatism, the possible additional expenses and “the chance that an attempt will be made to apply [it] to immigrant languages.”<sup>143</sup> The fear is that the ratification of the Charter would motivate its use for the political purposes of the Russian-speaking population in Estonia. Estonia has a small community of Old Believers (Old Russian Orthodox) in East-Estonia region where they have lived historically. Unlike the Russian-speaking population in Northeast Estonia, they are not recent migrants and would probably be covered by the European Charter for Regional or Minority Languages. Yet their languages are difficult to distinguish from each other.<sup>144</sup> The analysis of the Charter was published in 2011. According to the representative of the MER, its results suggest now that Charter should not be signed although the terminology of the Charter should still be taken into use on a national level.<sup>145</sup>

The Charter is of some importance in the context of the Võro and Seto languages. Ratification of the Charter could give a stronger basis for these language groups in their demand for being recognised as regional languages rather than dialects (see on this discussion 2.2). Without the Võro and Seto languages being granted the status of regional language they would not benefit the Charter since it does not regulate dialects.<sup>146</sup>

### ***1.12 Debates on language rights and “old” and “new” minorities***

Since 1991, when Estonia regained its independence, language issues have been addressed mainly in the context of the issues regarding the relatively sizeable Russian minority. The language issues regarding the Russian minority can broadly be divided into three areas: the

<sup>142</sup> MER, Language education policy profile. Country report Estonia, 2008, p 53; also Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 35.

<sup>143</sup> MER, Language education policy profile. Country report Estonia, 2008, p 53; also Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 35.

<sup>144</sup> Expert commission for the determination of the legal status of South-Estonian language, Protocol no 2, 23.03.2004, para 2.1. Also see Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, p 63; Herkel, *Meie keelepoliitika vastab rahvusvahelisele standardile*, 2009; Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 35.

<sup>145</sup> Tender, Interview with Tõnu Tender, Advisor in the Language Department of MER, 04.03.2011.

<sup>146</sup> Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, p 61.

requirement to be sufficiently fluent in Estonian to become a citizen, the use of the Russian language in regions where the Russian-speaking population forms a majority, and the Russian language within the education system. The debate about the status of minority languages other than Russian has not received much public attention. Neither has the debate over the status of Võro and Seto languages reached the awareness of the general public, even though it is possible to find several articles on the subject from written media. Most of the discussion was raised in the context of drafting the new Language Act.

The terms “old minorities” or “new minorities” are not widely used in public or political debate. Reference to a term “new immigrant” is made in integration programmes and in the action plan of the Integration and Migration Foundation Our People.<sup>147</sup> The term “new immigrant” is mainly used to refer to immigrants that have come to Estonia after it regained its independence in 1991.<sup>148</sup> There has been relatively little of such immigration, amounting to approximately 1000 people annually. Most of the Russian-speaking population (those that arrived to Estonia during the years of occupation) are usually referred to as “older immigrants” in the context of integration.

The term “historical minority” is also used to describe minorities that were living in Estonia already before the Soviet occupation. Usually the term refers to Old Believers of Russian Orthodox, living in East-Estonia, Swedes, living in West-Estonia and Jews among others. Even though there is no exact corresponding term in Estonian for the English term “old minority”, one could argue that it corresponds to the term “old minorities” of Estonia.

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<sup>147</sup> MER, Estonian Integration Plan 2008–2013; Integratsiooni ja Migratsiooni Sihtasutus Meie Inimesed, Action Plan of the Foundation, 2010.

<sup>148</sup> Estonian Integration Plan 2008–2013, p 4.

## 2 Language and minority policies in practice

### 2.1 Parliamentary debates on languages and minorities

#### 2.1.1 With respect to constitutional provisions

The Constitution was recently amended to include a reference to the Estonian language in the Preamble (see above 1.9.1). The issue had been discussed already while drafting the original Constitution. According to Kaido Kama, who participated in the drafting of the Constitution in the end of the Soviet occupation, the term “language” was in the initial wording of the Preamble based on the example of a constitution from the pre-occupation period.<sup>149</sup> However, lawyers who were consulted in the drafting process, found that this was an unnecessary addition (because the notions of nation and culture already include language) and the word “language” was taken out.

It was the Estonian Language Council who initially, in 2002, took up the idea that it would be necessary to emphasise the importance of the language in the Constitution (on the Council, see below in section 3.5). The Research Department of the Parliament was asked to prepare a short brief in 2003 on how other states have reflected their national language in their constitutions.<sup>150</sup> The brief did not wholly endorse the idea. It noted that the international experience had shows such amendment having merely a short-term impact. Still, in 2006 the issue came up again when the Reform Party initiated an amendment of the Preamble of the Constitution. The initiative was actively supported also by the MER.<sup>151</sup> It has later been noted that the motives behind the initiative by the Reform Party were probably connected to pre-election populism.<sup>152</sup>

The Explanatory Note on the amendment to the Constitution put forward by the initiator, the Reform Party, was brief, emphasising the importance of the Estonian language to

<sup>149</sup> Kama, Vs: võro ja seto keele õigusuuring, Member of the Academic Board of the Võro Institute, 2011.

<sup>150</sup> Economic and Social Information Department of *Riigikogu*, Ülevaade rahvuskeele kaitse ja kasutamise sätetest teiste riikide põhiseadustes, 2003.

<sup>151</sup> Ojuland, Shorthand record of VIII session, X *Riigikogu*, 17.10.2006; Also see Economic and Social Information Department of *Riigikogu*, Ülevaade rahvuskeele kaitse ja kasutamise sätetest teiste riikide põhiseadustes, 2003, p 5.

<sup>152</sup> Tomusk, Probleemidest Eesti keelepoliitikas praktiku pilgu läbi, 2007, p 193.



Estonian culture and identity.<sup>153</sup> It noted that previously the basis for constitutional protection of the Estonian language was merely the scarce case law of the Supreme Court. The representative of the Party, presenting the draft in the Parliament, stated that the draft merely expresses what linguists and different public opinion leaders already think: the Estonian language needs stronger symbolic and legal protection.<sup>154</sup> She noted that the language policy has been inconsistent and under strong influence from outside. This amendment would provide for a solid basis for the long-term development of a language policy. Another member of the Parliament, Urmas Reinsalu, also stated that the amendment would, most of all, mean a political obligation to take real steps towards protection, development and preservation of the Estonian language.<sup>155</sup>

The initiative was supported by 86 out of 101 members of the Parliament.<sup>156</sup> The draft caused little controversy in regard to its content; statements at the Parliamentary discussions were supportive.<sup>157</sup> It was mentioned a number of times, however, that the amendment would have little legal impact.<sup>158</sup> Most of the concerns that were put forward were about the adoption procedure of the draft, which initially was to be done through speedy procedure.<sup>159</sup> However, since legal experts could not agree upon the legality of such a procedure, the amendment was adopted through the regular procedure.<sup>160</sup>

Kristiina Ojuland, Estonian member of parliament and former Minister of Foreign Affairs, when presenting the draft, also referred to the supporting opinion of the MER.<sup>161</sup> The Ministry had found the draft necessary because of two reasons – anglicisation and the

<sup>153</sup> Reform Party, Explanatory Note to the draft Amendment Act of the Constitution of the Republic of Estonia, 2006.

<sup>154</sup> Ojuland, Shorthand record of VIII session, X *Riigikogu*, 17.10.2006.

<sup>155</sup> X *Riigikogu*, Shorthand record of IX session, 20.02.2007.

<sup>156</sup> X *Riigikogu*, Shorthand record of VIII session, 13.09.2006; X *Riigikogu*, Shorthand record of IX session, 18.01.2007.

<sup>157</sup> It is worth to mention here that before the final adoption of the draft in April, the new Government coalition, which was formed after the Parliamentary elections in March, included the adoption of the draft as the first point under the heading “Estonian language protection policy” of the Coalition Programme for 2007–2011.

<sup>158</sup> X *Riigikogu*, Shorthand record of VIII session, 17.10.2006; X *Riigikogu*, Shorthand record of IX session, 18.01.2007.

<sup>159</sup> X *Riigikogu*, Shorthand record of VIII session, 17.10.2006; X *Riigikogu*, Shorthand records of IX session, 18.01.2007 and 20.02.2007.

<sup>160</sup> Sepp, Shorthand records of IX session, X *Riigikogu*, 20.02.2007.

<sup>161</sup> Ojuland, Shorthand record of VIII session, X *Riigikogu*, 17.10.2006.

“exaggerations” concerning the status of the regional varieties of Estonian language.<sup>162</sup> No further explanation as to what was meant by “exaggerations”, however, was offered or asked for. One possible explanation to the MER’s opinion could be that the addition to the preamble would provide additional protection to these varieties (as asked for by these communities). On the other hand, the opinion could also have meant that the addition would, in fact, protect the standard Estonian language from the pressures from its regional varieties. Regardless, it has been confirmed by various sources that the addition to the preamble is meant to protect dialects and regional varieties.<sup>163</sup>

### 2.1.2 With respect to language legislation

The previous Language Act was changed several times since the initial adoption in 1995. Most of the recent changes and corresponding discussions in the Parliament concerned language proficiency issues, in particular the proficiency levels, examinations and certificates. Most relevant to the present analysis, however, are the changes and corresponding discussions in the Parliament in 2007.<sup>164</sup> Processing the amendments to the Language Act 1995 was accompanied with extensive discussions in the Parliament in regard to content as well as form. For example, the MER and two political parties, Pro Patria Union and Res Publica party, proposed similar amendments almost simultaneously. The parties initiated the amendments first (on 11.05.2006), while the Ministry was still finishing the round of approvals for the draft from other ministries and relevant organisations.<sup>165</sup> The Ministry still initiated its own draft (21.12.2006) and the drafts were processed separately in their initial stages. Eventually the drafts were united.<sup>166</sup>

Another controversy in regard to the amendments was the fact that a similar draft (excluding provisions on the Sign language and other smaller differences) had already been initiated by the MER in 2005. It was forwarded to the Parliament, where the Cultural Affairs Committee (CAC) discussed it. However, when the draft was supposed to be presented at the plenary session, the Minister of Education and Research at the time, Mailis Reps,

<sup>162</sup> Ojuland, Shorthand record of VIII session, X *Riigikogu*, 17.10.2006.

<sup>163</sup> Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2002, p 35; Tulviste, CAC Protocol no 223, XI *Riigikogu*, 15.11.2010.

<sup>164</sup> Amendment Act of the Language Act (RT I 2007, 17, 82).

<sup>165</sup> X *Riigikogu*, CAC Protocol no 231, 14.09.2006; Soosaar, Shorthand record of VIII session, X *Riigikogu*, 21.09.2006.

<sup>166</sup> X *Riigikogu*, CAC Protocol no 260, 22.01.2007.

withdrew it.<sup>167</sup> No explanations or reasons for this were given at the session. The Government, in fact, took note of the action by the Minister on the following Government meeting.<sup>168</sup>

It is worth to mention that the amendments in 2007 were processed in the Parliament at the same time as the amendment draft of the Constitution (see section 2.1.1 above). It seems that the sentiments concerning the Estonian language, as part of the identity of every Estonian, were prevalent at this time. The constitutional amendment was repeatedly referred to in support of arguments aimed at the protection of the Estonian language from the undue impact of other languages, such as Russian and English.<sup>169</sup>

It is therefore no surprise that §3(3) from the Language Act 1995 (“The measures to support foreign languages shall not damage Estonian”) was added at that point.<sup>170</sup> Apparently this was done upon suggestion by Mr Mart Rannut, member of the Estonian Language Council (on the Council, see below in section 3.5), on the basis of a similar provision in the French Language Act. Mart Nutt, the presenter of this proposal, was of the opinion that this would not harm the position of other languages while still providing the basis for the protection of Estonian language through court when necessary.<sup>171</sup> The provision was, in fact, initially proposed in the draft initiated by the political parties and was not supported by the MER. Reasons for the MER’s objection were twofold – first, it would contravene with the Estonian Strategy of Foreign Languages<sup>172</sup> that supports multilingualism and, second, it could essentially allow any measure to be declared harmful to the Estonian language.<sup>173</sup> The representative of the Reform party, however, found it doubtful that this provision would be used by any of the future governments to prohibit other languages altogether. Mart Rannut, also pointed out that such a provision is reflected in the European Charter for Regional or Minority Languages. The general consensus was that this provision would allow intervention when project-based financing would concentrate too much on the promotion of foreign

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<sup>167</sup> X *Riigikogu*, Shorthand record of V session, 13.04.2005.

<sup>168</sup> Government of the Republic, Valitsus võtab Riigikogu menetlusest tagasi neli seaduseelnõud, 2009.

<sup>169</sup> Eg X *Riigikogu*, CAC Protocol no 263, 5.02.2007.

<sup>170</sup> This provision can also be found in the Language Act 2011 (§2(3)).

<sup>171</sup> Nutt, CAC Protocol no 236, X *Riigikogu*, 12.10.2006.

<sup>172</sup> By now the Strategy has been renewed: MER, Strategy of the Estonian Foreign Languages 2009–2015.

<sup>173</sup> Reinthal, CAC Protocol no 256, X *Riigikogu*, 08.01.2006; Läänemets, CAC Protocol no 263, X *Riigikogu*, 05.02.2007.

languages. Regardless of the risks pointed out by the Ministry, the provision was eventually adopted in the Parliament. Until now, the provision has not been used to obstruct any measures supporting multilingualism or foreign languages.

How and whether at all §3(3) of the Language Act 1995 and §2(3) of the new Act could become an obstacle for the Võro or Seto language groups is doubtful. Currently, they are not considered as languages separate from the Estonian language. Being considered part of the Estonian language would actually place them on the protected side. Even if they were to become regional languages (see on that section 2.2 below), it is doubtful that they would be considered foreign languages within the meaning of that provision.

The 2007 amendments also concerned the regulation of national minority languages. The MER proposed to relax the previous definition and unify it with the definition provided in the Local Government Council Election Act.<sup>174</sup> This was not supported by the Pro Patria Union and the Res Publica party (the political parties that were the authors of the competing draft).<sup>175</sup> In their opinion, the rules were ineffectual.<sup>176</sup> Regardless, the amendment was adopted. The issue of national minority languages was raised once again in the same year in the context of the amendment on the language of public information to the Language Act 1995. Mart Rannut, member of the Language Council, suggested that instead of allowing translations of different public signs, announcements and other things into foreign languages, it should only be allowed to translate them to national minority languages.<sup>177</sup> He noted that otherwise the provision is too wide, going significantly further from what the FCNM requires. His suggestion, however, did not find support from the CAC and the possibility of translation into foreign languages in general was added to the law.

The use of the term “regional varieties of the Estonian language” caused some discussions in the Parliament, thus reflecting the discussions on a ministerial level as well as in media (see below 2.2). At the meeting of the CAC, Mart Meri, a member of Parliament, asked if the issue had come up during the drafting of amendments to the Language Act 1995 by the

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<sup>174</sup> Reinthal, CAC Protocol no 256, X Riigikogu, 08.01.2006.

<sup>175</sup> Meri, Shorthand record of IX session, X Riigikogu, 7.02.2007.

<sup>176</sup> X Riigikogu, CAC Protocol no 256, 8.01.2006.

<sup>177</sup> Rannut, CAC Protocol no 263, X Riigikogu, 5.02.2007.

MER.<sup>178</sup> The representative of the Ministry noted that they are familiar with the topic but did not elaborate on it any further. The discussion around the term “regional varieties” was again raised later when Urmas Sutrop, director of the Institute of the Estonian Language, proposed that the term could be included in §23 (language of information).<sup>179</sup> This proposition was eventually adopted and added to the Language Act 1995. This was the first time that the term “regional variety of Estonian language” was ever used in a legal act. Previously it was only referred to in the Development Strategy of Estonian Language (see below 2.2). It is interesting to note that this particular amendment was not discussed with the Võru Institute at all. They were merely sent the adopted amendment act.<sup>180</sup> The Võru Institute was, at the time, actively advocating for taking into use the term “regional language” for Võro as well as Seto languages (see 2.2 below).

The discussion in the CAC following the proposition by Mr Sutrop demonstrated the political confusion and sensitivity when it comes to Southern-Estonian languages (including the Seto and Võro). Mr Sutrop, when putting forward the proposition, noted that this would prevent the issue of the status of the Southern-Estonian languages from being raised again and would provide significant moral support to people in South-Estonia.<sup>181</sup> It was suggested at the CAC-meeting to include the definition of the term “regional variety” in the Act but Mr Sutrop rejected the proposition noting that the issue is politically too sensitive. This was probably noted with reference to the discussions in the Commission on the Status of Southern Estonian Languages (see section 2.2 below). He was asked how the proposed provision on regional variety in the Language Act should be understood. Mr Sutrop responded that it could be understood however anyone wants to understand it.<sup>182</sup>

Another point of discussion in the Parliament during the proceedings on the Language Act 1995 amendments concerned the Language Inspectorate and its supervisory competence. The amendments inserted provisions on the Inspectorate into the Language Act 1995, while

<sup>178</sup> Reinthal, CAC Protocol no 256, X Riigikogu, 8.01.2006.

<sup>179</sup> Sutrop, CAC Protocol no 260, X Riigikogu, 22.01.2007.

<sup>180</sup> Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>181</sup> Sutrop, CAC Protocol no 260, X Riigikogu, 22.01.2007.

<sup>182</sup> Sutrop, CAC Protocol no 260, X Riigikogu, 22.01.2007.

previously its supervisory powers were based on a Governmental regulation.<sup>183</sup> The Chancellor of Justice had repeatedly requested for appropriate provisions to be inserted in a Parliamentary act, because the competence of the Inspectorate assumed powers to restrict individual fundamental rights and the Constitution does not allow such restrictions on the basis of a mere governmental regulation.<sup>184</sup> Corresponding provisions were added to the current Language Act without much controversy, as its scope of competence and powers did not change compared to those in the Regulation.

The role of the Language Inspectorate, in general, has been little discussed on a parliamentary level in recent years. It has mostly been in the context of checking the language proficiency of teachers and public servants.<sup>185</sup> Only a couple of remarks were raised on the powers of the Inspectorate during the proceedings of different amendments to the Language Act 1995. These remarks reflect to some extent the concerns that the general public and different international organisations have repeatedly raised.<sup>186</sup> Thus, on a plenary session of the Parliament in 2010, one of the members declared the powers of the Inspectorate to be virtually limitless.<sup>187</sup> Earlier, in 2007, another Parliament member expressed his concerns in regard to “rampant” (author’s translation) checking of language use in the Estonian society and asked how is the Inspectorate and its activities checked.<sup>188</sup> The latter concern was raised in the context of the possibility to supervise and, where appropriate, fine when audiovisual and audio programmes and international events that targeted the general public are not translated into the Estonian. Neither of the concerns brought about significant elaborations on the part of the MER representative answering questions. The first concern was dismissed with the note that the particular amendments under discussion did not concern the Inspectorate directly.<sup>189</sup> In regard to the second

<sup>183</sup> Aarna, CAC Protocol no 231, X Riigikogu, 14.09.2006; Reinthal, CAC Protocol no 256, X Riigikogu, 8.01.2006; Lukas, Shorthand record of VIII session, X Riigikogu, 21.09.2006.

<sup>184</sup> Õiguskantsler, Õiguskantsler: järelevalve keeleseaduse täitmise üle tuleb sätestada seaduses, 2006; also see Reps, Shorthand record of IX session, X Riigikogu, 17.01.2007.

<sup>185</sup> E.g. Lukas, Shorthand record of V session, X Riigikogu, 6.05.2007.

<sup>186</sup> See, e.g. Diène, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Mission to Estonia, 2008, para 79; Committee on the Elimination of Racial Discrimination, Concluding observations: Estonia, 2010, para 13; Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Estonia, 2005, paras 163–164 (in regard to the enforcement of the language proficiency requirements).

<sup>187</sup> Efendijev, Shorthand record of VII session, XI Riigikogu, 13.02.2010.

<sup>188</sup> Reinthal, CAC Protocol no 256, X Riigikogu, 8.01.2006.

<sup>189</sup> Lukas, Shorthand record of VII session, XI Riigikogu, 13.02.2010.

concern the person was directed to the Statute of the Inspectorate to see how the checking is conducted.<sup>190</sup>

### **2.1.3 With respect to education legislation**

In regard to education legislation, there were extensive discussions in 2009 and 2010 in connection with the processing and subsequent adoption of the new Basic Schools and Upper Secondary Schools Act, which entered into force on 1 September 2010. The discussions were long and complicated and the initial draft presented to the Parliament was significantly changed by the time of the adoption. The new Act was by and large adopted in order to finalise the school reform whereby Russian schools would be fully integrated into the Estonian school system.

Paragraph 21 (see above in 1.9.3) regulating the language of instruction was changed compared to the old Act. However the changes were mostly technical. The opportunity for the students to learn their mother tongue and to learn about their national culture when certain preconditions are fulfilled was provided already in the Basic Schools and Upper Secondary Schools Act since 13.03.2003.<sup>191</sup> Some additions in the current Act concerning this opportunity were merely brought in from the respective regulation. This is probably the reason why this particular provision did not spark much debate while other aspects of the Act did.

### **2.1.4 With respect to media legislation**

The Parliament held comprehensive discussions in connection with the adoption of the new Estonian National Broadcasting Act on 2007. The majority of discussions were concerned with the rules in regard to the Council of the new unified broadcasting agency that was created with the Act. There were also discussions, albeit very brief, in regard to the purposes and aims of the new institution. The provision proposed by the Broadcasting Council placing the development and preservation of Estonian culture, language and nationality as one of the purposes of ERR received a favourable reception from all political fractions.<sup>192</sup>

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<sup>190</sup> Reinthal, CAC Protocol no 256, X *Riigikogu*, 8.01.2006.

<sup>191</sup> Basic Schools and Upper Secondary Schools Act (RT I 2010, 41, 240 ... RT I 2010, 41, 240).

<sup>192</sup> Soosaar and Tomson, Shorthand record of VIII session, X *Riigikogu*, 25.10.2006.

More relevant and interesting in the context of the present report is another proposition by the Broadcasting Council.<sup>193</sup> Initially, the task of the new ERR to transmit programmes, which would meet the information needs of all sections of the population, including minorities, was to be limited to news programmes. The Council proposed its extension to programmes in general. The MoC did not support the proposal but CAC found the term “news programmes” to be too restrictive. CAC especially wanted to emphasise that minorities (not necessarily only national minorities) should be able to satisfy their need for information through any type of programme, not only news.<sup>194</sup> In reality, the provision has been interpreted rather restrictively (see more below 2.4.4).

## 2.2 Recent legal initiatives on languages and minorities

The most recent legal initiative on language legislation is the new Language Act, which is already extensively discussed above in section 1.9.2. The MER initiated the drafting of the new Language Act on 1 October 2008.<sup>195</sup> The first draft was finished in summer 2009 and it caused extensive discussions in media.<sup>196</sup> As a result, the draft received over 100 proposals of amendment and the finishing of the draft had to be postponed.<sup>197</sup> The final version of the draft that was sent to a round of approvals before sending it to the Parliament for the adoption attracted 76 proposals for a revision on different aspects of the draft from.<sup>198</sup> Finally, in 19 August 2010, the Government approved the draft and sent it to the Parliament.<sup>199</sup> After extensive discussions and further changes to the draft, the Parliament adopted the new Language Act on 16 February 2011 and it entered into force on 1 July 2011.

The content of the new Act is already extensively covered above in 1.9.2. The discussions over the draft of the new Language Act were heated, not only within the Parliament but also outside. One controversial issue was the language use in media. Initially the draft included a

<sup>193</sup> X *Riigikogu*, CAC Protocol no 244, 09.11.2006.

<sup>194</sup> *Riigikogu*, Explanatory Note to the Second reading of the Draft Act of the Estonian National Broadcasting Act (965 SE), 2006.

<sup>195</sup> MER, Explanatory Note to the draft Language Act] final version, 2008; MER, Analüüsitakse vajadust keeleteaduse uue redaktsiooni järele, 2008.

<sup>196</sup> MER, Draft. Language Act, 22.05.2009; Tamm, Seadus kohustab kaubamärke eesti keelde tõlkima, 2010; Tamm, Seadus sätestab ajakirjanduskeeleks hea tava, 2010.

<sup>197</sup> Rudi, Avalikkust ärritanud keeleteadusele esitati üle 100 muudatuse, 2009.

<sup>198</sup> MER, Explanatory Note to the draft Language Act, first version, 2008.

<sup>199</sup> There was one dissenting opinion from the Minister of Justice concerning the requirement to translate audiovisual programmes in foreign language into Estonian. – Government of the Republic, Decision on the Approval of the Specified Language Act, 2010.



provision that required the use of the Literary Standard in national media publications including their web versions and the use of “correct” Estonian language in television and radio programmes.<sup>200</sup> As a result, media organisations criticised the draft for overregulating and restricting the free use of language. Linguists pointed out that placing a fine for violating the Literary Standard would be counteractive and prevent the language from developing naturally. Specialists also pointed out that such a regulation would “seed fear” among people even if the regulation would not be implemented to the letter.<sup>201</sup> By the time the draft reached the Parliament the provisions had been downsized to the requirement of “good practice” of language use in media.<sup>202</sup> Most importantly, the use of “good practice” is not a norm and there are no sanctions in place for not following it.<sup>203</sup>

The new Language Act brings with it the regulation of websites, already in 2006 when the Language Act 1995 was under comprehensive review (*see* 2.1.2 above). At that time, the Pro Patria Union and the Res Publica party (upon recommendation from Mart Rannut, member of the Language Council) put forward a similar proposition, which in addition to requiring public organs to show the opening page of their websites in the Estonian, required the same from private entities.<sup>204</sup> The proposition at that time did not find support because it was considered to be too restrictive on the freedom of enterprise.<sup>205</sup> In the new Language Act, this provision takes a different form. First, when it comes to the websites of public organs then they must comply with the Literary Standard anyhow because it is the official use of language (§4(1)).<sup>206</sup> Second, in regard to private enterprises the websites should include at least a summary of the essential information on the company and its services in Estonian. Note that here Literary Standard is not required to be followed because it is just public, and

<sup>200</sup> MER, Draft. Language Act, 22.05.2009. Kaplinski, Uue keeleseaduse valgel tundub meie iseseisvus üllatavalt nõrk, 2009; Ummelas, lasugune “keeleseadus” on muutunud barbaarseks ja natsionalistlikuks terroriks, 2009.

<sup>201</sup> Rudi, Avalikkust ärritanud keeleseadusele esitati üle 100 muudatuse, 2009; the discussion referred to by Lukas, Shorthand record of VIII session, XI Riigikogu, 13.10.2010.

<sup>202</sup> The “good practice” will be developed by the Centre of Tactical Language Planning (*Keelehooldekeskus*) in cooperation with the Institute of Estonian Language and the representative organisation of journalists. – MER, Explanatory Note to the draft Language Act, first version, 2008, p 3. Jaak Viller, Director of the MER Language Department, also mentioned that the Ministry has already ordered “Style guide for Journalism” (*Ajakirjanduse stiiliraamat*), which will be the basis of the “good practice”. – XI Riigikogu, CAC Protocol no 212, 23.09.2010.

<sup>203</sup> MER, Explanatory Note to the draft Language Act, final version, 2008, p 3.

<sup>204</sup> Rannut, CAC Protocol no 236, X Riigikogu, 12.10.2006.

<sup>205</sup> X Riigikogu, CAC Protocol no 236, 05.02.2007; Also see Meri, Shorthand record of IX session, X Riigikogu, 7.02.2007.

<sup>206</sup> Tomusk, CAC Protocol no 212, XI Riigikogu, 23.09.2010.

not official, information (§4(3)). Thus, in principle, the Võro and Seto languages could also be used.

The new Act also brings with it a definition for language of public administration. This was missing from the Act 1995. The Chancellor of Justice had asked the MER to remedy the situation already in 2005.<sup>207</sup> He had pointed out that there is no explanation as to the division of the language of public administration into oral and written language, or into internal and external language. The MER made corresponding attempts to bring the topic to discussion in 2005 and 2007. As mentioned above, the Minister of Education and Research withdrew the amendment act of the Language Act 1995 in 2005. Different definitions were discussed both at the plenary session of the Parliament as well as in CAC in 2007 but no agreement was reached.<sup>208</sup> The new act divides the use of language of the public sector into oral and written use. It also defines the written use and lists the concerned public sector institutions. In particular, the new act specifies in detail the domains where foreign languages, including national minority languages, can be used.

The discussion over the status and regulation of dialects or regional varieties of Estonian language proved to be politically especially sensitive. It was the first time when this topic was discussed in such detail at all on a Parliamentary level. Previously it was mainly discussed on a ministerial level. Essentially, the debate in the Parliament evolved around the question of whether to take into use the term “regional language” or keep the term “regional variety of Estonian language” or use “dialects” instead. This debate was initiated by the Võro Institute and the Union of Rural Municipalities of Setomaa.

The initiative to enhance the status of both Võro and Seto languages to the status of regional languages has, in fact, been the most significant movement for change in recent years. Both the Võro Institute and the Union of Rural Municipalities of Setomaa have advocated for it since 2004. In fact, in 2004 the Council of the State Programme “Language and Culture of South Estonia 2000–2004” presented a proposal to the MoC to determine the legal status of the South-Estonian languages.<sup>209</sup> As a result the Government formed an Expert Commission

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<sup>207</sup> Jõks, Shorthand record of IX session, X *Riigikogu*, 11.04.2005.

<sup>208</sup> Meri, Shorthand record of IX session, X *Riigikogu*, 7.02.2007; X *Riigikogu*, CAC Protocol no 260, 22.01.2007.

<sup>209</sup> Expert commission for the determination of the legal status of South-Estonian language, Protocol no 1, 5.02.2004

to Determine the Legal Status of the South-Estonian Language.<sup>210</sup> Although the Commission did agree on “all the issues of language rights,” there was no resolution as to the status of these languages.<sup>211</sup> The result was a proposition to the Government, asking it to decide whether to use the term “regional variety of Estonian language” or “South-Estonian language”.<sup>212</sup> The meeting of the government was supposed to take place in September 2004 but it never did.<sup>213</sup> In 2009, both the Võru Institute and the Union of Rural Municipalities of Setomaa brought the issue up again, this time during the initial stages of drafting the new Language Act.

The Institute and the Union advocated for the taking into use of the term “regional language” as well as for the right to use the Võro and Seto languages in public offices within the respective regions, on public signs and announcements, and in media.<sup>214</sup> During the drafting of the new act the MER asked for an opinion from the Language Council. Although the Council decided to support the use of “regional language”, the decision was not unanimous. In fact, a working group was established to settle the issue, but again with no result.<sup>215</sup> In the end all references to regional varieties or regional languages were excluded from the draft Language Act. The Explanatory Note to the draft stated that the term “Estonian language” is to be understood as including both the Literary Standard and the regional varieties of Estonian language. Whenever the use of Literary Standard is not required expressly, the regional variety can be used.<sup>216</sup> This was specifically emphasised by the MER at the plenary session, saying that the freedom of enterprise and cultural life can all be exercised in the local dialect or variety.<sup>217</sup>

The Võru Institute and the Union of Rural Municipalities of Setomaa were not content with excluding all references to these languages. Even though the use of the Seto and Võro

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<sup>210</sup> Composition of the Expert commission for the determination of the legal status of South-Estonian language (RTL 2004, 8, 127).

<sup>211</sup> Kama, On law proposals of recognition of South Estonian language, 2010.

<sup>212</sup> Ministry of Culture (MoC), Explanatory Note to the draft decision of the Government Office “Propositions on the Determination of the Legal Status of South-Estonian Language.”

<sup>213</sup> Office of the Government of the Republic, Excerpts of the Protocol from the meeting of the Office of the Government, 05.07.2004.

<sup>214</sup> Union of Setomaa Rural Municipalities and Võru Institute, Amendment proposals to the draft Language Act, 17.08.2009.

<sup>215</sup> Estonian Language Council, Protocol of the meeting, 22.09.2009.

<sup>216</sup> MER, Explanatory Note to the draft Language Act, final version, 2008, p 8.

<sup>217</sup> Lukas, Shorthand record of VIII session, XI Riigikogu, 13.10.2010.

languages in the private sector was indeed freed from any restriction, the draft completely excluded the use of these languages in the public sector. Thus, they submitted a proposal to the Parliament in 2010.<sup>218</sup> It included several propositions, including the right (not the obligation) to use these languages in the public sphere (both official and other), on public signs and information, in the media and in place names. It specified that “Estonian language” would be the macro-language (a term used by the authors of the proposals referring to the generic nature of the term) that connects Estonian Literary Standard and regional languages as individual languages.<sup>219</sup> The motion also included a provision that “regional languages” would be Võro and Seto languages in particular.

The CAC initially approved the proposals in substance.<sup>220</sup> The MER proposed another wording, which read that the state supports the protection, use and development of “historical dialect and regional languages”, such as Võro, Seto, Mulgi and Kihnu.<sup>221</sup> Also, these languages could be added to any official written text in Literary Standard. However, at the following CAC meeting, the term “historical dialect and regional languages” was replaced with “regional variety of Estonian language”.<sup>222</sup> In consequence, the new Language Act is now requiring the state to promote the protection, use and development of “regional varieties” of Estonian language (also expressly equating it with a “dialect language”) (§3(3)). The regional varieties can be used in official settings in addition to Literary Standard (§4(1)). This result satisfied neither the Võro Institute nor the Union of Rural Municipalities of Setomaa since the term “regional varieties” was established with the draft even more forcefully than it was in the Language Act 1995.<sup>223</sup> The term “regional languages” was set aside firmly.

When the draft in its final version was presented to the Parliament, the opinion against the use of the term “regional languages” was firm.<sup>224</sup> Paul-Eerik Rummo, who presented the draft emphasised two points in particular. First, Võro and Seto are dialects and not

<sup>218</sup> XI Riigikogu, CAC Protocol no 223, 15.11.2010.

<sup>219</sup> According to the explanation of the motion to amend, such division of languages is in accordance with ISO standards (võro language has an international language code ISO 639-3). – XI Riigikogu, CAC Protocol no 223, 15.11.2010.

<sup>220</sup> X Riigikogu, CAC Protocol no 236, 12.10.2006.

<sup>221</sup> X Riigikogu, CAC Protocol no 236, 12.10.2006.

<sup>222</sup> Rummo, CAC Protocol no 238, XI Riigikogu, 25.01.2011.

<sup>223</sup> Pelisaar, CAC Protocol no 238, XI Riigikogu, 25.01.2011.

<sup>224</sup> Rummo, Shorthand record of IX session, XI Riigikogu, 16.02.2011.

languages. According to him, this is the current view of linguists, which in fact is not entirely true (see below).<sup>225</sup> Second, since the Võro and Seto are dialects they are not covered by the European Charter for Regional or Minority Languages and therefore would not benefit from the use of that term at all. He also specifically emphasised that choosing “regional varieties” instead of “regional languages” does not mean that the state is not under an obligation to respect and financially and institutionally support the Võro and Seto languages. The new act indeed includes a provision, which requires the state to support the protection, use and development of these languages (§3(3)).

The reasons for and against taking into use the term “regional language” when referring to the Võro and Seto languages have been manifold. The fear that Russian-speaking population would also demand their language to be recognised as regional language seems to be the most dominating (see section 1.11 above).<sup>226</sup> The Võro Institute and the Union of Rural Municipalities of Setomaa pre-emptively addressed this: regional languages for the purpose of the Language Act would have been fixed to the Võro and Seto languages only. The later proposition by the MER, which suggested the term “historical dialect and regional languages,” added Mulgi and Kihnu to the closed list (without specifying which of the languages mentioned in the list are dialects and which are actually languages).<sup>227</sup> Neither of the proposals ended up in the version of the act that was adopted.

Kaido Kama, in particular, believes that the above-mentioned fear-related argument has no objective bearing. National minority languages receive specific protection on their own. The Võro and Seto languages would be recognised as regional languages. Although this distinction is not included in the European Charter for Regional or Minority Languages, several of its Signatory States do use it in their practice. Kama suggests doing this in Estonia as well. He does not see why the Russian-speaking population would want to claim the

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<sup>225</sup> Rummo, Shorthand record of IX session, XI *Riigikogu*, 16.02.2011.

<sup>226</sup> Lukas, Shorthand record of VIII session, XI *Riigikogu*, 13.10.2010; Estonian Language Council, Protocol of the meeting, 22.09.2009. Also see Kama, On law proposals of recognition of South Estonian language, 2010; Koreinik, Public Discourse of (De)legitimation: The Case of South Estonian Language, 2011.

<sup>227</sup> Rummo, CAC Protocol no 238, XI *Riigikogu*, 25.01.2011.

status of regional language when its level of protection does not differ from that given to a minority language.<sup>228</sup>

The debate in the Language Council brought with it another argument against taking into use the term “regional language”. According to this argument, the promotion of the Seto and Võro languages diminishes the amount of resources available for the protection of the Estonian language as a whole.<sup>229</sup> As a result, neither the Võro-Seto languages nor the standard Estonian language would survive. This argument, however, can be set aside since the obligation of the state to support “regional varieties” was included in the new Act (§3(3)).

Another reason against using the term “regional languages” was mentioned in the CAC. There were doubts as to the exact practical value of adopting the term – which institutions it can be used in, under what circumstances etc.<sup>230</sup> Yet, the new Language Act includes provisions establishing exactly when and where the “regional varieties” can be used (§4(1)). Similar regulation could, in principle, also be adopted for “regional languages.”

Several arguments have also been put forward in favour of establishing the Võro and Seto languages as “regional languages”. First, the Võro and Seto people have always called their mother tongues “languages” and not dialects.<sup>231</sup> It has also been argued that since both languages are so different from the mainstream Estonian language that television programmes in these languages usually are subtitled, their classification as languages would be justified.<sup>232</sup> In fact, advocates from the respective communities have said that calling these languages dialects is even offensive because the Estonian word for dialect (*murre*) “has

<sup>228</sup> Kama, Vs: võro ja seto keele õigusuuring, Member of the Academic Board of the Võru Institute, 25.03.2011.

<sup>229</sup> Kama, Võru asi, 2005, p 120; MER, Language education policy profile. Country report Estonia, 2008, p 16; also see Valge, Mida küll Võru murdega peale hakata?, 2007; Väljataga, Lühiühendus: “Ohtlik kergemeelsus,” 2005.

<sup>230</sup> Tomusk, CAC Protocol no 223, XI Riigikogu, 15.11.2010. Also brought out in the Estonian Language Council, Protocol of the meeting, 22.09.2009.

<sup>231</sup> Koreinik, Language ideologies and identity-building in the public discourse of South Estonian, 2011, p 250; Kama, CAC Protocol no 223, XI Riigikogu, 15.11.2010; also Kama, On law proposals of recognition of South Estonian language, 2010; Küntsler, Pealend, 2010; and Jüvä, Võru keel eesti keele arendamise strateegias, 2007.

<sup>232</sup> Koreinik, Language ideologies and identity-building in the public discourse of South Estonian, 2011, p 250; Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

a certain pejorative meaning [as] it means “broken language”.<sup>233</sup> Second, classifying them as languages will help to increase their image not only for the rest of the Estonians but also for Võro and Seto people themselves. Võro and Seto people especially need convincing since these languages were heavily oppressed during the Soviet times.<sup>234</sup> It is argued that a positive image of the languages is essential to ensure their survival and, in this regard, the possibility to use them in official settings would be imperative.<sup>235</sup> A third argument that has been put forward is that giving the Võro and Seto languages the status of regional languages is necessary for international cooperation. There is no cooperation for dialects but there are organisations for regional languages.<sup>236</sup> In addition, the Võro language is recognised as a language on an international level (with a code ISO 639-3) and not recognising this in domestic law is contradictory.

It is worth to mention here that in 2004, the Government adopted the new Statutes for the Võro Institute, which was established by the Government in 1995 (*see more* below 3.5). The new Statutes clearly refer to local “language” when defining one of its tasks: studying the peculiarity of the local language and its standardization for public use (§4(3)).<sup>237</sup> The Government provides regular financing to the Institute to fulfil this task. Therefore, on the one hand it has established and supported a local institution and its policy on advocating for the Võro language while on the other hand it has rejected legislative initiatives to recognise the Võro language as a regional language on the state level.

Throughout the debate about whether the Võro and Seto languages are dialects or languages or something in between, it has repeatedly been brought up that ultimately it is a political decision and not a linguistic. Moreover, it is a domestic political decision, since there

<sup>233</sup> Kama, On law proposals of recognition of South Estonian language, 2010; Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011. See also Koreinik, Public Discourse of (De)legitimation: The Case of South Estonian Language, 2011.

<sup>234</sup> Ojar, Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeeesti keele õigusliku kaitse võimalustele, 2004, p 55; Kama, Protocol no 1, Expert commission for the determination of the legal status of South-Estonian language, para 2.28; Kama, Võro asi, 2005, p 121; Küntsler, Pealend. 2010.

<sup>235</sup> Kama, CAC Protocol no 223, XI Riigikogu, 15.11.2010; also see Ojar, Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeeesti keele õigusliku kaitse võimalustele, 2004, p 53.

<sup>236</sup> XI Riigikogu, CAC Protocol no 223, 15.11.2010. Also mentioned by Õie Sarv (Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 2011); Kama, On law proposals of recognition of South Estonian language, 2010; Küntsler, Pealend, 2010.

<sup>237</sup> Statute of the Võro Institute (RTL 2004, 152, 2295).

is no pressure from the international community.<sup>238</sup> There are no definitive linguistic parameters to rely upon and thus linguists in Estonia have been unable to agree on the exact nature of Võro and Seto languages.<sup>239</sup> In the end, however, it is essentially agreed by majority that the protection and teaching of the Võro and Seto languages is important.<sup>240</sup>

Another important initiative currently pending concerns the 2011 population census. As mentioned above in section 1.10, censuses so far have not recognised the possibility of indicating multiple mother tongues or ethnicities. Yet a census is a powerful tool in the hands of the state in determining the ethnic composition of the population. A census gives the opportunity to “legitimise” collective identities perceived by the population.<sup>241</sup> Since most of the Seto and Võro people consider themselves Estonians and either Seto or Võro people too, this is an essential issue.<sup>242</sup> Therefore, the Võro Institute and the Union of Setomaa Rural Municipalities made a recommendation to the Statistical Office to include questions on local culture and language in the 2011 census.<sup>243</sup> The Statistical Office immediately noted its readiness to specify questions on languages but because regional ethnicity is not included in Official Statistics Act as demographics data, asking questions on ethnicity might be unlawful. Currently, the number of people identifying themselves as Seto or Võro is only estimated. The Statistical Office eventually did decide to include a question on a person’s knowledge on local language or dialect in the census.<sup>244</sup>

## 2.3 Case law on languages and minorities

### 2.3.1 With respect to constitutional provisions

There is no case law in regard to the constitutional provisions on language and minorities. However there are two cases relating to the constitutional act of the National Minorities

<sup>238</sup> Ojar, *Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaeesti keele õigusliku kaitse võimalustele*, 2004, p 61.

<sup>239</sup> Kama, CAC Protocol no 223, XI *Riigikogu*, 15.11.2010; Küntsler, Pealend, 2010.

<sup>240</sup> Allik, Protocol no 1, Expert commission for the determination of the legal status of South-Estonian language, para 2.17. Also see Jääts, *Kuidas säilitada lõunaeesti murdeid?*, 2005, p 124; and Tender, *Mitmekeelsus Eestis Euroopa Liidu mitmekeelsuse ideaali taustal*, 2010, p 34.

<sup>241</sup> Jääts, *Kuidas säilitada lõunaeesti murdeid?*, 2005, p 122.

<sup>242</sup> Rannut, Rannut and Verschik, *Keel. Võim. Ühiskond*, 2003, p 125.

<sup>243</sup> *Fenno-Ugria Asutus, Setud ja võrukesed soovivad end loendusel määratlada*, 2010; also Nutov, *Setod ja võrukesed võitlevad etnilise kuuluvuse pärast*, 2010.

<sup>244</sup> Statistics Estonia, *Memo: Summary of the roundtable on dialects in the context of the questionnaire of the population and housing census*, 11.02.2011.



Cultural Autonomy Act. Both of the cases concern Russians' attempt to form cultural autonomy in Estonia. The MoC had refused the request for approval of the compilation of a nationality list, a precondition for the autonomy.

The first case brought by Russian organisations concerned the deadline for responding to their application for the permit to compile a nationality list.<sup>245</sup> Although the Act does not provide for an exact deadline, the Administrative Procedure Act provides that procedural acts must be conducted as soon as possible. The court found that the MoC had exceeded the reasonable time period by not responding for over two years.

The second case concerns the refusal by the MoC to approve the application.<sup>246</sup> The Court found that the Minister can establish an advisory committees even in a case where there is only one application to review. Correspondingly, the Act clearly provides the Minister with the discretion to respond in negative to this one application. This can happen (as it did in this particular case) where the applicant does not constitute a "cultural society" within the meaning of the Cultural Autonomy Act. Although the Act does not define "cultural society" *per se* the nature of that term could be implied from the purposes of the cultural autonomy body according to the Act. Thus, the Court summarised that a cultural society is a society that deals with the promotion of language study, acquires means to study national culture and to organise cultural events. Organisation's actual activity must be the basis for a decision and not merely the organisations Statutes of Association. In a situation where there are over 200 organisations that could apply for a cultural autonomy for Russians in Estonia, a more detailed inquiry into the application is justified. This is especially so because only one of those organisations can receive the right.

Although these cases are from the first two court instances and thus have little legal significance outside the particular dispute, they do provide valuable indication as to how the National Minorities Cultural Autonomy Act is likely to be interpreted. If Seto people would at some point decide to continue with their idea to form autonomy (see below in section 2.4.1), these cases provide valuable guidance.

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<sup>245</sup> Judgment of the Tallinn Administrative Court no 3-07-2246 (19.05.2008), para 5.2 (upheld subsequently by the Tallinn Circuit Court with the judgment of 28.11.2008).

<sup>246</sup> Judgment of the Tallinn Administrative Court no 3-09-464 (30.06.2009), para 5.2 (upheld subsequently by the Tallinn Circuit Court with the judgment of 02.03.2009).

### 2.3.2 With respect to language legislation

There is no case law concerning the Võro or Seto languages or “regional varieties”. Most of the cases concern levels of language proficiency. After establishing in 1998 that language is an essential guarantee for the preservation of the Estonian nation and culture, the Supreme Court created the general basis for justifying the establishment of language proficiency levels and other language requirements in certain areas of employment.<sup>247</sup> An additional basis was the need for unified notation system (i.e. common understanding of what is being said or written) in public administration so it would be able to function properly. Since 1998 there have been several cases in the Supreme Court regarding language proficiency requirements.<sup>248</sup> Few have concerned language requirements in the context of elections specifically.<sup>249</sup> The Court established that where the language requirements effectively constitute a precondition for setting up one's candidature, this must be provided for in the respective election acts<sup>250</sup> and not in the Language Act. The right to set up one's candidature for elections is a constitutional right regulated by constitutional law and its limitation by an ordinary law, such as the Language Act, is not in accordance with the Constitution.

One of the election cases is relevant in the context of the present study also because it concerned the name of an election coalition.<sup>251</sup> The coalition was not registered because the name was in the Russian language and, thus, it could not participate in elections (para 2). The Election Commission argued that the name in the Russian might be misleading and not understandable to the voters. The Court found that registration of a coalition may not be refused solely based on a formal reasoning that it has a Russian name. The Court found that the understandability of the name of the election coalition or political party is for voters to decide (para 10). It is possible to draw parallels here for a possible case where either election coalition or a political party could bear a name in Võro or Seto languages. This case seems to allow such a situation.

<sup>247</sup> Judgment of the Supreme Court no 3-4-1-1-98 (05.02.1998), part II.

<sup>248</sup> Such as the judgment of the Supreme Court no 3-3-1-20-03 (07.03.2003).

<sup>249</sup> Judgment of the Supreme Court no 3-4-1-7-98 (04.11.1998), part III; Judgment of the Supreme Court no 3-4-1-15-05 (13.09.2005), para 9; Judgment of the Supreme Court no 3-4-1-7-98 (04.11.1998), part III.

<sup>250</sup> *Riigikogu* Election Act (RT I 2002, 57, 355 ... RT I, 21.03.2011, 1); Local Government Election Act (RT I 2002, 36, 220 ... RT I, 21.03.2011, 1).

<sup>251</sup> Judgment of the Supreme Court no 3-4-1-15-05 (13.09.2005).

Other major cases are on various subjects, such as consumer protection,<sup>252</sup> language use in indictments,<sup>253</sup> a persons' entitlement to response in a national minority language from local governments, and the use of personal names.

In regard to the persons' entitlement to response from local governments in a national minority language, the Court determined that this entitlement is restricted to physical persons. The Court stated that legal persons are not entitled to require a response in a national minority language (paras 10–12).<sup>254</sup> This can be derived from the wording of the right in the Constitution as well as the respective provisions in the Language Act with further confirmation from Art 10(2) of FCNM.

One Supreme Court case concerned family names.<sup>255</sup> In particular, the person wanted to change her family name from Arendi to Arendi Elita von Wolsky, a name that her family used to carry (para 2). The change was refused by the Minister of Interior Affairs based on a provision (not existent anymore) that did not allow those of Estonian nationality (not citizens) or those carrying an Estonian family name to change it to a foreign family name. The Court found the provision to be discriminatory towards non-Estonians whose name is Estonian in comparison with non-Estonians whose name is foreign (para 22). This is because a non-Estonian with a foreign name can change it to another foreign name while a non-Estonian with Estonian name cannot. Such a differentiation is arbitrary and a violation of the principle prohibiting discrimination (Constitution, §12). This reasoning is especially interesting when keeping in mind the general approach taken by the legislation, in particular the amendment of the Preamble and the discussions during the adoption of the new Language Act. This case is perhaps not very relevant for Võro or Seto language communities, since these languages are not considered foreign. Languages of national minorities are considered foreign languages (see above in section 1.9.2). It will become relevant if the Seto people would decide to continue with their idea to form cultural autonomy (see below in section 2.4.1), since they can do that only if they identify themselves as national minorities.

See also 2.3.4 on a language-related case involving a media publication.

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<sup>252</sup> Judgment of the Supreme Court no 3-3-1-63-00 (6.02.2001).

<sup>253</sup> Judgment of the Supreme Court no 3-1-1-116-06 (18.06.2007).

<sup>254</sup> Judgment of the Supreme Court no 3-3-1-29-05 (16.06.2005).

<sup>255</sup> Judgment of the Supreme Court no 3-4-1-6-01 (3.05.2001).

### 2.3.3 With respect to education legislation

There is no relevant case law on education legislation. There was one procedure initiated by the Chancellor of Justice, which is summarised below in section 2.4.3 as it does not amount to case law *per se* (the Chancellor is not a judicial body).

### 2.3.4 With respect to media legislation

The Tallinn Circuit Court has looked at one case, which is relevant for the present report. It concerns a daily newspaper, *Eesti Päevaleht*, and its dispute with the Language Inspectorate.<sup>256</sup> The Inspectorate had issued a precept to the newspaper on poor language use in its online version, although no fine was imposed. The Tallinn Administrative Court had decided in favour of the Inspectorate and the newspaper appealed to the Circuit Court to quash the decision. The Circuit Court analysed three different aspects of the Language Act. First, the Court found that even where the Inspectorate has no intention of using coercive measures, such as a fine, to ensure the compliance with the precept, the precept itself refers to the possibility to use such measures. Thus the precept is an encumbering administrative act. Second, the Court established that none of the provisions in the Language Act (of 1995) subscribing obligations to private persons require the use of the Estonian language in accordance with the Estonian Literary Standard. Finally the court examined the difference between official and public use of language. The Court established that official use of language must comply with the Estonian Literary Standard (Language Act, §1(2)), while public use of language does not. The use of language by newspapers is public while “official” refers mostly to the use of language in the exercise of public authority. The Court found that the Standard and the Language Inspectorate imposing the Standard could only guide the public use of language in newspapers, which refers to the use of memorandums and other similar recommendatory recourses. Consequently the Court ruled against the Inspectorate and ordered the precept to be declared void.

This case demonstrates the need at that time for clearer definitions of official and public use of language. This is one of the reasons for the new Language Act, which expressly differentiates between the two uses and the requirements imposed on them (§4). This case also explains why the Inspectorate insisted on including a provision regulating the language

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<sup>256</sup> Judgment of the Tallinn Circuit Court no 3-07-2521 (2.10.2008).

use in media. Initially the proposition was meant to require the language use to comply with the Literary Standard. However this caused strong reactions from media and the provision that eventually ended up in the adopted version of the Act was considerably downsized and merely referred to the use of language following “good practice” (see also above 2.2). The case and the provision in the new Language Act are also relevant to the Võro and Seto language groups, as these developments make it clear that newspapers and magazines do not have to comply with the Literary Standard. It is a public use of language and as such it can also be in regional varieties of Estonian language. With the new Language Act, this difference was clarified.

## ***2.4 Practice of administrative organs and other supervisory organs***

### **2.4.1 With respect to constitutional provisions**

There is little practice in regard to constitutional provisions on language and minorities. However, there has been some practice in regard to the National Minorities Cultural Autonomy Act. Only two cultural autonomy bodies have been established, one for the Ingrian-Finnish population and one for the Swedes.<sup>257</sup> Russians in Estonia have also attempted to form cultural autonomy. A prerequisite for autonomy formation is that the number of that national minority in Estonia (who are also Estonian citizens) must amount to at least 3000. This number is to be recorded in the nationality list that has to be compiled, subject to the approval of MoC. The MoC has never given such approval to Russians in Estonia (see above in section 2.3.1.).<sup>258</sup>

Seto people have also discussed this option seriously. The topic was brought up by the former local government mayor of Värskä, Rein Järvelill, who suggested that the Seto Congress (on the Congress, see section 3.1.2) should be developed into a cultural autonomy body.<sup>259</sup> The Minister of Culture expressed her support for the initiative already in 2001 and a committee for reviewing the application submitted by Seto people was formed.<sup>260</sup> In 2009 on the eighth Seto Congress, the participants decided that the cultural autonomy does not

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<sup>257</sup> See on that: <http://www.kul.ee/index.php?path=0x2x1424x1431> (last accessed 13.05.2011).

<sup>258</sup> Procedure of maintaining and use of nationality lists (RT I 1996, 72, 1272).

<sup>259</sup> See, e.g. Järvelill, Seto kongressi tulevik on kultuuriomavalitsus, 2006. Also see Council of the Elders of the Seto Congress, Setod taotlevad oma valitsust, 18.08.2001.

<sup>260</sup> MoC, Letter no 2-11/1492, 2001. Also Commission Reviewing the Application Submitted by the Council of Elders of the Seto Congress for Compiling the National List, Protocol of the meeting, 18.06.2002.

seem to give any additional benefits for them and dropped the issue from the agenda for the time being.<sup>261</sup> The Seto people continue with their unofficial form of governing, which are the Seto Congress and the Council of Elders.

#### **2.4.2 With respect to language legislation**

The Language Inspectorate has no practice in regard to the Seto and Võro languages. No procedures have ever been initiated. In one complaint a television viewer complained that he or she did not understand an author who was talking in the Võro language without subtitles. The Language Inspectorate decided not to initiate proceedings in order to maintain the diversity of the Estonian language.<sup>262</sup> The Data Protection Inspectorate that supervises the implementation of the Public Information Act<sup>263</sup> regulating the procedure for requesting and providing public information has no practice in regard to the Seto and Võro languages.<sup>264</sup> The Inspectorate stated that nothing in the relevant acts, including the Public Information Act, seems to prevent an individual from turning to a public authority in the Seto and Võro languages. As long as the institution understands the communication, it is under the obligation to accept it and respond to it. The response of the institution, however, should follow the Estonian Literary Standard, as required by the Language Act.

The right to use a national minority language (if it is a majority language in the particular region) as a working language in the local government has never been realised in practice.<sup>265</sup> The Government has not issued any permissions on this, although in reality some local governments already use national minority languages as working languages. According to the director of the Language Inspectorate, only two local governments could be entitled to such a right, i.e. only two municipalities have one national minority forming a majority. However, these two have not resorted to that option.

Both the Seto and Võro languages are used in public sector, although sporadically. For example, during the Parliamentary discussions over the new Language Act, members of the Parliament, Kalvi Kõva and Inara Luigas, spoke Võro and Seto languages respectively. In fact,

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<sup>261</sup> Tatar, *Setod panevad rahva kirja ja asutavad instituudi*, 2009.

<sup>262</sup> Tomusk, Interview with Ilmar Tomusk, Director of the Language Inspectorate, 9.03.2011.

<sup>263</sup> Public Information Act (RT I 2000, 92, 597).

<sup>264</sup> Peep, *Vastus selgitustaotlusele*, E-mail response, Director of the Data Protection Inspectorate, 25.03.2011.

<sup>265</sup> Herkel, *Meie keelepoliitika vastab rahvusvahelisele standardile*, 2009. Also Tomusk, Interview with Ilmar Tomusk, Director of the Language Inspectorate, 9.03.2011.

even the shorthand records were written in these languages, although in principle these statements should have been recorded following the Literary Standard.<sup>266</sup> The Võro Institute, which is a public office (see below in section 3.5), uses the Võro language daily not only in oral but also in written communication.<sup>267</sup> Both languages have also been used in the offices of local governments in the respective regions. On the other hand, local public offices use the Võro language very little, fearing that it might violate the Language Act. The Võro Institute referred to an initiative of the local government to have its website translated to the Võro language but, in the end, the idea was abandoned.<sup>268</sup> In the Seto region, the fear does not seem to be the main argument for not using the Seto language in local public offices. The inevitable fact that youth and immigrant residents are not speaking and possibly also do not understand the Seto language seems to be the main reason for abandoning the usage of Seto language in public sector.<sup>269</sup> However, Aare Hõrn, representative of the Union of Setomaa Rural Municipalities, assesses that about 60% of the oral communication and 40% of the written communication is still in the Seto language.<sup>270</sup>

Occasionally, local governments intentionally use their local languages in written administration, both parallel to the language in the Literary Standard as well as without the translation. For instance when the status of the Võro and Seto languages was discussed in the special Commission, the Association of Local Authorities of Põlva County provided its opinion in the Võro language. The document was accepted.<sup>271</sup> It has been said that if the Language Inspectorate would want to enforce the current Language Act to the letter, it

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<sup>266</sup> Members of the Parliament, Kalvi Kõva using võro language and Inara Luigas using seto language – XI *Riigikogu*, Shorthand record of VIII session, 13.10.2010; Tomusk, Interview with Ilmar Tomusk, Director of the Language Inspectorate, 9.03.2011.

<sup>267</sup> Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>268</sup> Although now the idea has been brought up again and few of the titles are being currently translated. – Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011, and Koreinik, Re: võro ja seto keele õiguslane uuring, Comments by e-mail, researcher at the Võro Institute, 27.03.2011.

<sup>269</sup> Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011. Also Hõrn, Telephone interview with Aare Hõrn, Member of the Board of the Union of Setomaa Rural Municipalities, 1.04.2011.

<sup>270</sup> Hõrn, Telephone interview with Aare Hõrn, Member of the Board of the Union of Setomaa Rural Municipalities, 1.04.2011.

<sup>271</sup> Association of Local Authorities of Põlva County, Letter no 1.4-3/79, 2004.

would have to impose many fines.<sup>272</sup> The above description of the actual usage of these languages could easily be interpreted as a violation of the Act.

The practice in regard to the Names Act regulating personal names has not been problematic. In fact, reports in media on popular and strange names suggest that registrars are relatively liberal and let the parents choose any name, unless it is clearly against the rules.<sup>273</sup> The Võro Institute noted that the registrars have accepted names that have origins in the Võro language and might not be too common in other parts of Estonia.<sup>274</sup>

The regulation on place names has proved to be supportive of both Võro and Seto languages. This is mainly due to the purpose of the Place Names Act, which is to protect historically and culturally valuable place names. In fact, in 1997, a major reform on the restoration of historical place names took place. During the Soviet times many villages and smaller settlements were merged and renamed. The reform tried to reverse this. The Place Names Board made extensive recommendations to local governments to restore the state of settlements and names used before the reform in 1970s. These recommendations concerned every county, including those that include historical Võro and Seto communities.<sup>275</sup> Similar practice was adopted in regard to place names that were historically in a foreign language, such as in the Estonian-Swedish settlement in Northwest Estonia.<sup>276</sup>

The underlying rationale behind this emphasis on historical and cultural value in regard to place names is their part in the linguistic and historical heritage.<sup>277</sup> Thus preference is given to old place names and place names reflecting history and folklore. The use of idiomatic

<sup>272</sup> Kama, Võro asi, 2005, p 123.

<sup>273</sup> E.g. Kruuse, Kiir nurunuks tartlaselt Rasmuse ja Laura, 2011. Some examples from media on names given to children: Rand, Aprillis sündis 1320 last, 2010; Kuidas sai Lea Liitmaa tütar nimeks Geiti Gerbera?, 2010; Lohk, Yoko Alender: iga lapse sündides on tunne, nagu oleks nimi talle näkku kirjutatud, 2010.

<sup>274</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>275</sup> See, e.g. Institute of the Estonian Language, Aggregate Protocol of the Settlement Names Working Group of the Place Names Board, 1997; Institute of the Estonian Language, Opinions and recommendations of the Settlement Names Working Group of the Place Names Board: *Põlvamaa*, 1997; Institute of the Estonian Language, Opinions and recommendations of the Settlement Names Working Group of the Place Names Board: *Võrumaa*, 1997.

<sup>276</sup> Institute of the Estonian Language, Opinions and recommendations of the Settlement Names Working Group of the Place Names Board: *Läänemaa*, 1997. Also see Päll, Kohanimeseadus ja selle eesmärgid, 1996.

<sup>277</sup> Kikas, Kohanimekorraldus Eesti, 2009.



generic terms is also encouraged.<sup>278</sup> Thus, Seto people achieved the possibility to use the word “*nulk*” (essentially meaning “corner” – referring to a historical administrative parish) in the place names registry.<sup>279</sup> As a result, Seto people can now erect signs showing these historical administrative units (the rest of Estonia has similar signs showing the historical parishes).

Restoration of the old place names has not been without setbacks. Although the state is supportive, the local governments have not always been so.<sup>280</sup> Peeter Päll, member of the Place Names Board, estimates that approximately one-third of the local administrations followed the suggestions by the Board in full or in part.<sup>281</sup> Only a few local municipalities have restored place names in the Võro language while, for instance, Vastseliina local government, which is partly Seto partly Võro, declined the suggestions completely.<sup>282</sup> In the Seto area, the interest was similarly diverse and one of the local governments, Mikitamäe, did not change the place names at all.<sup>283</sup>

The general rule is that the local government determines the place names within its own territory and the state has a say in respect to only certain objects. The occasions on which the opinion of the local government is ignored are rare.<sup>284</sup> Local governments are always consulted when place names within their territory are discussed even if the state authority is responsible for the establishment of the name (Place Names Act, §6(3)). Opposing arguments have been put forward particularly in regard to bilingual signs, for instance, that they cost more and remind people of the bilingual signage during the Soviet Union.<sup>285</sup> According to the Võro Institute, the restoration of the place names depends mostly on the

<sup>278</sup> Kikas, *Kohanimede määramine ja kohanimeregistrisse kandmine*, 2009.

<sup>279</sup> Pesur, *Setud tahavad nulki kohanimede registrisse*, 2010; Ratt, *Setomaa nulgad jõuavad kohanimede registrisse*, 2010.

<sup>280</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>281</sup> Päll, Interview with Peeter Päll, member of the Place Names Council, 21.03.2011.

<sup>282</sup> Päll, Interview with Peeter Päll, member of the Place Names Council, 21.03.2011; Ehala, Grünthal et al, XII *Rahvusvaheline vähemuskeelte konverents*, 2010, p 70.

<sup>283</sup> Lillak, Interview with Anti Lillak, Executive Director of the Seto Institute, 25.03.2011.

<sup>284</sup> Peeter Päll brought one example, where the local government wanted a rural municipality to be named Karksinuia but the Minister of Interior Affairs, based on the recommendation from the Place Names Board, named the municipality Karksi. – Päll, Interview with Peeter Päll, member of the Place Names Council, 21.03.2011.

<sup>285</sup> Ehala, Grünthal et al, XII *Rahvusvaheline vähemuskeelte konverents*, 2010, p 70.

attitude of local government institutions.<sup>286</sup> First, there is no actual pressure from the residents in regard to place names being in Võro language since the majority do not find the issue important. Second, locals might have got used to the name in standard Estonian and, therefore, restoring the name in local dialect does not necessarily make sense to them.

### **2.4.3 With respect to education legislation**

The Chancellor of Justice has initiated one procedure in recent years concerning language use in the education system. The procedure was initiated based on information received from a newspaper article, which claimed that an Estonian language high school in Tallinn prohibited a student from talking in Russian with his or her friends during a break.<sup>287</sup> The Chancellor determined that breaks are not included in the study period since there is no study activity during that time (para 3.4). This means that the Basic Schools and Upper Secondary Schools Act does not provide for a legal basis for restricting the choice of language for communication during the breaks. In addition, the Act provides for the right of pupils, whose language of study is not their mother tongue, to learn their mother tongue and culture in order to preserve their national identity (para 3.5). This indicates the legislator's will to guarantee the preservation of the pupil's national identity. As a result, the Chancellor recommended that there should be no more interference in students' choice of language of communication with friends during their free time.

In regard to other practice on education legislation, the assessment must be made carefully as the system was changed only recently (*see* section 2.1.3 above) and the new national curricula for basic schools and upper secondary schools were only adopted in 2011. The changes were significant. An example in this regard is a new addition: study on upper secondary school level must be divided into three fields of study – humanities, sciences and one chosen by the school. This development could potentially be used for the benefit of the Võro and Seto languages and culture, for instance, by having the third field specialised on local language and culture. However, because this is a new development, the actual practice is yet to develop. The old national curricula have been criticised for not promoting regional

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<sup>286</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>287</sup> Chancellor of Justice, Recommendation no 7-8/082025/00901735 (03.2009).

varieties of Estonian language enough.<sup>288</sup> The new Basic Schools and Upper Secondary Schools Act has not changed in this regard – still, local cultures and languages or dialects are not mentioned, although great emphasis is put on students’ cultural identity.

According to information from the Võru Institute as well as the Seto Council of Elders, the previous Minister of Education and Research was supportive of local cultures and languages being taught in local schools.<sup>289</sup> Schools in the Võro and Seto language regions are specifically encouraged to apply for funding for such elective courses from the state’s budget equalisation fund. This fund is set up to allocate funding for local governments for state obligations assigned to them, one of which is education.<sup>290</sup> Each year in February, the Minister of Interior Affairs adopts a regulation, which divides the finances between the areas in accordance with negotiations with local governments. Applications for funding for education will be submitted to the Minister of Education and Research.<sup>291</sup> The Võru Institute stated that currently there are approximately seven schools in the region (out of 55 in total) that provide elective courses in the Võro language and culture with the help of that fund.<sup>292</sup> In the Seto region there are four such schools (these are all the schools in the region) that have taken the opportunity to get such funding from the Ministry.<sup>293</sup>

Teaching the Võro and Seto language as an extracurricular activity is more widespread. These classes are partly financed from the Cultural Programmes administered by MoC (see on these programmes below 2.6.1 on Võro and 2.6.2 on Seto). There are approximately ten schools in Võro region where a separate course, mostly on primary school level, exists on respective languages and cultures. In at least two schools in Setomaa, the teacher of

<sup>288</sup> MER, Language education policy profile. Country report Estonia, 2008, pp 15-16.

<sup>289</sup> Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>290</sup> Budget equalisation fund is provided for in the State Budget Act (RT I 1999, 55, 584 ... RT I, 12.11.2010, 1), §9.

<sup>291</sup> E.g. in regard to 2010: Division of the grants designated by the “2010 State Budget Act” to the equalisation fund of budgets of local governments and the scope, conditions and procedure for the division (RT I 2010, 10, 51 ... RT I, 28.12.2010, 4).

<sup>292</sup> Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011. Tali, Võru kultuuri ja keele renessanss, 2004.

<sup>293</sup> Adoption of the Setomaa Development Plan 2009–2013 and Vision up to 2015 (KO 2009, 46, 644), p 27.

handicraft is teaching the students in the Seto language.<sup>294</sup> Such integrated study (i.e. teaching in the Seto language rather than teaching the Seto language in a separate class) is greatly encouraged by Seto organisations and in the Setomaa Cultural Programme (see on this programme below in 2.6.2).<sup>295</sup> In 2011, the Minister of Education and Research also created a fund of scholarships for musicians who would provide informal education (i.e. as part of extracurricular activity) in Seto culture and music to children in the Seto region.<sup>296</sup> The Võro Institute has, over the years, organised several extracurricular activities for children.<sup>297</sup> Both Cultural Programmes (for Setomaa and Võrumaa) include comprehensive measures to promote education (starting from kindergarten level) and awareness in the respective cultures and languages.

The organisation of the teaching of these languages and cultures is problematic due to the lack of skilled teachers. Many of the teachers in these regions are not necessarily locals and are thus unable to teach the local languages and cultures. The education provided for future teachers does not include courses on local cultures or languages neither at Tallinn University nor Tartu University.<sup>298</sup> Tartu University does host a Research Centre of South-Estonian Language and Culture (in Estonian: *Lõuna-Eesti keele- ja kultuuriuuringute keskus*), which provides courses in the South-Estonian language and literature and on Seto traditions.<sup>299</sup> The Centre also provides for the opportunity to acquire a master degree of Teacher of South-Estonian language and culture.<sup>300</sup> This is the only possibility to acquire such education on higher level.

Activists for the Seto culture and language have expressed their concern on the lack of appropriate teachers and are trying to find ways to remedy that.<sup>301</sup> The Võro Institute has, over the years, provided some inhouse training to interested teachers on the Võro language.

<sup>294</sup> Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011, and Lillak, Interview with Anti Lillak, Executive Director of the Seto Institute, 25.03.2011.

<sup>295</sup> MoC, Setomaa Cultural Programme 2010–2013, p 7.

<sup>296</sup> Hõrn, Telephone interview with Aare Hõrn, Member of the Board of the Union of Setomaa Rural Municipalities, 1.04.2011.

<sup>297</sup> Information available on the homepage of the Võro Instituut at: <http://www.wi.ee/> (last accessed 13.05.2011).

<sup>298</sup> MER, Language education policy profile. Country Report Estonia, 2008, pp 15–16.

<sup>299</sup> See more at: <http://www.ut.ee/lekeskus/> (last accessed 13.05.2011).

<sup>300</sup> MoC, Vana Võrumaa kultuuriprogramm 2010–2013. Lisa 1: Lühiülevaade riiklikust programmist "Lõunaeesti keel ja kultuur 2000–2009."

<sup>301</sup> IX Seto Congress, Decision on Seto language, culture, education and youth, 15.11.2008.

The Institute has also developed teaching materials and an unofficial curriculum for teaching the Võro language and culture.<sup>302</sup> The Setumaa Cultural Programme also includes extensive plans in regard to producing different study materials on Seto culture and language. Still, training materials for the Seto language are yet to be developed, although, there is already an anthology (*Palakõsõ seto keeleh*, ed by Vello Jüriöö, 2009) and a primer is being published.

#### 2.4.4 With respect to media legislation

Legislation on media, specifically on ERR, provides for different possibilities to include Võro and Seto communities both in the programme planning and as topics in the programmes. For instance, the Public Advisory Board should, in accordance with the National Broadcasting Act (§ 29), include persons from different interest groups and areas of life. Representative of either Võro or Seto people could participate. However, as far as Võro Institute is aware, representatives from neither community have been involved.<sup>303</sup>

The ERR principle of meeting the informational needs of all parts of the Estonian population, including minorities, has been further elaborated in development plans since the establishment of the new institution in 2009. For example, in the Development Plan 2011–2014, the particular aim is to create more opportunities for everyone to participate in public discussions in their own mother tongue. Mostly, efforts have been made to include the Russian-speaking population through programmes targeted specifically towards them, both on radio and television. The plan for 2014 also foresees including languages other than Russian in the programme of Raadio 4. Obviously the reasoning for this diversity perspective derives from the integration needs and specifically from the realisation that the Russian population in Estonia mostly obtains its information from Russia.<sup>304</sup>

In regard to Estonian dialects or regional varieties, the development plans of ERR do not add much. Although the development plans for 2009–2012<sup>305</sup> and 2010–2013<sup>306</sup> mention the

<sup>302</sup> See: <http://www.wi.ee/> (last accessed 13.05.2011).

<sup>303</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>304</sup> E.g. see the remark by Andres Herkel: Herkel, Shorthand record of VIII session, X Riigikogu, 20.12.2006.

<sup>305</sup> Estonian Public Broadcasting Development Plan 2009–2012, p 23.

<sup>306</sup> Estonian Public Broadcasting Development Plan 2010–2013, p 23.

continuation of programmes in dialects, specifically in Võro, Mulgi and Kihnu, the last Development Plan for 2011–2014 does not. It merely notes that programmes on Estonian language and dialects are transmitted while no plans in regard to programmes that would actually be in the dialects, and not just merely on the dialects, have been voiced.<sup>307</sup> Programmes in the Võro and Seto have mostly been made on initiatives from the respective communities. In fact, before the MoC's Cultural Programmes (see more in sections 2.6.1 and 2.6.2 below) such programmes did not exist at all.<sup>308</sup> When these programmes came into existence providing the respective communities with resources for the preservation of their language and culture, the communities also initiated activities through media.<sup>309</sup> Radio and television programmes have continuously been mentioned in the MoC's Cultural Programmes as one of the activities eligible for funding. As a result, the media channels for these communities are project-based, which might explain why they are scarcely mentioned in the development plans of the National Broadcasting. It also means that they are short-term, subject to the availability in the schedule and the funding.

Both Seto and Võro languages have their own local newspapers: *Setomaa* and *Uma leht*.<sup>310</sup> In addition, the Seto community has a magazine called *Peko Helü*. On occasion, both languages have also been used in national as well as local newspapers. The databases of the two press councils (*Avatud Sõna Nõukogu* or *Pressinõukogu*) do not include any complaints with regard to the use of Seto and Võro languages.<sup>311</sup> Different persons have referred to one instance in particular whereby a local paper rejected a note of condolence because it was written in the Võro language.<sup>312</sup> However, this incident did not reach the two press councils. The

<sup>307</sup> Estonian Public Broadcasting Development Plan 2011–2014, p 22.

<sup>308</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>309</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011; and Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011.

<sup>310</sup> See, respectively: [www.setomaa.ee](http://www.setomaa.ee) and [www.umaleht.ee](http://www.umaleht.ee) (both last accessed 13.05.2011).

<sup>311</sup> List of cases of the *Avatud Sõna Nõukogu* available at: [http://www.asn.org.ee/asn\\_lahendid.php](http://www.asn.org.ee/asn_lahendid.php) (last accessed 13.05.2011); list of cases of the *Pressinõukogu* available at: <http://www.eall.ee/pressinokogu/kaebused.php> (last accessed 13.05.2011).

<sup>312</sup> Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011; Tender, Interview with Tõnu Tender, Advisor in the Language Department of MER, 4.03.2011.

newspaper explained that the Language Act (of 1995) prohibits such notices from being published. This, however, was a misinterpretation of the Act – neither the old Language Act nor the new Language Act prohibits newspapers from publishing in dialects or regional varieties of Estonian language.<sup>313</sup>

On the whole, MoC has supported the promotion of both Seto and Võro languages through different media channels in its Cultural Programmes. Thus, regular news broadcasting (once a week) in these languages, television shows (mostly in Võro language) and radio shows, as well as documentary films, newspapers and journals and in recent years also the use of new media (internet) has been funded.<sup>314</sup>

## ***2.5 Practice of international monitoring organs and courts with respect to language and minority issues in Estonia***

None of the international monitoring organs and courts has ever dealt with the issue of the Seto and Võro languages in their practice and neither has Estonia mentioned these languages in its various reports to these organs. They have, however, discussed in detail other language and minority related questions. In the first decade after regaining independence these were the main issues that Estonia had to deal with under the supervision of the different monitoring organs.

The United Nations (UN) and its various organs have analysed the situation on languages and minorities. Thus, for example, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Estonia on 2007 and discussed the situation in his report.<sup>315</sup> Four of the UN treaty bodies have also mentioned these topics in their discussions with the Government and the subsequent concluding observations.<sup>316</sup> On the European level, the European Court of Human Rights to a limited degree and the Advisory Committee of FCNM to a larger degree has continuously supervised Estonia.

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<sup>313</sup> Also confirmed by all the interviews made for the purpose of this Analysis.

<sup>314</sup> See the programmes: Old Võrumaa Cultural Programme 2010–2013; Setumaa Cultural Programme 2010–2013; National Programme for Southern-Estonian Language and Culture 2005–2009.

<sup>315</sup> A/HRC/7/19/Add.2, 2008.

<sup>316</sup> E/C.12/1/Add.85, 2002; CERD/C/EST/CO/8-9, 2010; CCPR/C/EST/CO/3, 2010; and CRC/C/15/Add.196, 2003.

The latest decision by the European Court of Human Rights on Estonia, which remotely touched upon the subject of language, was *Tarkoev and others v. Estonia*.<sup>317</sup> The applicants claimed that they had been discriminated against (among other things) based on their language and ethnic (national) origin. The Court, however, concluded that there was no discrimination on these grounds.

The international monitoring organs have focused on potential problems with Estonia's language policy in general. Concerns have been expressed that the local Russian-speaking population sees the language policy as an attempt to suppress the usage of Russian.<sup>318</sup> This could be particularly counter-productive in the context of integration. The Committee on the Elimination of Racial Discrimination has referred to the punitive nature of the language regime as particularly contributing to such sentiments.<sup>319</sup> The competence and practice of the Language Inspectorate is seen as contributing to that.<sup>320</sup> The Inspectorate has been very active in imposing the language requirements set in the legislation through different sanctions, such as fines or demand to discontinue employment contract. The representatives of the Seto and Võro language communities, in fact, also mentioned the punitive nature of the whole language system as an occasional deterring factor to taking into use these languages in a more comprehensive manner in particular regions. Even if the use of these languages is perfectly legitimate, people sometimes refer to language legislation in fear that they would be violating it (see more in section 2.4.2).

Constant criticism is directed towards language requirements in the naturalisation process and the National Minorities Cultural Autonomy Act. Over the years, Estonia has been repeatedly requested to lower the language requirements in the naturalisation process, which Estonia did on several occasions prior to EU accession. But the issue is still being addressed by supervisory organs.<sup>321</sup> Another subject of criticism is the National Minorities

<sup>317</sup> European Court of Human Rights, *Tarkoev and others v. Estonia*, 2010.

<sup>318</sup> A/HRC/7/19/Add.2, 2008, para 79; CERD/C/EST/CO/8-9, 2010, para 13; CCPR/C/EST/CO/3, 2010, para 16.

<sup>319</sup> CERD/C/EST/CO/8-9, 2010, para 13.

<sup>320</sup> CERD/C/EST/CO/8-9, 2010, para 13; also A/HRC/7/19/Add.2, 2008, para 79. Language Inspectorate has also been a concern for the Advisory Committee on FCNM, ACFC/INF/OP/II(2005)001, 2005, paras 163–166.

<sup>321</sup> CERD/C/EST/CO/8-9, 2010, para 13; also ACFC/INF/OP/II(2005)001, 2005, paras 10 and 45–51.



Cultural Autonomy Act, which is generally seen as ineffective and not providing sufficient protection to minority rights.<sup>322</sup>

Particular attention has been given to education, both in a minority language as well as on minority culture and languages. In 2002, the Committee on Economic, Social and Cultural Rights, and in 2003, the Committee on the Rights of the Child, were specifically concerned with education not being sufficiently available in minority languages.<sup>323</sup> In 2005, however, the Advisory Committee of FCNM had already noticed changes. It commended Estonia for making the choice over language of instruction more flexible but still criticised the implementation of the policies and the lack of an adequate multiculturalism perspective within the curricula.<sup>324</sup> In 2010, the Committee on the Elimination of Racial Discrimination complemented Estonia for providing opportunities to learn minority languages as well as including “subjects on minorities’ culture in the public education programmes.”<sup>325</sup>

The UN Special Rapporteur has pointed to the insufficient inclusion of minorities in decisions concerning them. In his opinion, language policy “should be subject to an open and inclusive debate, in close consultation with ethnic minorities, aimed at finding strategies that better reflect the multilingual character of Estonian society.”<sup>326</sup> Lack of inclusion in decisions concerning languages in particular has been criticised both by the Seto and Võro language activists (see more in section 3.4 below). However, the Special Rapporteur pointed out some developments, such as establishment of the Council of Ethnic Minorities (at the MoC) and the Roundtable of Nationalities (at the office of the President) (see more below in 3.5).<sup>327</sup> Yet, the Committee on the Elimination of Racial Discrimination was still concerned about the lack of political participation among the national minorities, especially in the Parliament.<sup>328</sup>

The Advisory Committee of FCNM additionally brought up the issue of media. In particular, the Committee was concerned that national minorities are not paid enough attention in the

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<sup>322</sup> E/C.12/1/Add.85, 2002, para 57; ResCMN(2006)1, 2006; also ACFC/INF/OP/II(2005)001, 2005, paras 8–9 and 66–69.

<sup>323</sup> E/C.12/1/Add.85, 2002, para 57, and CRC/C/15/Add.196, 2003, para 43.

<sup>324</sup> ACFC/INF/OP/II(2005)001, 2005, paras 12, 110–114. Also see ResCMN(2006)1, 2006.

<sup>325</sup> CERD/C/EST/CO/8-9, para 7.

<sup>326</sup> A/HRC/7/19/Add.2, p 3. Also a concern for ACFC/INF/OP/II(2005)001, paras 22 and 154–155.

<sup>327</sup> A/HRC/7/19/Add.2, para 75. Also ACFC/INF/OP/II(2005)001, paras 22 and 152.

<sup>328</sup> CERD/C/EST/CO/8-9, para 14.

programme of the national broadcasting organisation.<sup>329</sup> As already mentioned in section 2.4.4 above, there have been subsequent attempts by the organisation to remedy the problem.

None of the international monitoring institutions have monitored the situation of the Võro and Seto languages in Estonia. The monitoring institutions have concerned themselves with the situation of ethnic minorities, particularly with the Russian-speakers, in Estonia. Some possible relevance is the monitoring of the implementation of the National Minorities Cultural Autonomy Act by the international organisations. The Seto people have discussed the possibility of applying for a cultural autonomy but have put the issue aside for now (see more on that in 2.4.1 above).

In regard to the Võro and Seto languages, it is also relevant to remark the UNESCO Atlas of the World's Languages in Danger. The most recent edition of the Atlas marks three languages in Estonia that are considered to be endangered, namely Romani, Võro-Seto (which is considered by UNESCO as one language) and Yiddish. The Võro-Seto language is listed as “definitely endangered,” which is described as implying that “children no longer learn the language as mother tongue in the home”.<sup>330</sup>

## 2.6 Programmes and action plans on language use and language diversity

The Ministry of Education and Research has developed several action plans and programmes on language use:

- The Development Plan of the Estonian Language (*Eesti keele arengukava*) 2011–2017, approved by the Government on 26 November 2010 – protection, development and promotion of Estonian language and its varieties. Continues the recently expired Development Strategy of the Estonian Language (*Eesti keele arendamise strateegia*) 2004–2010.
- The National Programme for Estonian Language Technology (*Eestikeelse terminoloogia toetamine*) 2011–2017 – development of technological applications, language resources and software development. Continues the recently expired National Programme for Estonian Language Technology Support (*Eesti keele keeletehnoloogiline tugi*) 2006–2010.

<sup>329</sup> ACFC/INF/OP/II(2005)001, paras 85–86.

<sup>330</sup> Moseley, *Atlas of the World's Languages in Danger*, 2010.

- The National Programme for Estonian Language and National Memory (*Eesti keel ja kultuurimälu*) 2009–2013 – which supports the development and study of Estonian and studies of national memory and identity. Continues the recently expired Estonian Language and National Memory (*Eesti keel ja rahvuslik mälu*) 2004–2008.
- The Estonian Strategy of Foreign Languages (*Eesti võõrkeelte strateegia*) 2009–2015 – to promote learning of foreign languages.
- The Development of Values of the Estonian Society (*Eesti ühiskonna väärtusarendus*) 2009–2013 – also includes the Estonian language and culture to be valued.
- The National Programme for Supporting Estonian-language terminology (*Eestikeelse terminoloogia toetamise riiklik programm*) 2008–2012 – includes publishing materials and dictionaries in paper and online, launching terminology studies and promotional activities.
- The Estonian Higher Education Strategy (*Eesti kõrgharidusstrateegia aastateks*) 2006–2015<sup>331</sup> and The Preparing and Publishing of Estonian-Language Textbooks for Institutions of Higher Education (*Eestikeelsete kõrgkooliõpikute koostamine ja väljaandmine*) 2008–2012 – both aim to ensure the continuity and development of higher education in Estonian language.

The External Study Programme of the Estonian Language and Culture (*Eesti keele ja kultuuri akadeemilise välisõppe programm*) 2005–2010 recently expired. Its aim was to develop the Estonian language study abroad.

Programmes of the Ministry of Culture (programmes and action plans in regard to Võro or Seto languages and cultures are listed separately below in 2.6.1 and 2.6.2 respectively):

- The expired National Programme for Southern-Estonian Language and Culture (*Lõunaeeesti keel ja kultuur*) 2000–2005 and 2005–2009 have been followed by the Mulgimaa Cultural Programme (*Mulgimaa kultuuriprogramm*) 2010–2013 and the Peipsiveere Cultural Programme (*Peipsiveere kultuuriprogramm*) 2009–2012 – main objectives are, respectively, to revitalise the traditions, identity and language of Mulgimaa and to raise appreciation towards them and to maintain the culture of Russian Old Believers, including language.
- The National Integration Plan (*Riiklik lõimumiskava*) 2008–2013 – the main purpose is to create equal opportunities in the society to all Estonian residents regardless of their ethnicity or mother tongue. Continues the recently expired Integration in Estonian Society (*Integratsioon Eesti ühiskonnas*) 2000–2007.

Cultural programmes on the culture and languages of Kihnu and islands expired recently and were not followed by renewed programmes.

<sup>331</sup> Approval of the Strategy of Higher Education of Estonia 2006–2015 (RT I 2006, 52, 386).

None of the programmes and strategies on languages mentions the Võro or Seto language specifically. Some of them do mention dialects (e.g. The National Programme for Estonian Language and National Memory) or regional varieties. Both the current and the previous Strategy of the Estonian Language include some plans concerning “regional varieties of Estonian language,” although neither of them mentions specific regional varieties. The previous strategy however recognised the need to stipulate clearly their use in public administration and on public signs and notices, an aim that has already been realised in the Language Act 1995 and in the new Language Act respectively.<sup>332</sup> The current Strategy of the Estonian Language includes more references to dialects, e.g. one of the activities to come is research into Estonian dialects and compilation of a dictionary on dialects.

It has been pointed out by one of the commentators from the Võro language group, Sullõv Jüvä, that the previous Strategy refers to regional varieties mostly in the context of preserving cultural heritage without foreseeing new conditions for their use.<sup>333</sup> He argues that this could lead to conservation of the dialects rather than their development as living languages. Moreover, he is criticising the fact that South-Estonian languages are described as similar to other dialects despite the fact that the South-Estonian cultural background and linguistic consciousness is very different. Both Võro and Seto languages differ from the Literary Standard considerably and the Võro language even has its own orthography. In a situation where the Võro and Seto languages are increasingly under pressure by mainstream Estonian language, the project-based approach provided by the Strategy of the Estonian Language as well as Cultural Programmes (see below in sections 2.6.1 and 2.6.2), he says, is too simplified.

The debate over the status of Võro and Seto languages as either “regional varieties of Estonian language” or “regional languages” had spilled over also to these strategies (see above in section 2.2 on the debate), which has been discussed in the Estonian Language Council. Initially, the Development Plan of the Estonian Language included references to

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<sup>332</sup> Development Strategy of the Estonian language 2004–2010, p 34.

<sup>333</sup> Jüvä, Võro keel eesti keele arendamise strateegias, 2007. This argument was also put forward in the authors' interview with the representatives of the Võro Institute. – Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

“regional languages” but this was later replaced with “regional varieties”.<sup>334</sup> As a result the current development plan mentions in the analysis of the present situation that the use, development and increased appreciation of regional varieties may lead to the term “regional language” being taken into use. It further explains that “regional language” refers to supra-dialect language.<sup>335</sup> This is a sign of progress, as it is the first time when an official document, approved by the Government, refers to the possibility of languages currently understood as “regional varieties” developing into “regional language” protected under international law. It is possible that it also influenced the taking into use of the new term “dialect language” in the new Language Act, which could be considered halfway towards “regional language” (§3(3)). Thus progress has been made in recent years towards recognition of the existence of “regional languages” in Estonia.

The expired National Programmes for Southern-Estonian Language and Culture (administered by MoC) did mention specifically both the Seto and Võro languages alongside Mulgi and Tartu. Although the programmes did not include language as a separate area of work, it did explicitly support cultural activities in these languages, also programmes in radio, television and newspapers in these languages, educational programmes in and on these languages and cultures, and research activities.<sup>336</sup> After a separate programme was created for Seto culture, the activities supported in this regard were concentrated under that programme. In 2010, the Programme for Southern-Estonian Language and Culture was further divided into separate programmes for Võro and Mulgi, while there are no programmes for Tartu as there was no interest in a programme expressed from that region.

### 2.6.1 Võro language

The main objective of the Old Võrumaa Cultural Programme (*Vana Võrumaa kultuuriprogramm*) 2010–2013 is the maintenance and development of the Võro language and culture in the Old Võrumaa region and the expansion of the areas of Võro language usage. Unlike the Programme for Southern-Estonian Language and Culture, which was inter-ministerial, this programme was created solely under the MoC. It signifies certain hierarchical change in the status of these policy documents but also that the programme

<sup>334</sup> Estonian Language Council, Protocol of the meeting 21.05.2009, para 12.

<sup>335</sup> Development Plan of Estonian Language 2011–2017, p 30.

<sup>336</sup> MoC, Vana Võrumaa kultuuriprogramm 2010–2013. Lisa 1: Lühiülevaade riiklikust programmist "Lõunaeesti keel ja kultuur 2000–2009".

concerns only one Ministry, i.e. the MoC while inter-ministerial programme could have potentially concerned other Ministries as well. The programme includes a specific sub-programme for language and education. The budget for the whole programme in 2011 was 143,801 EUR (in 2010 it was 1,500,000 EEK = approx. 95,900 EUR).<sup>337</sup> It has, thus, slightly decreased. It is worth to mention also that the budget for the Old Võrumaa Cultural Programme is considerably lower than the budget for the Setumaa Cultural Programme. Although in 2011, the difference in the size of the budgets is smaller, it was significant in 2010 – Setumaa Cultural Programme had twice the budget that the Old Võrumaa Cultural Programme had. Reason for such a difference is unclear, as the geographical reach of Old Võrumaa is larger (Old Võrumaa is 4200 km<sup>2</sup>, Setumaa is 647.558 km<sup>2</sup>) and also the estimated amount of people affected by the programme is significantly higher (Old Võrumaa has 70,700 people living in the area while there are about 10,000–13,000 Seto people living in the entire Estonia and 3,000–4,000 living in the Seto area).<sup>338</sup>

### 2.6.2 Seto language

Similarly to the Old Võrumaa Cultural Programme, the Setumaa Cultural Programme (*Setumaa kultuuriprogramm*) 2010–2013 and its preceding programmes<sup>339</sup> are under the competence of the MoC. The main objective is to support the maintenance and development of the culture and language of Seto people. This programme as well includes a specific sub-programme for language and education. The budget of the whole programme for 2011 was 191,735 EUR (in 2010, it was 3,000,000 EEK = approx. 191,700 EUR).<sup>340</sup> The area of language and education receives 200,000 EUR from the whole budget of the Programme.<sup>341</sup>

Additionally, there is the Setumaa Development Plan 2009–2013 and Vision up to 2015 composed by Seto community.<sup>342</sup> Although it was adopted by Meremäe council of a rural

<sup>337</sup> Budgets of the MoC are available at: <http://www.kul.ee/index.php?path=0x1x56> (last accessed 13.05.2011).

<sup>338</sup> MoC, Vana Võrumaa kultuuriprogramm 2010–2013, pp 1-2; and MoC, Setumaa kultuuriprogramm 2010–2013, p 1.

<sup>339</sup> List of these programmes and links to them is available at: <http://www.kul.ee/index.php?path=0x214x789> (last accessed 13.05.2011).

<sup>340</sup> Budgets of the MoC are available at: <http://www.kul.ee/index.php?path=0x1x56> (last accessed 13.05.2011).

<sup>341</sup> MoC, Setumaa kultuuriprogramm 2010–2013, Lisa 2: Setumaa kultuuriprogrammi finantsplaan 2010–2013.

<sup>342</sup> Setumaa Development Plan 2009–2013 and Vision up to 2015.

municipality,<sup>343</sup> all the municipalities and organisations in Setomaa participated in the development of the Plan and Vision. The Development Plan covers different aspects, such as economy, labour market, infrastructure etc, and it refers to the need to maintain and develop the Seto culture.

## ***2.7 View on language and minority legislation in the wider public discourse and media***

The public discussion on language and minority languages mostly concentrates on specific issues that media has found particularly intriguing. For example, the attempt to make the media subject to the Estonian Literary Standard met significant resistance from the media, which resulted in a considerably less stringent provision in the new Language Act (see above in section 2.2). The drafting of the new Language Act, however, caused some discussions about the overall need of such an act as well. Arguments put forward varied from calling the idea of a language act “barbaric” to questioning the need for it in the presented form.

One of the journalists considered the idea of any language act in a multicultural society to be “barbaric” and a “nationalist terror” harassing the fundamental rights of people.<sup>344</sup> He criticised the act for creating national reservations and causing segregation by allowing persons of non-Estonian origin to speak their language only in designated areas, i.e. local governments where they form a majority. Another commentator made the remark that Estonian national and cultural independence must be surprisingly weak if the state finds it necessary to create a “nursing home-reservation” where a small nation (i.e. Estonians) would be “nursed” and protected against “bad foreign impact.”<sup>345</sup>

Most of the arguments against the new Language Act concerned its very first version that the Government took later back. The comments concentrated on the repressive nature of the draft. Doubts were expressed as to whether verbal expressions could be subjected to strict rules at all.<sup>346</sup> Expressing oneself in accordance with the Literary Standard is unrealistic and, thus so is the attempt to subject media to that standard.<sup>347</sup> A lector in languages

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<sup>343</sup> Adoption of the Setomaa Development Plan 2009–2013 and Vision up to 2015 (KO 2009, 46, 644).

<sup>344</sup> Ummelas, Igasugune “keeleseadus” on muutunud barbaarseks ja natsionalistlikuks terroriks, 2009.

<sup>345</sup> Kaplinski, Uue keeleseaduse valgeltundub meie iseseisvus üllatavalt nõrk, 2009.

<sup>346</sup> Ummelas, Igasugune “keeleseadus” on muutunud barbaarseks ja natsionalistlikuks terroriks, 2009.

<sup>347</sup> Tavast, Keelelektor: milleks seadus, mille täitmine on võimatu?, 2009.

commented that when systematic conflict appears between language use and some literary norm then the norm must be changed and not the language use.<sup>348</sup> He was particularly worried that the repressive measures have no linguistic justifications while it might be administratively less burdening and politically popular. The same commentator asked why the law, in particular the provisions on the language use in media, is drafted in such fashion if in fact it will be impossible to implement especially since the Language Inspectorate had already announced that no one would be fined for using the language in the wrong way. The representative of the MER defended the draft saying that it tries to find a balance between unnecessary regulation that would kill the vitality and joy that is necessary for a development of a language and no regulation at all, which would lead the small language towards inevitable doom.<sup>349</sup> He pointed out that this balance must be found as a result of the discussions.

One additional idea was presented while the new Language Act was being drafted. The commentator cast a doubt on the need for a Language Inspectorate at all.<sup>350</sup> He pointed out that the same functions could more logically be carried out by the Consumer Protection Board and by other state institutions themselves through setting standards of service that would also include requirements for the level of proficiency in the Estonian language in the service sector.

## ***2.8 Perceived effect of the examined legislation on the languages and language communities studied***

The minority legislation has had no impact on Võro or Seto communities, since neither is considered to be national minorities as such and their languages are also not considered to be minority languages. Although the Seto Congress has expressed its view that Seto people are a separate ethnic group and their language independent from the Estonian, this view has not been adopted by the state.

Language legislation seems to have had mixed effect on these communities. Interviews with representatives from the communities have indicated that the effect of the legislation is felt

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<sup>348</sup> Tavast, Keelelektor: milleks seadus, mille täitmine on võimatu?, 2009.

<sup>349</sup> Viller, Keeleseadus – reeglite poolt ja vastu, 2009.

<sup>350</sup> Käsper, Kas keeleinspektsiooni on vaja?, 2009.



stronger within the Võro community than in the Seto community. Section 2.4.2 discussed in detail if and how these languages are used in and by public offices in the region. While the use of the Seto language in public administration is mostly dependent on the proficiency of the official or the client in this language, the use of Võro language seems to be to a certain extent inhibited by fear of sanctions. Whether the fear is actual or merely an excuse to justify the refusal to use the language does not play a significant role, since it proves the undeniable effect of language legislation.

Due to the current status of these languages, the actual effect of the language legislation is minimal, though, as stated above, it has had some effect. The Võro or Seto languages are considered part of the generic Estonian language and can thus be used relatively freely. Them being classified as regional varieties of Estonian does not seem to have much impact in practice either. The languages have been used on public signs and place name signs before and will be used also after the entry into force of the Language Act 2011. Institutions where these languages were used will continue using them. The Language Inspectorate has expressed its openness towards these languages and has not been eager to prohibit their use even in cases where it could have. Thus the impact of language legislation in this regard seems to be particularly minimal.

## **3 The legal actors**

### ***3.1 Minority and language group actors involved in legal and policy debates***

There are numerous minority groups and organisations that are promoting their respective culture and language.<sup>351</sup> Mostly these organisations participate in legal and policy debates through roundtables formed to advise the MoC and the President (see section 3.2 below).

In regard to minority languages, an important actor is the Estonian Bureau of Lesser Used Languages (EstBLUL; in Estonian: *Eesti Regionaal- ja Vähemuskeelte Liit*) that was established in 2004 bringing together Yiddish, Roma language, Swedish, German, Finnish, Tatar and

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<sup>351</sup> A list and overview of these organisations can be found on [www.etnoweb.ee](http://www.etnoweb.ee) (last accessed 13.05.2011).

Russian, as well as the Seto and Võro languages.<sup>352</sup> It used to be a member of the European Bureau for Lesser Used Languages (EBLUL) that ended its activities in 2010.<sup>353</sup>

Other institutions that play an important part in the development and research of languages are universities, such as the University of Tartu and Tallinn University. In addition, there are several non-governmental organisations, such as the Estonian Terminology Centre (*Eesti Terminoloogia Ühing*),<sup>354</sup> the Estonian Mother Tongue Society (*Emakeele Selts*),<sup>355</sup> the Estonian Native Language Teachers Association (*Eesti Emakeeleõpetajate Selts*),<sup>356</sup> and Association of the Teachers of Estonian as a Second Language (*Eesti Keele kui Teise Keele Õpetajate Liit*).<sup>357</sup>

### 3.1.1 Võro language

The Võro Institute (*Võro Instituut*) is one of the main advocates for the Võro language and culture. It was established by the Government on 1995 and is therefore a state institution (see below 3.5). However it is also clearly a language group actor advocating on behalf of the Võro language and culture.<sup>358</sup> The latter is the case, for example, when the Institute is advocating for the Võro language to be recognised as a regional language. The basis for such advocacy is its Statutes, which specifically refers to local “language” as a subject of study and of standardization for public use (§4(3)).<sup>359</sup> The Institute is also organising the teaching of the Võro language and culture (including preparing teachers, study materials etc), materials in the Võro language (CDs, books), competitions for youth and summer schools, and also research projects and publications.

The Võro Society VKKF (*Võro Selts VKKF*) mostly focuses on the development of Võro culture, organising different events and publishing books, newspapers and other materials.<sup>360</sup> Võro Society VKKF is also the founder of EstBLUL (see above under 3.1).

<sup>352</sup> More on the organisation at: Ministry of Culture, General info on the cultural heritage area, 2011.

<sup>353</sup> CIEMEN, European Bureau for Lesser Used Languages to close down, 3.03.2010.

<sup>354</sup> More at: <http://www.eter.ee/> (last accessed 13.05.2011).

<sup>355</sup> More at: <http://www.emakeeleselts.ee/> (last accessed 13.05.2011).

<sup>356</sup> More at: <http://www.eeselts.edu.ee/> (last accessed 13.05.2011).

<sup>357</sup> More at: <http://www.eestikeelteisekeelena.ee/> (last accessed 13.05.2011).

<sup>358</sup> More on the organisation at: [www.wi.ee](http://www.wi.ee) (last accessed 13.05.2011).

<sup>359</sup> Statute of the Võro Institute (RTL 2004, 152, 2295).

<sup>360</sup> More on the organisation: [www.voroselts.ee](http://www.voroselts.ee) (last accessed 13.05.2011).

### 3.1.2 Seto language

Seto people have established several organisations for the benefit advocating for Seto culture and the region's development.

The Seto Congress (in Estonian: *Kongress*) is the most comprehensive organisation representing the Seto people. The Congress gathers every three years and the last, ninth, Congress took place on 15 November 2008.<sup>361</sup> This body discusses issues concerning different aspect of Setomaa, such as those concerning the cultural, economical and political development. In between the Congresses, the Council of Elders (*Vanemate Kogu*), elected by the Congress, implement the decisions reached by the Congress. In addition to the Council, there is also the Assisting Association of the Seto Congress (*Seto Kongressi Tugiühing*), which assists in the implementation of the aims and decisions taken by the Congress. It is essentially a legal body for the Congress and is in fact the only body registered as such in the Non-profit Associations and Foundations Register.

The newest non-governmental organisation, the Seto Institute (*Seto Instituut*), mentioned in the Setumaa Cultural Programme, was established on 15 April 2010. It is tasked with the development of research on Setomaa and Seto culture.<sup>362</sup> The Institute will publish research and other materials, organise research events and education on Seto culture.<sup>363</sup> The Council of the Institute includes a representative from the MoC and the Ministry also provides the core funding.<sup>364</sup>

In addition to organisations bringing together individuals, there is also one organisation that brings together municipalities situated in the historic region of Setomaa. The Union of Setomaa Rural Municipalities (*Setomaa Valdade Liidu*) is composed of the municipalities Meremäe, Mikitamäe, Misso and Värska.<sup>365</sup> The purpose of the Union is to preserve, develop and introduce Seto culture, support the social and economic development of Setomaa, and the representation of the region and protection of common interests of the Setomaa population.<sup>366</sup> Among other activities, the Union is conducting several projects.<sup>367</sup> The Union

<sup>361</sup> —, Seto Kongress, 2011.

<sup>362</sup> —, Seto Instituut, 2010; Seto Institute, Sihtasutus Seto Instituut alustas tööd, 2010.

<sup>363</sup> Statutes of the Foundation of Seto Institute, 2010.

<sup>364</sup> Fenno-Ugria Asutus, Sihtasutus Seto Instituut alustas tööd, 2010.

<sup>365</sup> —, Setomaa vallad, 2010.

<sup>366</sup> Statutes of the Union of Setomaa Rural Municipalities.

organises a gathering every month to discuss the activities and matters concerning the Seto area.

### 3.2 Other actors

In addition to non-governmental organisations (see section 3.1 above) and state institutions (see section 3.5 below), there are also roundtables for minorities that function as a cooperation network for different ethnic minorities and advisory bodies to respective state authority.

The Round Table of Nationalities was convened by the Estonian Cooperation Assembly on 26 May 2010 to advise the President and other executive as well as legislative institutions.<sup>368</sup> The MoC has also established a roundtable – the Cultural Council for Ethnic Minorities (*Rahvusvähemuste kultuurinõukoda*) – to receive advice on topics related to its competence, such as integration and culture.<sup>369</sup> Neither of these roundtables includes representatives from the Võro or Seto communities, as they are not considered to be national minorities.

### 3.3 Channels of participation in language related matters

The Ministry of Internal Affairs has, along with NGOs and public sector representatives, developed the rules of Good Practice of Participation,<sup>370</sup> which should encourage cooperation between NGOs, interest groups, the general public and the public sector. Adherence to these rules is voluntary for all parties. As a result of these Rules the *Osalusveeb* (in English: Participation Web) was established.<sup>371</sup> This website includes draft laws, programmes and strategies that the state authorities have uploaded for commenting. This website also allows individuals to present their ideas and propositions that do not have to be connected to specific documents uploaded by the state authority. This is the only time when the ministries are obliged respond. Those who are interested must keep themselves updated on any additions. Local authorities do not use that medium for ensuring individual participation.

<sup>367</sup> See more: –, Projektid, 2010.

<sup>368</sup> Statute of the Estonian Cooperation Assembly's Round Table of Nationalities, 2010.

<sup>369</sup> See more: MoC, Council for Ethnic Minorities, 2008.

<sup>370</sup> Ministry of Interior Affairs, *Kaasamise hea tava*, 2010.

<sup>371</sup> <https://www.osale.ee/> (last accessed 13.05.2011). This web took over the now closed websites Themis and TOM (*Täna Otsustan Mina* – Today I Decide) websites, the former was meant for consultation on draft laws and the latter was a tool for direct democracy.

A more specific way to ensure that the interests of all those affected by a legislative draft, programme or strategy have been considered, is to include them in the round of consultations when the draft has already been compiled. In principle, the actors could be invited to participate already in the stage of actual drafting – in working groups. This is the practice that the MoC has used in drafting its cultural programmes (see the actual use of this in 3.4 below). Relevant actors are also involved in different committees and commissions created for the implementation of cultural programmes (administered by MoC). Additional channel of participation is through the members of Parliament. Several members of Parliament have been from the Seto and Võro region and speaking on behalf of the Seto and Võro people, such as Kalvi Kõva, Georg Pelisaar, Inara Luigas and Ivari Padar. At times they have made sure that representatives from the respective communities are invited to the Parliamentary committees to speak on their behalf when issues concerning them directly are under discussion. In the Parliament there is also the Southeast Estonian delegation group (*Kagu-Eesti saadikurühm*).<sup>372</sup> A composition of a delegation group for Old Võrumaa (*Vana Võrumaa saadikurühm*) has also been discussed.

### 3.4 Use of channels of participation in practice

Regardless of the different channels of participation available in principle the use of them has been unpredictable. The situation for the Seto and Võro languages is mostly seen as a question of cultural heritage rather than a question of politics, human rights or law.

#### 3.4.1 Võro language

The experience of the Võro Institute and other Võro organisations has been less positive than the experience of Seto organisations. This applies both to the involvement in legislative processes as well as drafting of cultural programmes (under MoC). This is especially strange when considering the legal status of the Institute. Being founded by the state as a research institute, it should in principle, be relied upon for expert opinion.

A good example of how the state seems to view the role of the Institute is the time when Language Act 1995 was amended in 2007. The Võro Institute was notified of the

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<sup>372</sup> *Riigikogu, Ühendused*, 2011; Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011; also Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

amendment, according to which “regional varieties of Estonian language” can be used on public signage and announcements, only after it was already adopted in the Parliament.<sup>373</sup> In 2011, when the need to include a question on local languages or dialects in the census was raised, the Võru Institute, although being the initiator, was not initially asked to participate in the working group discussing the matter.<sup>374</sup> When this was pointed out to the Statistics Office, an invitation to the Võru Institute was immediately arranged.

Similar practice is evident in regard to programmes and strategies on a state level. For example, according to both strategies towards the Estonian language,<sup>375</sup> the Võru Institute is designated as one of the implementers of the strategy and the last strategy also lists the Institute as one of the institutions that were involved in creating it. Yet the Võru Institute noted that in reality its involvement was only asked for in regard to the chapter on place names though the Institute took the opportunity to express its opinion also on the chapter on regional varieties.<sup>376</sup>

In regard to the MoC’s Cultural Programme, the involvement has been more frequent. The Võru Institute was given the chance to comment on the Vana Võrumaa Cultural programme.<sup>377</sup> However, the Institute remarked that the cooperation was not fruitful and apparently most of the recommendations from them were disregarded. In any event, a representative from the Institute is usually involved in the commission responsible for the implementation of the Programme. Thus, Külli Eichenbaum from the Võru Institute is currently a member of commission of the Vana Võrumaa Cultural programme.

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<sup>373</sup> Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011; also Kama, *On law proposals of recognition of South Estonian language*, 2010.

<sup>374</sup> Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>375</sup> Development Strategy of the Estonian language 2004–2010; and Development Plan of Estonian Language 2011–2017.

<sup>376</sup> Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>377</sup> Saar, Kuuba, and Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

Both the Seto and Võro communities have been involved in discussions at the Parliamentary level but not in an organised manner. They do occasionally meet with the Members of Parliament to discuss matters of interest. For example, when the new Language Act was being drafted in the MER and discussed in the Parliament, the Võro Institute met with members of Parliament Kalvi Kõva, Urmas Klaas, Ülo Tootsen, Georg Pelisaar, Andres Herkel and Inara Luigas for discussion. These members became the strongest allies to the cause of having the term “regional language” inserted in the new Language Act. In addition, the members of Parliament occasionally form delegation groups to support certain causes in Estonia or in the world. From the perspective of the Võro language the Southeast Estonian delegation group (*Kagu-Eesti saadikurühm*) formed in the Parliament is relevant.<sup>378</sup> These groups are mostly formed to bring together like-minded members of Parliament but are mostly very small and their actual impact is difficult to measure. Their purpose is to work for the group’s particular issues of interest.

### 3.4.2 Seto language

The participation of the Seto people is more complicated and seems mostly to be dependent on specific organisations and their interests as well as capabilities. The level of involvement has also depended on the particular issue as well as on the institution responsible.

Aare Hõrn, representative of the Union of Setomaa Rural Municipalities, assessed the participation of the Union to be more than satisfactory.<sup>379</sup> They have been regularly involved in both the drafting of programmes and legislative acts concerning Setomaa. In certain cases that clearly affect Setomaa, such as border questions and cultural programmes, the involvement has been automatically asked for and initiative from the Union or other organisations was not even needed. Hõrn noted that occasionally the channels of participation are there but initiative from organisations is lacking. Use of available channels of participation presupposes certain knowledge of what the organisation should be involved in and their readiness to get involved. He noted that this knowledge or readiness is not always there when it comes to some organisations. Although the Seto Council of Elders was not involved in the drafting process of the new Language Act it does not necessarily mean

<sup>378</sup> *Riigikogu, Ühendused*, 2011.

<sup>379</sup> Hõrn, Telephone interview with Aare Hõrn, Member of the Board of the Union of Setomaa Rural Municipalities, 1.04.2011.

that they were deliberately excluded by the state.<sup>380</sup> Aare Hõrn noted that representative organisations in the Seto region are not adequately aware of the possibilities for cooperation and the importance of being involved in the drafting of relevant laws. A few years back a proposition was put forward to draft the so-called Setumaa Act that would address the specific issues that the Seto region faces, being divided between Estonia and Russia.<sup>381</sup> But there was not enough interest from the organisations representing the Seto people to pursue the matter.

Organisations are more aware of the possible benefits of participation in creating the Cultural Programmes, which could mean access to resources to advance Seto culture. Both the Union and the Seto Council of Elders were involved in the drafting process of the Cultural Programmes.<sup>382</sup> In fact, the Võru Institute also described the involvement of the Seto organisations as fruitful. According to the Institute, the Seto organisations have been frequently consulted throughout the period of drafting the programmes, and no amendments were made without their agreement, which apparently was not the case in regard to the Cultural Programme of Vana Võrumaa and the involvement of the Võro people.<sup>383</sup> The reason for this is unclear. Nevertheless, as mentioned with regard to the Võro language, representatives from both communities are involved in commissions created to implement the programmes. Thus, Õie Sarv (from Seto Council of Elders) is a member of the commission of Setomaa Cultural Programme.

The involvement varies depending on which state institution is responsible. According to Aare Hõrn, institutions that have cooperated with Seto organisations frequently over the years are open to participation and understand the need to involve Seto people.<sup>384</sup> Institutions or persons that are not familiar with the situation and have not had contacts

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<sup>380</sup> Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011.

<sup>381</sup> This initiative has also been mentioned in local media: Niilo, *Setumaa vajab oma seadust*, 2005; Raudvere, *Peaminister jagas Setumaal lubadusi*, 2005.

<sup>382</sup> Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011; also Hõrn, Telephone interview with Aare Hõrn, Member of the Board of the Union of Setomaa Rural Municipalities, 1.04.2011.

<sup>383</sup> Saar, Kuuba, Eichenbaum, Interview with Evar Saar (Researcher at the Võru Institute), Rainer Kuuba (Director of the Võru Institute), Külli Eichenbaum (former Director of Võru Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011; and Kama, *Vs: võro ja seto keele õigusuurung*. Comments by e-mail, Member of the Academic Board of the Võru Institute, 25.03.2011.

<sup>384</sup> Hõrn, Telephone interview with Aare Hõrn, Member of the Board of the Union of Setomaa Rural Municipalities, 1.04.2011.



with Setomaa do not tend to use the whole potential of the existing participatory channels. For example, the MER, while drafting the new Language Act, often consulted the respective communities and took their opinion into account. However, when the draft reached the Parliament, the channels of participation were more limited as was the Parliament's trust in the respective communities. Yet major changes to the draft affecting both the Võro and Seto language communities were actually made in the Parliament.

Similarly to the Võro language community, the Seto community has links to the Parliament and are represented by members of Parliament who are from the region, e.g. Inara Luigas. In addition to the aforementioned Southeast Estonian delegation group (*Kagu-Eesti saadikurühm*) in the Parliament, Seto people got their support from Petserimaa Support Group (*Petserimaa toetusrühm*) in the previous Parliament and from the Setomaa Support Group (*Setomaa toetusrühm*) created recently in the new Parliament.<sup>385</sup> Again, Aare Hõrn, representative of the Union, criticised that the potential of having their own members of Parliament as well as support groups is perhaps not utilised to the maximum.

### 3.5 Institutions responsible for minority and language policies

The Ministry of Education and Research is responsible for state language policy and its coordination. It draws up strategies and prepares legislative drafts and administers other institutions that are concerned with language policies on a state level. The Language Department (*keeleosakond*) of the MER administers the activities of the Ministry in the language area and gives advice.<sup>386</sup> Other ministries are also involved in language policy implementation within their respective competence, for instance the Ministry of Justice includes the Legislative Drafting and Legal Language Division responsible for Estonian legal terminology.

The Estonian Language Council (*Eesti keelenõukogu*), which was established in 2001, is an expert committee at the MER.<sup>387</sup> The Council's task is to monitor and analyse the language situation in Estonia and advice the Minister in language policy questions, including proposing

<sup>385</sup> See *Riigikogu, Ühendused*, 2011. Sarv, Interview with Õie Sarv, member of the Council of Elders of Seto Congress, 7.03.2011; also Saar, Kuuba, Eichenbaum, Interview with Evar Saar (Researcher at the Võro Institute), Rainer Kuuba (Director of the Võro Institute), Külli Eichenbaum (former Director of Võro Institute and member of the Council of the Research Centre of South-Estonian Language and Culture), 7.03.2011.

<sup>386</sup> Statutes of the Estonian Ministry of Education and Research (RT I 2005, 11, 45 ... RT I 2009, 38, 256).

<sup>387</sup> Homepage: <http://ekn.hm.ee/> (last accessed 13.05.2011). Current Language Act, §7.

amendments to language legislation. The Council was participating in drafting the development strategies on Estonian language and is responsible for monitoring its implementation.

Within the area of competence of the MER are the Language Inspectorate (*Keeleinspektsioon*) and the State Examinations and Qualifications Centre (*Riiklik Eksami- ja Kvalifikatsioonikeskus*). The former is responsible for supervising the implementation of different language acts and it also has competence to issue precepts and warnings and implement sanctions where violation has occurred.<sup>388</sup> The Language Inspectorate also supervises the language requirements of the Place Names Act. The State Examinations and Qualifications Centre is responsible for the implementation of state policies in education and language, including organising language exams and issuing language proficiency certificates.<sup>389</sup>

The Institute of the Estonian Language (*Eesti Keele Instituut*) is an institution of research and development administered by the MER.<sup>390</sup> Its tasks include conducting research on the Estonian Literary Standard, dialects and languages related to Estonian. The Institute is responsible for the development of the Estonian Literary Standard and gives recommendations in this regard. The Institute has established the Estonian Language Foundation (*Eesti Keele Sihtasutus*), with the aim of supporting the research on Estonian language and culture.<sup>391</sup> This is done through publishing literary and research works.

The Võro Institute was established by the Government in 1995 (also see above in section 3.1.1).<sup>392</sup> Currently the Institute is under the supervision of the MoC and it is financed from the state budget. It receives additional funding from different funds and programmes. According to the Statutes of the Institute, its task is to preserve and develop the local language (note that the Statutes refers to local language and not to dialect) and

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<sup>388</sup> Statutes of the Language Inspection (RTL 2007, 16, 250). Homepage: <http://www.keeleinsp.ee/> (last accessed 13.05.2011).

<sup>389</sup> Statutes of the State Examinations and Qualifications Centre (RTL 2004, 151, 2287 ... RTL 2009, 70, 1024).

<sup>390</sup> Statutes of the Institute of the Estonian Language (RTL 2007, 99, 1653). Homepage: <http://en.eki.ee/> (last accessed 13.05.2011).

<sup>391</sup> More at: <http://www.eksa.ee/> (last accessed 13.05.2011).

<sup>392</sup> Statute of the Võro Institute (RTL 2004, 152, 2295). More on the organisation at: [www.wi.ee](http://www.wi.ee) (last accessed 13.05.2011).

culture of the historic region of Võrumaa (so-called Old Võromaa – current Võrumaa, Põlvamaa and part of Tartumaa and Valgamaa).

In respect of national and cultural minorities, the role of the MER is mainly limited to education, which is administered by the Department of education of national minorities. In this context, the MoC has a dual role. First, it is responsible for supporting the Estonian culture and language. For instance, the MoC administers the Cultural Programme of Old Võrumaa and the Cultural Programme of Setumaa, which also covers measures in regard to languages spoken in these regions. Second, the MoC is responsible for cultural diversity and integration of different ethnic and national minorities. The Ministry thus implements the Estonian Integration Programme 2008–2013 but also provides financial support to the activities of cultural societies of ethnic minorities (e.g. the Support Programme “Support to Projects on the Culture of National Minorities in Estonia” [*toetusprogramm “Rahvusvähemuste kultuuri projektide toetamine Eestis”*]).

Activities originating from the Integration Programme are carried out by the Integration and Migration Foundation Our People (*Integratsiooni ja Migratsiooni Sihtasutus Meie Inimesed*), which was established in 1998 by the state.<sup>393</sup> Initially its name was Non-Estonians Integration Foundation (*Mitte-eestlaste Integratsiooni Sihtasutus*), then Integration Foundation (*Integratsiooni Sihtasutus*) and after a merge with Estonian Migration Foundation (*Eesti Migratsioonifond*) in 2010, it is called the Integration and Migration Foundation Our People. The Foundation is initiating, supporting and coordinating projects concerning integration and migration.

### ***3.6 The role of the kin-state or country of origin in language maintenance***

Võro and Seto languages are varieties of Estonian language and as such they do not have kin-states or a country of origin. This section is therefore not applicable for the current analysis.

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<sup>393</sup> Statutes of the Integration and Migration Foundation Our People. More information available at: <http://www.meis.ee/about-the-foundation> (last accessed 13.05.2011).

## 4 Concluding remarks

### *4.1 Regulation of the languages and language communities in the legal and institutional system*

Language is area that is heavily regulated in Estonia, the rights of the language communities as such are perhaps less so. Since the independence of Estonia in 1918, the Estonian language has been attached with a special symbolism. Over the decades, it has symbolised Estonian nation and culture and its resistance against foreign powers and forced cultures.<sup>394</sup> As a result, for instance, the Constitution provides in its Preamble that the purpose of the Estonian state is to “guarantee the preservation of the Estonian nation, language and culture through the ages.” The Supreme Court has confirmed that this purpose justifies the elaborate language requirements for public information and people working in the public sector and in certain circumstances also in the private sector.<sup>395</sup> The Language Act 2011 also includes a specific provision that prohibits measures aimed at promoting foreign languages in case they are seen as damaging the Estonian language (§2(3)). The detailed and highly institutionalised language regulation aims to assert the Estonian language at least as the language of public administration. Thus the legislative framework is mainly concerned with the requirements on the use of the Estonian language while also providing for a clear regulation on the use of foreign languages, including the languages of national minorities.

The Constitution establishes different fundamental rights that people have in regard to language, including in court, education and in public administration, but it also prohibits discrimination. The Constitution establishes the right of national minorities to pursue their culture, either individually or collectively through the establishment of self-governing agencies. The latter right is further elaborated in the National Minorities Cultural Autonomy Act. This act also regulates the rights of national minorities while the related language rights are, in large part, regulated in the Language Act.

The main act in the language area is the Language Act; the previous Act was adopted in 1995 and was replaced with the new Act in 2011. The Act regulates the use of Estonian as the

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<sup>394</sup> Koreinik, Public Discourse of (De)legitimation: The Case of South Estonian Language, 2011.

<sup>395</sup> Judgment of the Supreme Court no 3-4-1-1-98 (05.02.1998), part II.

state language, language proficiency required in specific areas and instances where languages other than the state language can be used. The requirements to the use of Estonian language are divided into two parts. In official use, i.e. in exercising public authority, the use must comply with the Estonian Literary Standard established by the Government. In other cases of public use, such as in advertisements, announcements, signs etc., the use of language must comply with at least “good practice” of Estonian language. In the latter case, the “regional varieties” of Estonian language (also referred to as “dialect languages”), including also the Võro and Seto languages, can be used. Foreign languages must always be accompanied with translation while languages of national minorities do not, if certain preconditions are fulfilled.

Other, more specific, acts deal with language requirements in the area of consumer protection (Consumer Protection Act) and in court proceedings. Similarly important are the (personal) Names Act and Place Names Act. The latter is of particular significance since it pays great importance to historical place names, which may also be either in the Võro or Seto language. Apart from the Language Act, it is one of the two legislative acts that include references to different varieties of the Estonian language. Reference is made to local dialects (§10(3), Place Names Act).

In education, regulation on language mainly plays a role in the choice of language of instruction. Based on the Constitution and parliamentary acts regulating each level and sector of education, the choice of language of instruction is flexible. School chooses the language of instruction but it must also be approved by the local government or the Minister of Education and Research (depending on whether the school is owned by state or by local government). Additionally, the Basic Schools and Upper Secondary Schools Act provide for the right to learn one’s mother tongue and culture, subject to certain preconditions. The national curricula on each level of study include no explicit references to different local cultures and languages or dialects. Regardless, the national curricula for all the levels of education provide certain flexibility for schools to include local language and culture in the school curriculum, as an elective or on upper secondary level, and on upper secondary level also as a whole field of study.

Another area that plays an important role for languages and their respective communities is media. The Estonian National Broadcasting Act merely requires media activities to guarantee “permanence of the Estonian state and nation” and support to “the development of Estonia language and culture” (§4). It also includes a reference to the need to address the informational needs of minorities (§5(1)).

The main institution with the responsibility of supervising the language requirements is the Language Inspectorate. The Inspectorate oversees the fulfilment in all areas covered by the Language Act, including advertisement, Place Names Act, media etc. The Inspectorate is within the area of competence of the Ministry of Education and Research that is responsible for the language policies.

#### ***4.2 Attitudes towards the legal and institutional regulation of the languages and language communities***

Regulation of language and language communities is problematic. Over the years, it has been changed as a result of recommendations from international organisations. Most of the criticism has been directed towards regulation of the language rights of minorities, as well as language requirements in the naturalisation process. The National Minorities Cultural Autonomy Act has been another area of interest for these organisations. The Act’s ineffectiveness in the protection of the rights of national minorities is of continuous concern for the minorities themselves and for international organisations. Still, it has remained unchanged since its adoption in 1993.

During the drafting of the new Language Act, some commentators in media expressed their doubts as to the necessity of the Act in general (*see above in section 2.7*). The language legislation reflects the notion of nation state promulgated in the Preamble of the Constitution. The commentators were critical towards the maintenance of that notion in a modern society while in modern era diversity is accepted as well as valued. It was said that the language legislation would lead to language conservation, not allowing it to evolve.

Representatives of the Võro and Seto language communities have mostly been concerned with the lack of legal status for the languages. Neither linguists nor legislators have reached an agreement about whether the Võro and Seto are dialects or languages. Initially the only

legal act referring to these languages was the Place Names Act, which allowed the use of place names in local dialects. Since 2004, the term applied to the Võro and Seto languages has been “regional varieties of Estonian language.” This term was taken into use by the Development Strategy of the Estonian Language. The term in itself entails no rights or obligations from either the state or the language communities. The representatives of the Võro and Seto language communities started advocating for the taking into use of the term “regional language.” At the same time, the Statutes of the Võru Institute adopted by the Government, includes reference to local “language”, i.e. the Võro language. Different working groups and committees on state level have discussed the matter over the years but since no decision has been reached, the term “regional varieties” has stayed in use.

The situation did not satisfy the Võro and Seto language communities who kept pressuring the public authority for “regional language.” The term is found in the European Charter for Regional or Minority Languages that Estonia has not signed. As a result of the pressure from these communities, the Development Plan of the Estonian Language 2011–2017 states that languages that currently are recognised as “regional varieties” or dialects can in due time become “regional languages”. Discussions on the terminology continued throughout the drafting process of the new Language Act. But the attempts to include a provision on regional language, adding that the term refers specifically to the Võro and Seto languages, fell through. Thus, the new Act still uses the term “regional variety” with one notable difference however. It also states that it is understood to be a “dialect language”, a term that has never been used in legislation previously. It can be interpreted as a middle ground between dialect and “regional language”, in which case it would undeniably be a progress towards recognition of existence of “regional languages” in Estonia.

The new Act also expressly attaches clear rights to “regional variety” of Estonian language, allowing its use in the exercise of state authority in parallel with Estonian based on the Literary Standard. The Võro and Seto languages and other similar varieties now do have a certain legal status even though it is still troubling since on an international level the term “regional varieties” has no bearing at all. The advocates for the “regional language” have expressed their disappointment towards using an internationally ambiguous term.

The discussion about the status of the Võro and Seto languages under Estonian law is sensitive. It is connected to the highly politicized issue of Russian-language population and their language rights. The main reason for avoiding the internationally recognised term “regional language” is the fear that the Russian-speaking population might also claim rights on the basis of being a language minority. Activists, however, do not consider this a danger. According to them the term usually does not refer to recent immigrants. On any account, the status of “regional language” would not benefit the Russian-speaking population any more than the status of national minority language that the Russian language in Estonia already has. On the other hand, the status would greatly benefit the Võro and Seto languages, giving them prestige and solid legal status both nationally and internationally. The debate on the status is solved on legislative level for now but the activists from Võro and Seto language communities are not satisfied with the result and will probably continue their advocacy work. The activists have a solid ground in the form of the Development Plan of the Estonian Language 2011–2017, which foresees the possibility of “regional varieties” or dialects developing into “regional languages”.

#### ***4.3 The position of language diversity in the legal and political system***

Language diversity does not seem to be a goal of the Estonian legal and political system. The tone is set already in the Preamble of the Constitution, which clearly establishes that nation-state with one language is a goal for Estonia. Regulation on language use in different sectors, including education, consumer protection, integration and citizenship, suggests that the aim is to achieve a monolingual state. It is particularly evident from the strategies drawn up by different ministries on language and education but also on integration. The population’s high level of proficiency in foreign languages is something the strategies always emphasise and the continuance of the teaching of foreign languages is encouraged. However, as the strategies on Estonian language demonstrate, proficiency in foreign languages is more of a necessity and mostly considered as a threat to Estonian language (see more above in section 1.3).



The Võro and Seto language communities are particularly affected by the principle of “one state – one nation – one language”.<sup>396</sup> Both of the communities are essentially multi-lingual and to a certain extent also multinational. People who identify themselves as Võro and Seto people, also consider themselves Estonians. They refer to their mother tongue as Võro or Seto as well as Estonian language. Neither multinationality nor multilingualism is recognised by the Estonian legal system. It is assumed that a person belongs to either one or another ethnic group. Similarly the person has either one or the other language as a mother tongue.

#### ***4.4 The overall quality of the legal system in language matters***

The overall quality of language legislation is the same for both the Võro and Seto languages. There is no separate legislation for either of the languages. The only measures that consider them separately are the cultural programmes developed by the Ministry of Culture. However even these programmes are relatively similar.

Accessibility of legislative and policy measures and guarantees has two parts. The measures are physically easily accessible, since all the relevant documents are available on print as well as online. Comments and question in regard to any of the measures can be forwarded to the responsible state institution directly or through websites set up to encourage participation. However, the terminology used in these policies and documents is problematic and far from clear. The new Language Act explains much of the terminology that was previously left for interpretation by the executive and judicial authority, such as official *versus* public use of language. Some clarifications have been made concerning the term “regional varieties of Estonian language” by simply noting that this refers to dialect language (in Estonian: *murdekeel*). But the new Act has also brought with it new terminology, which is yet to be clarified. For instance, the “good practice” of language use, which is a set of guidelines for language use in the public sphere, needs to be explained further.

The legislation, the corresponding implementing measures and policy programmes are readily available. On the one hand, none of the legislative acts refer to either the Võro or Seto languages. It can be difficult for someone who is not familiar with the language legislation to find all the relevant regulations and language-related policies. Culture-related

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<sup>396</sup> Ojar, Keeleõigus ja -poliitika Eestis ja Euroopas vaatega lõunaestli keele õigusliku kaitse võimalustele, 2004, p 69.

policy programmes administered by the Ministry of Culture have adopted separate programmes for the Võro language and for Seto language. There are a number of institutions and organisations active on the field of language in general and on the Võro or Seto languages in particular.

The adaptability of the legislation and policies again has two parts. On the one hand, the new Language Act provides enough flexibility to allow both of the language communities to use their languages in the public sector. However, the Võro or Seto languages can only be used in parallel to the Estonian language complying with the Literary Standard. On the other hand, the legislation and policies have proved to be inflexible when it comes to the status of the Võro or Seto languages. Due to the importance given to the protection of nation-state in Estonian legislation and politics, any attempt to diversify the understanding of the Estonian language is seen as a threat to the unity of the language and therefore to the Estonian nation. Changes concerning the Võro or Seto languages, such as their recent popularisation and development of Võro language orthography, is not recognised by the state on official level.

Acceptability in regard to the legislation and implementation is problematic. This is particularly due to the legal status granted to the Võro or Seto languages. Although the activists from both language communities have advocated for the status of “regional languages,” it has not been successful. The new Language Act maintained the term “regional varieties” of the Estonian language equating it with a new term “dialect language”. In some ways, it was a compromise between “regional varieties” and “regional languages”.

The coherence of the language legislation has increased considerably as a result of adopting the new Language Act. Its aim was to restructure, clarify and fill in the gaps revealed in the course of implementing the current Language Act. The rights attached to the term “regional varieties” of the Estonian language have also become clearer. Although by taking into use a completely new term “dialect language” and equating it with “regional varieties”, could be argued to diminish coherence.

The stability of the legislation has increased over the years. However, the law has been under constant revision since 1990s. This is mostly due to changes in the society, such as

Estonia having to meet certain conditions in order to become a member of several international organisations and the high politization of the language issues, for instance, the concerns with the Russian-speaking community. It remains to be seen whether the new Language Act would be more stable.

The efficiency of the relevant legal acts and policies can be assessed as low. Both the Võro or Seto languages remain endangered. Although there is some progress made. The cultural programmes administered by the Ministry of Culture expressly deal with both the Võro and Seto languages. Also, the Government established the Võru Institute with the task to study and develop the Võro language and culture. However, there still seems to be some reluctance to provide further support because of the fear that it could actually harm the mainstream Estonian language.

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