

## **A Cliffhanger for LGBT+ Rights in Estonia**

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**From threats to cut off NGO funding to homophobic remarks by government members, a debate over LGBT+ rights became unexpectedly heated as Estonia battled the Covid-19 crisis in 2020. The ruling coalition's collapse in January 2021 meant that the debate was suddenly curtailed, and the contentious referendum on the definition of marriage planned for spring cancelled. Estonian Greens Züleyxa Izmailova and Mattias Turovski trace the rise of the country's LGBT+ movement and the conservative backlash, asking where next for the fight for LGBT+ rights now the debate recedes from the spotlight.**

The LGBT+ rights debate has been ongoing in Estonia for well over 20 years. Estonia is one of several Eastern European countries with a post-Soviet cultural space in which, until as recently as the turn of the century, any deviations from traditional gender identity norms or strictly monogamous heterosexual partnerships were considered not only immoral but psychological disorders. After Estonia's return to independence in 1991, various self-determination and human rights debates sprung up in a new wave of active citizenship that also enabled the LGBT+ community to organise. However, a predominantly conservative cultural space characterised by outdated attitudes and taboos means that Estonia's LGBT+ community today remains locked in an existential struggle.

### **An emerging LGBT+ movement**

The LGBT+ movement began to mobilise in the 1990s with activists such as Lilian Kotter organising the activity and advocacy of interest groups. They set up various societies and associations such as the Estonian Lesbian Union (the first sexual minority organisation in the Baltics, which later became LesBi Union) and the Estonian Gay Union. Nightman, Estonia's first gay nightclub, opened its doors and LGBT+ activists published magazines and informative leaflets.

The more enduring organisations managed to get a foothold in the 2000s. In 2004, the first pride parade took place in Tallinn, spearheaded by activist Lisette Kampus, and the gay nightclub Angel opened. One of the club's owners, Reimo Mets, established the NGO MTÜ SEKY, which aimed to support sexual minorities in legal disputes. Today, the face and focal point of LGBT+ advocacy in the country is the [Estonian LGBT Union](#). Founded in 2008 (and renamed in 2012), the Union's mission is to support the LGBT+ community and raise awareness of LGBT+ issues, which it does by organising workshops and counselling, and hosting events such as information evenings, film viewings, and the Baltic Pride festival. Meanwhile, organisations including the [Estonian Human Rights Centre](#) and (more indirectly) the [Open Estonia Foundation](#) and [Estonian Civil Society](#) provide legal protection to the Estonian LGBT+ community.

There is much work to be done. Gender equality and sexual and gender-based discrimination present real problems in Estonia today. In a [2019 public opinion survey](#) commissioned by the Estonian Human Rights Centre, more than half of respondents considered homosexuality totally or mostly unacceptable. The same year, the Estonian LGBT Union conducted a [survey with LGBT+ students in schools across the country](#), finding that 68 per cent had experienced mental harassment due to their sexual identity, gender identity, or gender expression, while 61 per cent stated that school staff never intervened when someone made homophobic remarks.

According to Aili Kala, the Estonian LGBT Union's advocacy expert and attorney, LGBT+ people's biggest concerns in Estonia today relate to "certain political forces creating a climate of fear, and the fact that laws and policies pertaining to eliminating discrimination and constituting equal treatment have not been passed or amended for years". A [July 2020 report by the Equal Treatment Network](#), a collective of NGOs established by the Estonian Human Rights Centre, concludes that the LGBT rights agenda has stalled in recent years due to the legislature's failure to heed relevant EU sectoral proposals, equal treatment and anti-discrimination laws, and inadequacies in existing legislation.

Additionally, there has been no extensive review of existing measures (legal or otherwise) that could lead to discrimination based on sexual orientation or gender identity, nor has any LGBT+ action plan been developed. Another area of serious concern is trans people's right to self-determination. Contrary to international best practice (and the [World Health Organization's 2019 decision](#) to end the categorisation of trans-related conditions as mental and behavioural disorders), changes to gender data in Estonia are not based on self-determination and are often diagnosed as a medical mental disorder (gender dysphoria).

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On a more positive note, polls show that, in general, attitudes toward LGBT+ people and issues in Estonia have improved in recent years. In 2014, the Registered Partnership Act was passed to regulate the legal relationship of cohabiting couples. While changes in attitudes take time in Estonia's conservative cultural space, there is a clear trend towards acceptance. At present, the main issue is the apparent lack of interest from government to offer solutions to persisting problems that affect the LGBT+ community.

## **The battle for registered partnership**

Reimo Mets started an active discussion on minority rights in Estonia in the early 2000s. By the early 2010s, the ground for legally regulating the partnership of same-sex couples had ripened. In May 2011, the Estonian [Chancellor of Justice](#) argued that the legal framework should be improved because it failed to ensure sufficient protection for de facto partners. He also pointed out that lasting partnerships between individuals of the same gender belong under the protection of family law, and thus it is unconstitutional for such partnerships to lack legal regulation.

As a result of these and other advocacy efforts, the Ministry of Justice signalled that it would gladly discuss civil partnerships for same-sex couples, but that it lacked a coherent draft upon which to base discussions. Refusing to let that be an obstacle, Mets took the Finnish Registered Partnership Act (enacted in 2002) as a basis and adapted it to the Estonian legislative context. In 2012, he sent the draft Estonian Registered Partnership Act to the Ministry of Justice, allowing the relevant parties to begin discussions over a new civil partnership law.

In reaction to the growing momentum of the Estonian LGBT+ rights debate, the Foundation for the Protection of Family and Tradition (SAPTK) was founded in 2011. The following year, SAPTK launched a campaign to oppose changes to the Family Law Act. The organisation, which according to its charter aims to defend traditional social organisation and European cultural patrimony based on Christian teachings, is led by lawyer Varro Vooglaid, a member of the international Tradition, Family and Property (TFP) movement and former fellow student of Mets at university.

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Among SAPTK's larger supporters is a Polish branch of TFP, the Piotr Skarga Institute. Known in Polish liberal circles as a far-right religious movement, the Piotr Skarga Institute organises aggressive anti-abortion campaigns and constantly accuses LGBT+ rights groups of assaulting traditional family values. SAPTK has chosen a similar communication strategy and plays an important role in mobilising Estonia's conservative electorate. Its main propaganda tool is *Objektiiv*, a media portal characterised by traditionalist, anti-liberal, anti-minority and anti-refugee messages which also offers a platform for spokespersons of the Estonian Conservative People's Party (EKRE).

The strong conservative reaction to LGBT+ issues in the early 2010s can likely be attributed to the growing momentum of LGBT+ advocacy groups at the time. Anti-gay propaganda became seen as a tool for mobilising the conservative electorate, and reactionary organisations began to receive steady funding.

Despite the rallying opposition, the Registered Partnership Act was narrowly adopted in October 2014 in a 40-38 vote. To this day, it remains the only law in Estonia that extends certain marriage-derived rights to same-sex couples. The law, which was formulated in a gender-neutral manner, enables two consenting adults to register their partnership with a notary. It also enables children born to couples in open marriages to be registered together with cohabiting partners, and it addresses questions of childrearing obligations and property in cases such as separation or illness. The Estonian Registered Partnership Act was the first of its kind in the territory of the former Soviet Union, but its initial success was short-lived.

## **The implementation conundrum**

Although the bill was passed, the provisions necessary to coherently implement it were not ratified. Due to the lack of a majority in the Riigikogu, Estonia's unicameral parliament,

these provisions remain unratified to this day. In 2017, the Tallinn Administrative Court ruled that the Ministry of Justice must pay damages to Reimo Mets due to the state's failure to adopt the implementing acts of the Registered Partnership Act. The court found "a long-term vagueness in law-making" that "invades a citizen's right to privacy and may deny them dignity". However, the ruling was later revoked. In Estonian President Kersti Kaljulaid criticised the failure to implement the Act's provisions in front of the Estonian parliament, calling it an evasion of accountability.

This situation has given rise to several legal misunderstandings. The rights registered partnership families are deprived of becomes clear on a case-by-case basis and often has to be resolved in court. Since the Act was passed, several families have found themselves in a situation where a non-Estonian same-sex partner of an Estonian citizen was denied a residence permit because the Aliens Act (which regulates residence in Estonia for non-EU citizens) failed to include same-sex couples. A 2019 Supreme Court decision found the gender-discriminating provisions of the Aliens Act to be unconstitutional. In a similar case, a clause in the Social Tax Act was deemed unconstitutional for discriminating against stay-at-home parents who belonged to same-sex registered partnerships as it failed to extend national health insurance to them.

## **Bullies in power**

Estonia's March 2019 parliamentary elections were clearly won by the neoliberal Reform Party, which secured 28.8 per cent of the vote. Nonetheless, the party failed to find suitable coalition partners and, to the surprise of many, the government was instead formed by the Reform Party's biggest rival, the Estonian Centre Party, together with the more conservative Pro Patria (Isamaa) and far-right coalition first-timer EKRE. During its period in government (almost two years), EKRE used its newfound power to promote many ultraconservative issues to the mainstream media agenda. EKRE's nationalist chauvinism, authoritarian rhetoric, and inflammatory communication had a divisive influence on Estonian society in a range of areas.

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EKRE's campaign promise to hold a referendum in 2021 on defining marriage as between a man and a woman made it into the coalition agreement. Due to peculiarities in the Referendum Act, the referendum would be held not as a proposal to amend the constitution but as a question of "other national issues", meaning that extraordinary parliamentary elections would not be necessary should the referendum result in a no-vote majority.

Throughout EKRE's time in power, the LGBT+ community was routinely attacked. Efforts were made to block the Estonian LGBT Union's activities, events, and funding. EKRE spokespersons routinely appeared in the media spouting anti-refugee and anti-abortion messages and decrying the "onslaught of gay propaganda". In an infamous 2020 interview

with *DW*, then Interior Minister Mart Helme made homophobic comments, including saying, “Let them [gay people] run to Sweden. Everyone there treats them more politely.”

A 2021 report by the European Council on [rising anti-LGBTI discrimination](#) observed a growing trend of official anti-LGBTI hate speech from religious and political leaders such as Helme. The Estonian Human Rights Centre’s 2020 report on [the situation of LGBT persons](#) concludes that “a new tendency has arisen in society where one government party has taken it upon themselves to create an atmosphere of fear and violate people’s sense of security, and their coalition partners have not wanted to or have not been able to change that.”

## **A short and shaky coalition**

The three-party coalition was characterised by a steady stream of small scandals and the inability to effectively address serious issues like the climate crisis. A pattern emerged in which EKRE deployed increasingly radical rhetoric in largely successful attempts to dictate the political course of the country. The coalition’s leading Centre Party mostly failed to keep EKRE in check. Prime Minister Jüri Ratas was routinely forced to publicly apologise for EKRE’s behaviour and to justify the government’s actions in a bid to avoid damage to his party’s reputation. The coalition managed to react decisively to the onset of Covid-19 and successfully led Estonia out of the worst of the crisis, but it soon returned to the old routine as the pandemic stabilised.

Adding to the constant sense of instability caused by EKRE’s public communications, small scandals shook the government. For instance, the minister of education and research was forced to resign after using the ministry’s minivan to organise a holiday trip, and the prime minister’s party was investigated by the public prosecutor for influence-peddling in the Porto Franco real estate development in Tallinn. These scandals and the question of the marriage referendum were the main focus of the Estonian media until the fall of the coalition in January 2021.

In October 2020, the Green Party became the first Estonian party to officially support a gender-neutral definition of marriage. It organised a [petition](#) to this end that quickly became the most popular in the country’s recent history with over 35,000 signatures – extremely high for Estonia, where successful petitions usually manage to raise only a few thousand signatures on the [citizens’ initiative portal](#) (The Estonian parliament is mandated to respond to all proposals that raise more than 1,000 signatures within a given time frame).

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The Greens’ petition proposed changes to the Family Law Act to ensure more equal treatment for same-sex couples, appealing to parliament to constitute marriage as a union between two adults regardless of their gender. Among other arguments, it referred to a court ruling that found that “the defence of family life does not correlate in the Constitution

with the gender or sexual orientation of family members”. The petition argued that the Family Law Act was discriminatory, failed to sufficiently ensure the rights of same-sex couples, and had no place in a democratic society.

The Greens invited all Estonian parties, including the opposition Reform Party, to support the initiative and join them with a clear message that Estonia is a tolerant country that stands in solidarity with its citizens’ freedom of choice. In the end, only the Social Democrats joined the petition. The Reform Party did not publicly support the initiative, with its leader Kaja Kallas claiming her party did not wish to join the marriage equality movement because it “met EKRE on its terms”. This statement from the now prime minister generated a wave of disdain among many in her own party and the public.

On 13 January 2021, after months of speculation and on the day of the third reading of the marriage referendum draft, the coalition government stepped down as a result of the constant instability and corruption scandals. It had governed for barely two years and sported a record number of resigned ministers. And as the coalition collapsed, so the question of a marriage referendum fell off the agenda. Estonia shifted to a two-party leadership with the new governing coalition formed by the Reform Party and the Centre Party.

## **Winds of change or stale air?**

Unfortunately, marriage equality was not among the priorities included in the new coalition agreement. As a result, ratifying the implementing provisions of the Registered Partnership Act may still not be on the table. This is most likely primarily for fear of losing the conservative vote, which will be crucial for both governing parties in the autumn 2021 local elections. EKRE, having adapted well to being in opposition once more, is now trying to make out that the incumbent government plans to make “all kinds of cohabitation” equal to marriage. However, this is far from true, and the point was emphasised by spokespersons for both the Reform Party and the Centre Party during coalition talks. The coalition agreement puts it plainly: “We will not change the definition of marriage as it is provided in the Family Law Act.”

Accusing the ruling parties of ultraliberalism is typical and largely empty rhetoric on the part of EKRE with the aim of fanning opposition to marriage equality. From the Greens’ perspective, the Reform Party and the Centre Party are not much closer to European liberal values than most far-right conservatives are to a fact-based climate policy. Both leading parties have shown a longstanding reluctance to move forward with LGBT+ issues. With marriage equality excluded from the coalition agreement, the Greens’ petition might not make it past the parliament’s legal affairs committee and may then fall off the agenda due to stalling tactics.

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However, another issue the coalition agreement does not mention, that of raising the age of consent from 14 to 16 years, is actually gaining traction in most parties. Raising this age was already proposed by the Greens in 2010, and a related petition recently gathered more than 5,000 signatures. This is a promising sign that an important social question will soon be resolved. Some hope remains then that the two ruling parties (which both self-define as liberal) will also find common ground on the question of marriage equality. If so, they may allow MPs to hold an open vote on a gender-neutral definition of marriage or, at the very least, ratifying the implementing provisions of the Registered Partnership Act. Valuing and recognising all families is an essential issue for the Estonian Greens. Every family deserves legal protection, and Greens aim to guarantee everyone's constitutional right to equal treatment.

New general elections are around the corner, set for March 2023, and liberals have reason to be concerned. Support for EKRE is rising once again and society has grown weary of the ongoing health crisis. Political trends analyst and professor of public governance Rainer Kattel suggests that a coalition between EKRE and the Reform Party may be a reality after the next elections, and that such a balance of power may be lasting. "The [2020s] will bring us a toxic mix of remnants of rivalry ideology such as austerity policy (which will only gain power as Covid-19 recedes) and the particularity of EKRE-created Estonian masculinity", Kattel predicts.

Although the change of government created breathing space for Estonia's LGBT+ community and civil society, the fight for the human rights of LGBT+ people is not over. Public attitudes towards LGBT+ people are improving, but it is unknown whether the scrapped referendum would have reflected this trend. Perhaps, then, it is not a bad thing the referendum was cancelled. If a similar referendum is held in the near future, a success for LGBT+ rights is all the more likely. The Estonian Greens remain hopeful that the coming years will be brighter, and that gender- and sexual orientation-based discrimination are firmly on their way into the garbage bin of history.

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