



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Estonia
<b>Title:</b>	Linguistic requirements in recruitment procedure
<b>Date:</b>	20 August 2015
<b>Expert:</b>	Vadim Poleshchuk
<b>Context</b>	
<b>Issue at stake:</b>	Professional linguistic requirements
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	Commissioner for Gender Equality and Equal Treatment (national equality body), Opinion of 22 July 2015
<b>Field:</b>	Employment
<b>Applicable law:</b>	Estonia, Equal Treatment Act, Article 2

### Content

#### *Case A. & B. v. C.*<sup>1</sup>

The Equal Treatment Act<sup>2</sup> (Article 2 (1)) bans discrimination on the grounds of race or ethnic origin in employment. This Act does not preclude the requirements of equal treatment in labour relations on grounds of other characteristics (Article 2 (3)).

Professional linguistic requirements are stipulated on the basis of the Language Act.<sup>3</sup> The proficiency requirements are subdivided into three broad levels: Basic User: A1 and A2; Independent User: B1 and B2; Proficient User: C1 and C2. The requirements for proficiency in and use of the Estonian language are established by the Regulation of the Government of the Republic no.84 of 20 June 2011.<sup>4</sup> Teachers of non-Estonian kindergartens must speak the Estonian language at level B2; teacher's assistants at level A2.

In this case employment contracts of two teachers of a Russian-language kindergarten were cancelled 'for a long time inability to perform their duties', namely due to insufficient proficiency in Estonian. Both teachers were native speakers of Russian and of Russian ethnic origin. According to the Employment Contract Act (Article 88 (3)) before cancellation of an employment contract on this basis the employer shall offer other work to the employee, where possible. In this case this requirement was not fulfilled. There were two positions of teacher's assistants available at the kindergarten. Relevant job advertising stated, however, that candidates must speak Estonian as a mother tongue.

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<sup>1</sup> Case A. & B. v. C. Opinion of the Commissioner for Gender Equality and Equal Treatment of 22 July 2015.

<sup>2</sup> Estonia, Equal Treatment Act (*Võrdse kohtlemise seadus*), Riigi Teataja I 2008, 56, 315. Riigi Teataja (hereinafter RT) – Official State Gazette.

<sup>3</sup> Estonia, Language Act (*Keeleseadus*), RT I, 18.03.2011, 1.

<sup>4</sup> Estonia, The requirements for proficiency in and use of the Estonian language for officials, employees and sole proprietors (*Avaliku teenistuja, töötaja ning füüsilisest isikust ettevõtja eesti keele oskuse ja kasutamise nõuded*), RT I, 18.03.2011, 1.

*Decision of the equality body:* The Commissioner for Gender Equality and Equal Treatment came to the conclusion that both teachers were discriminated due to their ethnicity insofar as they had not been offered another position at the kindergarten. Their proficiency in Estonian at level A2 was not properly controlled. Furthermore, a requirement to speak Estonian as a mother tongue (as stated in the job advertising) discriminated against jobseekers of a minority ethnic origin.

**Key points of analysis:** The Commissioner for Gender Equality and Equal Treatment linked explicitly ethnic origin (as a protected ground), mother tongue and language proficiency in the context of employment and non-discrimination. It was clearly stated that employer's requirement to speak the official language as a mother tongue may discriminate against jobseekers of minority ethnic origins (if this language proficiency does not constitute a genuine occupational requirement).

**Internet link source:**

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