



## **Executive Summary**

### **Estonia Country report on measures to combat discrimination by Vadim Poleshchuk**

#### **1. Introduction**

Estonia is a multi-ethnic society. According to the 2000 national census, non-ethnic Estonians made up one third of all residents, the majority of them are (80%) ethnic Russians. In 2006, 1/5 of the total population were not citizens of Estonia (the majority are stateless former Soviet citizens and citizens of the Russian Federation). Most of them are members of minorities who settled in Estonia after the Second World War and their descendants. Estonian society is rather indifferent towards religion and faiths, ethnic non-Estonians are significantly more religious than Estonians.

Before the accession of Estonia to the EU there was no detailed anti-discrimination legislation. Furthermore, most of the recent positive changes in this field were the result of harmonisation of Estonian legislation with the *acquis communautaire*. The more significant changes took place in 2003-2004. Importantly, the process of harmonisation has enriched the non-discrimination discourse.

In recent years Estonia has adopted several social policy documents to deal with vulnerable groups of the population, e.g. the State Programme, "Integration in Estonian Society 2000-2007" (ethnic and national minorities), the General Concept for Disability Policy in Estonia, the National Concept for Policy on Older People, etc. Similar social policy measures were taken to tackle gender discrimination.

In the course of the 2005 sociological study, "Working Life Barometer 2005" (commissioned by the Ministry of Social Affairs), a considerable share of respondents claimed that, either often or from time to time, they had been witnesses to the unequal treatment of other workers at their present workplace on the following grounds: older age (14%), official language proficiency (11%), younger age (11%), disability (8%), ethnic origin (6%), female sex (5%). However, there is very limited information about instances of discrimination or relevant court cases. For instance, the Labour Inspectorate (public control body) does not collect data on discrimination in the labour market. This statement is equally valid for the labour disputes commissions (quasi-judicial body).

It appears that the level of awareness regarding discrimination issues is very low in Estonian society. Special measures are vitally needed to propagate new opportunities to fight against discrimination on the basis of the amended Law on Employment Contracts and the Law on the Legal Chancellor. Importantly, the level of cooperation of public authorities with NGOs and social partners should also be enhanced.

#### **2. Main legislation**

According to the Estonian Constitution, the norms stipulated by international treaties which have been ratified have priority over domestic legislation. Estonia has signed and ratified the vast majority of international instruments aimed at combating discrimination.

Article 12 of the Estonian Constitution establishes explicit prohibition of discrimination. It does not provide an exhausted list of grounds for discrimination. A flexible and



comprehensive mechanism for protection against discrimination may be based on this provision, which is directly applicable against both natural persons and public and private legal persons. The constitutional principle of non-discrimination, worded in general terms, is repeated in some other laws.

According to the Penal Code, the most severe violation of the principle of equal treatment constitutes a crime, e.g. Article 152 (violation of equality), Article 153 (discrimination based on genetic characteristics of the person) and Article 151 (public incitement to hatred or violence on the basis of ethnic origin, race, colour, sex, language, origin, religion, political opinion, financial or social status).

In addition to generally worded anti-discrimination provisions in the Constitution and other laws, and as well as relevant criminal provisions, the structure of Estonian anti-discrimination law is now shaped by three legal acts: Law on Gender Equality (adopted 7 April 2004); Law on Employment Contracts (relevant amendments adopted on 22 April 2004); Law on the Legal Chancellor (relevant amendments adopted on 11 February 2003). The two latter laws were specifically amended to transpose the requirements of the EU anti-discrimination directives.

The Law on Gender Equality covers all spheres of public life and prohibits discrimination on the basis of sex. This act might also be used in cases of multiple discrimination.

The Law on Employment Contracts only regulates employment relations on the basis of this contract and prohibits “unequal treatment” on the grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership of workers' associations, political opinions or membership of a political party or religious or other beliefs.

The Legal Chancellor is an institution similar to an ombudsman, which can deal with cases of discrimination by public bodies and institutions on any grounds. Since 1 January 2004 the Legal Chancellor's Office became a quasi-judicial institution for disputes regarding discrimination by natural persons and legal persons in private law on the grounds of sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other grounds of discrimination provided for in the law.

### **3. Main principles and definitions**

The general principles of equality and non-discrimination in Estonian law can be found in the Constitution (primarily Article 12) and in some other laws. Only the Law on Gender Equality and the Law on Employment Contracts include very detailed definitions of direct and indirect discrimination (unequal treatment), harassment and the prohibition of the instruction to discriminate. However, according to their definitions, harassment can only take place in “a relationship of subordination or dependency”.

The Penal Code includes provisions that may protect victims from the most violent acts of harassment. Under the circumstances of “non-violent” harassment, a victim can also use those legal means that are provided by law for compensation for moral damage.

The Law on Employment Contracts does not regard it as discrimination if an employer considers sex, level of language proficiency, age or disability upon employment of a person,



or upon giving instructions or enabling access to retraining or in-service training, if it is an essential and determinative professional requirement. The same law includes provisions regarding reasonable accommodation, which was worded as the permission of preferential treatment of disabled workers in the context of the working environment (but without any positive obligations for an employer). General requirements regarding working conditions for disabled workers might be found in the Law on Occupational Health and Safety, however does not provide much detail. Partial reimbursement of employer's expenses that are necessary for the accommodation of a disabled worker is now possible on the basis of the new Law on Employment Services and Allowances.

The Law on Employment Contracts also allows preferences to be granted on the following grounds: pregnancy; confinement; care for minors or adult children or parents who are unable to work; representation of the interests of employees or membership of workers' associations. Furthermore, it is possible to allow a suitable regime of working and rest time which satisfies the religious requirements of an employee.

The concept of victimisation does not exist in Estonian law (save for the special protection afforded to an employee who is elected to represent other workers).

According to the Law on Employment Contracts, an employer can terminate an employment contract *inter alia* for reasons of the health of the employee and his or her long-term incapacity for work. Very similar provisions are applicable to public officials who can also be fired due to age. Estonian law has provided special minimum and maximum age requirements for several important positions in the public domain.

#### **4. Material scope**

Article 12 of the Constitution bans discrimination in all spheres of activities which are regulated and protected by the state. As for existing laws, there are no detailed rules against discrimination on grounds other than sex in the field of education (apart from employees' training), social protection and advantages, access to publicly available goods and service and housing.

As for the sphere of employment, the Law on Employment Contracts is applicable solely to the relations between an employer and an employee on the basis of an employment contract. However, people who have applied for employment are also protected. The prohibition of discrimination is applicable to employment and entry into employment contracts, remuneration, promotion in employment or office, giving work-related tasks, termination of employment contracts, access to retraining or in-service training or otherwise engaged in employment relations.

The Law on Employment Contracts does not regulate the work of public officials, self-employed people and some other categories of the working population. There are no special provisions regarding access to membership of workers' organisations. Furthermore, the Law does not apply to work in a religious organisation as a person conducting religious services, if the statute of the organisation does not require entry into an employment contract with such person.

The Law on Public Service and all other relevant laws do not include special anti-discrimination provisions regarding the armed forces, police, prison or emergency services and other fields of public service in Estonia. However, the Law on Employment Contracts is

applicable to the support staff (workers without a status of a public official) of the state and municipal institutions and therefore these persons are protected by relevant anti-discrimination provisions.

In the private domain, the Legal Chancellor as a special quasi-judicial body does not recognize discrimination-related complaints that concern the following: the professing and practising of faith or working as a person conducting religious services in religious organisations, relations in family or private life and exercise of the right of succession.

## 5. Enforcing the law

A victim of discrimination can use criminal procedures (if he or she has suffered from crimes stipulated by the Penal Code), administrative court procedures (e.g. complaints against action by an official or state/municipal institution) and civil procedures (e.g. moral damage) to bring forward their complaints. Additionally, a person can file an application to non-judicial entities such as the labour dispute commissions and the Legal Chancellor's Office. However, there is no developed practice of judicial or quasi-judicial bodies dealing with discrimination-related offences in Estonia.

In Estonia detailed anti-discrimination rules were established in the field of employment, while individual labour disputes regarding discrimination are solved by labour dispute resolution bodies (labour dispute commissions and courts) and the Legal Chancellor. The Law on Employment Contracts introduced a provision regarding a shift in the burden of proof. It was worded as an obligation to give clarification, but not as an obligation to prove to a labour dispute resolution body or to the Legal Chancellor, the absence of discrimination in a particular case. Special reference is made to the right to compensation for physical and moral damages to a victim of discrimination, however, no details were provided in the text of the law.

The labour dispute commissions follow a quasi-court procedure established in the Law on the Resolution of Individual Labour Disputes. Decisions must be based on law and must be substantiated.

In case of discrimination by public institutions the Legal Chancellor may be involved as an ombudsman and the procedure can be initiated on the basis of an application from the victim or on the Chancellor's own initiative. The opinion of the Legal Chancellor regarding such cases consists of a suggestion, proposal or critical notes and is not of a legally binding nature. However, the law makes provision for certain measures to ensure the fulfilment of the Legal Chancellor's suggestions and proposals. For instance, upon non-compliance with his or her suggestion or proposal or upon failure to answer his or her inquiry by a state or municipal agency, the Legal Chancellor may report such a fact to the authority which exercises supervision over the agency, to the government or to the parliament.

As a special quasi-judicial institution, the Legal Chancellor's Office may deal with discrimination by natural persons and legal persons in private law in the context of a special conciliation procedure. The aim of this procedure is to reach an agreement between the victim and the person suspected of discrimination on the above-mentioned grounds. The conciliation procedure can be initiated only on the basis of an application from the victim. The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff. It may also include an obligation to pay compensation. If the conciliation procedure fails, a victim may seek protection of his or her rights in court.



The rule that an alleged discriminator is not obliged to participate in a conciliation procedure at the Legal Chancellor's Office may be regarded as rather problematic. It makes the provision regarding the burden of proof very vague in such cases. In a conciliation procedure at the Legal Chancellor's Office, a person who has a legitimate interest in monitoring compliance with the requirements for equal treatment may also act as a representative of a victim of discrimination. No similar special rules were established for court procedures.

The Chancellor will definitely experience difficulties in dealing with discrimination on grounds other than sex and/or in fields other than ordinary employment because there are no detailed legal provisions to address these issues in Estonia.

Information about the new responsibilities of the Legal Chancellor is limited among the general public and this has resulted in a very small number of complaints being made on the basis of the new provisions of the Law on the Legal Chancellor. In 2004-2005 there were only six applications to the Legal Chancellor with a request to start a conciliation procedure and none of them resulted in an agreement. The Office does not keep separate statistics on cases of discrimination by public bodies and institutions.

There are very few NGOs in Estonia that provide assistance to discrimination victims. There were no examples of the use of situation testing or statistical evidences in anti-discrimination context in Estonian courts.

## **6. Equality body**

Since 1 January 2004 the Legal Chancellor was vested with new powers on combating discrimination in Estonian society. Now he or she is supposed to: 1) analyse the effect of the implementation of legislation to the condition of the members of the society; 2) advise and inform the Government of Estonia, governmental and local government institutions, other interested persons and the general public on issues related to the implementation of the principles of equality and equal treatment; 3) make proposals to the Government of Estonia, governmental and local government institutions and employers to change legal acts; 4) promote co-operation between private and legal persons and institutions on an international and domestic level in the interests of adherence to the principles of equality and equal treatment; 5) promote in co-operation with other persons and bodies the principles of equality and equal treatment.

The Legal Chancellor is appointed to office by the parliament, on the proposal of the President of Estonia, for a term of seven years. In directing his or her office, the Legal Chancellor has the same rights which are granted by law to a minister in directing a ministry. The Chancellor is independent in his or her decision-making and the office has a budget of its own.