



REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2008

ESTONIA

VADIM POLESHCHUK

State of affairs up to 10 January 2009

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

the Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of
the European network of legal experts in the non-discrimination field:
<http://www.non-discrimination.net/en/law/NationalLegislation/country-reportsEN.jsp>

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

The Estonian national legal system is typical for continental Europe. Historically it has been influenced by German (and to a lesser degree Russian and Scandinavian) legal traditions. The main sources of normative legal rules are provisions of the Constitution, laws and by-laws (secondary legislation). Case law (court decisions) cannot be regarded as a source of normative legal rules¹ in the way legislation of general application can. However, the decisions of the Supreme (National) Court² do influence local legal practice to a considerable extent (they can be used as guidelines by the local legal community).

At the top of the Estonian legal system is the Constitution³ which includes the most important legal provisions (including provisions regarding fundamental human rights and freedoms and general principles of non-discrimination). The next level consists of the laws adopted by the *Riigikogu* – the Parliament. According to Article 102 of the Constitution, all laws shall be adopted in accordance with the Constitution. The third level comprises other legal acts adopted by competent authorities on the basis of laws (e.g. decrees of the Government of the Republic). Additionally, there are normative acts of local self-government, which are valid on the respective territories: “[a]ll local issues shall be resolved and managed by local self-governments, which shall operate independently pursuant to law” (Article 154 (1)).

According to Article 123 of the Constitution, Estonia cannot enter into international treaties which are in conflict with its Constitution. Furthermore, “[i]f laws or other legislation of Estonia are in conflict with international treaties ratified by the *Riigikogu*, the provisions of the international treaty shall apply”. Additionally, at a referendum held on 14 September 2003, the people of Estonia amended the Constitution with the following provision⁴: “As of Estonia’s accession to the European Union, the Constitution of the Republic of Estonia applies taking account of the rights and obligations arising from the Accession Treaty.” Furthermore, “generally recognised principles and rules of international law are an inseparable part of the Estonian legal system” (Article 3 (1)).

In Estonia justice shall be administered by the courts solely in accordance with the Constitution and the law (Article 146 of the Constitution). “The court shall not apply any law or other legislation that is in conflict with the Constitution. The Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution” (Article 152).

¹ With the exception of decisions of the Supreme Court in issues which are not regulated by other sources of criminal procedural law but which arise in the application of law (Article 2 (4) of the Code of Criminal Procedure, *Kriminaalmenetluse seadustik*, RT I 2003, 27, 166, RT I 2004, 65, 456)

² *Riigikohus*, the court of highest instance in Estonia

³ *Eesti Vabariigi põhiseadus*, *Riigi Teataja* 1992, 26, 349 *Riigi Teataja* (hereinafter RT) – Official State Gazette

⁴ RT I 2003, 64, 429. Valid since 14 December 2003



A request to review the constitutionality of legislation of general application or international treaties may be filed with the Supreme Court by the President of the Republic, the Chancellor of Justice (the Chancellor of Justice)⁵, the *Riigikogu* or a local council. Additionally, a court may initiate proceedings by delivering its judgment or ruling to the Supreme Court (Article 4 of the Law on Constitutional Review Court Procedure⁶).

To sum up, provisions of the Constitution and international treaties (including those against discrimination) are directly applicable in Estonian courts and further legislation shall not violate these provisions. In the frame of certain procedures, laws and other legal acts that violate the Constitution may be proclaimed invalid by the Supreme Court.

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

Please clearly and briefly indicate whether the Member State had taken advantage of the option to defer implementation of Directive 2000/78 EC to 2 December 2006 in relation to age and disability?

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

As of 1 January 2008, 31.3% of total Estonian population were ethnic non-Estonians. The biggest minority groups were ethnic Russians (25.6%), Ukrainians (2.1%), Byelorussians (1.2%) and Finns (0.8%).⁷ The number of racial minority members and Roma in Estonia is very small. In March 2009 non-citizens (persons without Estonian citizenship) made up 16.1% of the total population, including 7.7% of de facto stateless former Soviet citizens ('persons with undefined citizenship').⁸ The overwhelming majority of resident non-citizens have settled in the country before 1991.

⁵ Õiguskantsler

⁶ Põhiseaduslikkuse järelevalve kohtumenetluse seadus, RT I 2002, 29, 174

⁷ Statistical Department; public database at <http://www.stat.ee> (10.03.2009)

⁸ Population registry; data published by Ministry of Foreign Affairs at <http://www.vm.ee> (15.03.2009)

According to the 2007 study commissioned by the Ministry of Social Affairs, quite many respondents (42%) referred to personal experience of discrimination within last three years in various areas: employment (24%), education (10%), services (26%), social relations (14%), media (12%), public administration and protection of public order (12%).⁹

Before the accession of Estonia into the EU there was no specific anti-discrimination legislation. Furthermore, most of recent positive changes in this field were the result of the harmonization of Estonian legislation with the *acquis communautaire*.

- The first specific bill prepared by the Ministry of Justice¹⁰ was the draft Law on Equality and Equal Treatment¹¹ submitted to the Parliament on 21 October 2002 (bill no. 1198 SE). It was not adopted by the *Riigikogu* before the parliamentary election of March 2003.
- In 2003 it was decided to make a special body for the promotion of equal treatment, the Chancellor of Justice¹², an ombudsman-like institution. On 11 February 2003 a number of amendments¹³ to the Law on the Chancellor of Justice¹⁴ were adopted by the Parliament, and new functions were ascribed to the institution from 1 January 2004.
- On 7 April 2004, the Parliament adopted the comprehensive Law on Gender Equality.¹⁵
- On 22 April 2004 the Estonian Parliament introduced amendments¹⁶ to the Law on Employment Contracts. According to the explanatory note attached to the draft, these amendments were to implement nine Community directives (including Directives 2000/78 and 2000/43¹⁷) in several work-related spheres.
- The new draft Law on Equal Treatment was elaborated in 2006-2007 by the Ministry of Justice in response to the concerns raised by the European Commission in an official letter to the Estonian Government. The previous government submitted the bill to the parliament on 25 January 2007 (bill no. 1101) but it was not adopted before the national elections of 4 March 2007. However, on 24 May 2007 the new government approved a revised text of the draft Law on Equal Treatment, which was submitted to the parliament on 30 May 2007 (bill no. 67). The bill was not adopted in the course of the final voting on 7 May 2008. On 8 May 2008 the ruling coalition parliamentary factions initiated a new similar bill (bill no. 262), which was not adopted in the course of the final voting on 23 October 2008. A new similar bill (bill no. 384) was submitted by the ruling coalition parliamentary factions on 6 November 2008. The bill was adopted on 11 December 2008.

The Law on Equal Treatment¹⁸ amended several legal acts. Thus specific anti-discrimination requirements were introduced into the Law on Public Service.

⁹ Mikko Lagerspetz, Krista Hinno, Sofia Joons, Erle Rikmann, Mari Sepp, Tanel Vallimäe. *Isiku tunnuste või sotsiaalse positsiooni tõttu aset leidev ebavõrdne kohtlemine: elanike hoiakud, kogemused ja teadlikkus*. Uuringuraport ("Unequal Treatment on Grounds of Individual or Social Characteristics: Attitudes, Experiences and Awareness of the Population"), Tallinn, 2007, p. 23

¹⁰ *Justiitsministeerium*

¹¹ *Võrdõiguslikkuse ja võrdse kohtlemise seaduse eelnõu*.

¹² *Õiguskantsler*.

¹³ RT I 2003, 23, 142

¹⁴ *Õiguskantsleri seadus*, RT I 1999, 29, 406

¹⁵ *Soolise võrdõiguslikkuse seadus*, RT I 2004, 27, 181

¹⁶ RT I 2004, 37, 256

¹⁷ See explanatory note attached to the Draft no. 330 SE (10th *Riigikogu*); available at <http://www.riigikogu.ee> (01.05.2008)

¹⁸ *Võrdse kohtlemise seadus*, RT I 2008, 56, 315

The Law on Employment Contracts has also been changed. It is worth mentioning, however, that on 17 December 2008 the parliament adopted a new Law on Employment Contracts.¹⁹ This law will be valid from 1 July 2009 and it does not contain any detailed anti-discrimination provisions.

The Law on Equal Treatment is valid from 1 January 2009. The amendments to the Law on Employment Contracts, Law on Public Service etc entered into force the same day.

- In general most provisions of the adopted Law on Equal Treatment (bill no. 384) are very similar to those of the directives. It deals with five relevant grounds (ethnic origin, race, religion or other beliefs, age, disability or sexual orientation) plus colour. Material and personal scope of the Estonian act and of the Directives are almost identical. The law introduced a new equality body in the meaning of the Directive 2000/43.
- Some previous drafts of the Law on Equal Treatment provided more protection than it was required by the EU law. However, the Parliament did not support such approach.
- In general, the new Law on Employment Contracts (valid from July 2009), the current amended Law on Employment Contracts and the Law on Public Service do not provide detailed anti-discrimination rules but include references to the Law on Equal Treatment and the Law on Gender Equality. Furthermore, both latter laws are applicable in case of discrimination on the basis of any attribute specified in the current Law on Employment Contracts (Article 10) and the Law on Public Service (Article 36¹ (2)).²⁰ In other words, by virtue of these provisions there are more protected grounds in private and public employment as compared with the grounds explicitly specified in the Law on Gender Equality and the Law on Equal Treatment.
- Article 9 (1) of the Law on Equal Treatment permits direct discrimination on the grounds of race and ethnicity in the circumstances other than genuine and determining occupational requirements or positive action measures. This provision will hardly be in line with the requirements of the Directive 2000/43.
- Article 36¹ (3) of the Law on Public Service excludes official linguistic requirements established for public officials from the scope of anti-discrimination requirements. So far as linguistic discrimination can be a form of ethnic/racial discrimination this provision might be in conflict with the Directive 2000/43.
- There are no specific provisions regarding legal standing of ‘a person who has legitimate interest to check compliance with the requirements for equal treatment’ in the areas outside 1. discrimination disputes in private employment; 2. conciliation procedure at the Chancellor of Justice (regarding discrimination by natural persons and legal persons in private law).
- There are no provisions to guarantee that sanctions applicable to infringements of the national anti-discrimination provisions are effective, proportionate and dissuasive (in the areas outside criminal law).

¹⁹ *Töölepingu seadus*, RT I 2009, 5, 35

²⁰ The grounds enlisted in the Law on Employment Contracts (Article 10) and the Law on Public Service (Article 36¹ (2)) are: sex, ethnic origin, race, colour, religion or other beliefs, age, disability, sexual orientation, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees. Upon discrimination on the basis of any specified attribute, the Law on Equal Treatment or the Law on Gender Equality applies. Law on Gender Equality provides protection against gender discrimination (Article 1 (1)).



0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (no more than several sentences)

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

As was mentioned above, case law (court decisions) cannot be regarded as a source of normative legal rules in Estonia, although the decisions of the Supreme Court do have a significant practical importance.

In recent years references to discrimination have been quite rare in the Estonian courts. However, the Supreme Court heard several cases where alleged discrimination or unequal treatment was among the parties' main arguments. They normally cited Article 12 of the Constitution. Relevant details in this regard will be presented in the next section of this report. Anyway, the practice of the Supreme Court regarding the interpretation and implementation of Article 12 of the Constitution is neither detailed nor comprehensive.

The Supreme Court did not have a chance to deal with cases based on provisions which were to transpose the directives into national legislation. There were few decisions of the first and second court instances in cases where one of the parties referred to the Directive 2000/43 or to relevant national provisions. However, the role of these arguments was marginal (see an example below).

No trends and patterns in cases brought by Roma and Travellers or in cases on Roma and Travellers can be described by the author of this report on the basis of the data publicly available.

**Case of I.T.****Name of the court:** Tallinn District Court²¹**Date of decision:** 5 September 2006**Name of the parties:** I. T. and Tallinn Pension Department²²**Reference number:** administrative case no. 3-06-905**Address of the web-page:** <http://www.kohus.ee/kohtulahendid/temp/3-06-905.pdf>**Brief summary of the key points of law and of the actual facts:**

According to the amendments to the Law on Police Service²³ (which entered into force 1 July 2004²⁴), the period of service as a police officer and as a preliminary investigator or senior preliminary investigation official of the Pre-trial Investigation Authority of the Republic of Estonia from 1 March 1991 to 1 September 1994 shall be included in the length of police service under favourable conditions multiplied by three (i.e. the issue at stake is a higher pension for policemen). However, according to the same amendment this rule will apply in respect of persons who are employed as police officers on the date of entry into force of this version or after the entry into force of thereof (Article 51 (9)).

Certain I.T. filed a complaint against the Tallinn Pension Department claiming discrimination and violation of the Council Directive 2000/43. The claimant argues that these provisions are discriminatory in respect of ethnic minority members who have had to leave *en mass* the police service before July 2004 due to absence of Estonian citizenship or poor proficiency in the Estonian language. The Tallinn Administrative Court did not recognise discrimination in the meaning of the 'Race' Directive arguing that there were no racially/ethnically motivated differentiation in the group of persons who had left the police service before July 2004. The claimant appealed claiming, *inter alia*, misinterpretation of the Directive provisions regarding indirect discrimination.

The Tallinn District Court did not find discrimination claiming that I.T. failed to prove that he belonged to the group of ethnic non-Estonians who had arguably left the police service due to absence of Estonian citizenship or poor Estonian language proficiency. The court made it clear that a victim of alleged indirect discrimination has to prove his or her belonging to the group that is arguably subjected to disadvantageous treatment.

²¹ Tallinna Ringkonnakohus

²² Tallinna Pensionamet

²³ Politseiteenistuse seadus, RT I 1998, 50, 753

²⁴ RT I 2007, 44, 314



1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

Article 11 of the Estonian Constitution stipulates that rights or freedoms may be restricted only in accordance with the Constitution, while Article 12 of the Constitution establishes an explicit ban on discrimination:

“Everyone is equal before the law. No one shall be discriminated against on the basis of ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

The incitement of ethnic, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable”.

In one of its decisions the Constitutional Review Chamber of the Supreme Court claimed that the general principle of equality is applicable to “all spheres of life”²⁵. As it was summarised by an Estonian scholar who studied the application of this provision by the Supreme Court, “Article 12 of the Constitution does ban unequal treatment in all spheres of activities which are regulated and protected by the State. Legislative, executive and judicial powers should observe the principle of equal treatment... The principle of equal treatment is valid for all laws regardless of their scope of application”.²⁶ In other words, the material scope of the application of Article 12 of the Estonian Constitution is wider than that of the Directives (as stipulated in Article 3 (1) of both Directives).

The principle of equality before the law as established in Article 12 was interpreted in a decision of the Constitutional Review Chamber of the Supreme Court²⁷:

"17.The equality of legislation requires, as a rule, that persons who are in similar situations must be treated equally by law. This principle expresses the idea of essential equality: those who are equal, have to be treated equally and those who are unequal must be treated unequally. But not every unequal treatment of equals amounts to the violation of the right to equality.

The prohibition to treat equal persons unequally has been violated if two persons, groups of persons or situations are treated arbitrarily unequally. An unequal treatment can be regarded arbitrary if there is no reasonable cause therefore.

²⁵ Decision of the Constitutional Review Chamber of the Supreme Court of 6 March 2002; published in RT III 2002, 8, 74 (section 13)

²⁶ Katri Lõhmus, *Võrdsusõiguse kontroll Riigikohtus ja Euroopa Inimõiguste Kohtus (Control over Equality in the Supreme Court and in the European Court of Human Rights)*, *Juridica* no.2, vol. 11 (2003), p.109

²⁷ Decision of the Constitutional Review Chamber of the Supreme Court of 3 April 2002; published in RT III 2002, 11, 108



The Chamber admits that although the review of arbitrariness is extended to the legislator, the latter must be awarded a wide margin of appreciation. If there is a reasonable and appropriate cause, unequal treatment in legislation is justified".

As decided by the Supreme Court, whether unequal treatment is justified or unjustified (i.e. arbitrary) can only arise if the groups who are treated differently are comparable, i.e. they are in an analogous situation from the aspect of concrete differentiation.²⁸

Anyway, breach of equality before the law is interpreted by the Supreme Court as infringement of the fundamental right.²⁹

In one of its decisions the Constitutional Review Chamber stated that public authorities cannot justify unequal treatment solely with reference to difficulties of an administrative or technical character³⁰.

The second sentence of Article 12 (1) of the Constitution does not provide an exhaustive list of grounds for discrimination. According to the formal legal interpretation of different scholars, this provision might be a basis for protection against discrimination on any grounds³¹. This approach was confirmed by the Supreme Court. For instance, in 2007 it studied the question regarding discrimination on the basis of age in terms of application of Article 12 (1) while age is not explicitly mentioned in this constitutional provision.³²

It is worth mentioning that in April 2005 the Civil Law Chamber of the Supreme Court delivered a decision³³ in an 'equal pay for equal work' case in which it came to the conclusion that any payment might be made for work agreed by a worker and an employer if their agreement did not violate Article³⁴ 51 of the Law on Wages³⁵ and Article 10 of the Law on Employment Contracts (both included the *exhaustive* lists of the grounds of banned discrimination). Importantly, in its analysis, the Court did not use Article 12 of the Constitution, with its open-ended list of grounds. Nevertheless, the Chancellor of Justice (specialised body) believes that the list provided in Article 10 of the Law on Employment Contracts only emphasises the most important grounds of prohibited discrimination. He argues that by virtue of Article 12 of the Constitution and general principles of law (respect for fundamental rights and freedoms) in employment relations the list of grounds of prohibited discrimination shall be regarded as open or unlimited³⁶.

²⁸ Decision of the Supreme Court *en banc* of 27 June 2005; published in RTIII 2005, 24, 248 (point 40)

²⁹ Decision of the Constitutional Review Chamber of the Supreme Court of 6 March 2002; published in RT III 2002, 8, 74 (point 13)

³⁰ Decision of the Constitutional Review Chamber of the Supreme Court of 21 January 2004; published in RT III 2004, 5, 45 (point 39)

³¹ However, some scholars do not follow this approach. See details in Katri Lõhmus, *Võrdsusõiguse kontroll Riigikohtus ja Euroopa Inimõiguste Kohtus (Control over Right to Equality in the Supreme Court and in the European Court of Human Rights)*, *Juridica* no.2, vol. 11 (2003), p.109

³² Decision of the Civil Law Chamber of the Supreme Court of 1 October 2007; published RT III 2007, 34, 274

³³ Decision of the Civil Law Chamber of the Supreme Court of 28 April 2005; published in RT III 2005, 16, 166

³⁴ In Estonia, special numbering may be used for new articles that are to amend the text of the law. For instance, Article 21, Article 22, etc means that the text was amended with new provisions that were placed between Article 2 and Article 3.

³⁵ *Palgaseadus*, RT I 1994, 11, 154

³⁶ Chancellor of Justice; Written communication no. 6-1/060300/0602801 of 19 April 2006



To sum up, a flexible mechanism of protection against discrimination can be based on Article 12 of the Constitution. However, there is no developed and comprehensive practice of application of these provisions by the Supreme Court.

Article 9(1) of the Constitution guarantees rights and freedoms for both citizens of Estonia and foreigners on its territory. However, the Constitution also permits differential treatment of non-citizens in certain social fields, e.g. in Articles 28, 29 and 31 (see section 4.4 of this report for details).

According to Article 49 of the Constitution, "everyone has the right to preserve his or her ethnic identity". Freedom of conscience and religion is proclaimed in Article 40.

The Constitution also provides special guarantees to the elderly and disabled: "...An Estonian citizen has the right to state assistance in the instances of old age, incapacity to work, loss of a provider, or need. The categories and extent of assistance, and the conditions and procedure for the receipt of assistance shall be provided by law..." (Article 28 (2)).

The constitutional principle of non-discrimination is repeated in some other laws, e.g. in the Law on Cultural Autonomy of National Minorities³⁷ (Article 3), the Law on Wages (Article 5) and the Law on Advertising³⁸ (Article 3 (4) 10, which bans offensive and discriminatory advertising), etc.

b) Are constitutional anti-discrimination provisions directly applicable?

Yes. Article 12 of the Constitution is directly applicable as well as other relevant constitutional provisions.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

On personal scope, there are no limitations on using the provisions of Article 12 against the state, public bodies or institutions as well as against natural and legal private persons.

³⁷ Vähemusrahvuse kultuuriautonomias seadus, RT I 1993, 71, 1001

³⁸ Reklamiseadus, RT I 2008, 15, 108



2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

As was mentioned above in section 1 of this report, Article 12 of the Estonian Constitution does ban discrimination on any ground.

The Penal Code³⁹ bans activities which publicly incite people to hatred or violence on the basis of ethnic origin, race, colour, sex, language, origin, religion⁴⁰, sexual orientation, political opinion or financial or social status (Article 151). Article 152 of the Code penalises ‘violation of equality’, which is referred to as “unlawful restriction of the rights of a human being or granting of unlawful preferences to a human being (*inimene*) on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion or financial or social status”. Additionally, Article 153 of the Code banned discrimination based on the genetic characteristics of the person, and Articles 154-155 provide for the protection of freedom of religion. Emphasis should be placed on the fact that such grounds as age and disability are not referred to in Articles 151 and 152 of the Penal Code. However, sexual orientation as a protected ground was added to the text of the Code in 2006.⁴¹

The purpose of the Law on Equal Treatment is to ensure the protection of persons against discrimination on the grounds of ethnic origin⁴², race, colour, religion or other beliefs, age, disability or sexual orientation (Article 1 (1)).

The amended current Law on Employment Contracts (valid until 1 July 2009) prohibits discrimination on the basis of sex, ethnic origin, race, colour, religion or other beliefs, age, disability, sexual orientation, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees. “*Upon discrimination on the basis of any specified attribute, the Law on Equal Treatment or the Law on Gender Equality applies*” (Article 10; italics added). Identical provision can be found in the Law on Public Service (36¹ (2)).

Interestingly, in the amended Law on Employment Contracts ‘political opinions or membership of a political party’ as a protected ground was abolished while ‘colour’ was introduced as such a ground. This issue was not publicly debated. It is not clear if political opinions can be covered by ‘other beliefs’ (see above).

Thus, the Law on Employment Contracts and the Law on Public Service enlist more protected grounds as compared with the Law on Equal Treatment.

³⁹ *Karistusseadustik*, RT I 2001, 61, 364, RT I 2002, 86, 504

⁴⁰ In the Estonian context the term ‘religion’ (*usutunnistus*) would refer to any religious belief.

⁴¹ RT I 2006, 31, 234

⁴² In the original: *rahvus* (*etniline kuuluvus*), i.e. nationality (ethnic origin or ethnic belonging). The term ‘nationality’ (*rahvus*) in Estonia refers to ethnic origin only. In this report we shall use only the term ‘ethnic origin’ to avoid misinterpretations.

Furthermore, the latter law shall be used in case of discrimination on these additional grounds. To solve possible problems with legal interpretation the Law on Equal Treatment was equipped with specific Article 2 (3) which says that this law “does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified in Article 1 (1) of this law, in particular due to family-related duties, social status, representation the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces⁴³”.

The new Law on Employment Contracts (valid since 1 July 2008) does not include any specific anti-discrimination requirements but explicitly refers to the Law on Gender Equality and the Law on Equal Treatment (Article 3).

Article 5 of the Law on Wages prohibits increasing or reducing wages on the grounds of an employee’s sex, ethnic origin, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the defence forces. It also prohibits reducing wages on the grounds of marital status, family obligations, membership in citizens’ associations or representation of the interests of employees or employers. The Law on Wages does not explicitly mention such grounds as age, disability or sexual orientation.

The Law on Gender Equality prohibits discrimination on the ground of sex (Article 1 (2)).

Table 1. List of protected grounds

Constitution (Article 12)	ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status or other grounds
Penal Code (Articles 151-153)	ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status (incitement and discrimination), genetic risks (discrimination)
Law on Equal Treatment (Article 1 (1) and 2 (3))	ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation; the Law does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified above, in particular due to family-related duties, social status, representation the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces
Law on Employment Contracts, valid until 1 July 2009 (Article 10)	sex, ethnic origin, race, colour, religion or other beliefs, age, disability, sexual orientation, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees; upon discrimination on the basis of any of these attributes, the Law on Equal Treatment or the Law on Gender Equality applies

⁴³ These are additional grounds enlisted in the current Law on Employment Contracts and the Law on Public Service (see above). However, for an unidentified reason lawmakers opted out ‘marital or family status’. Regulation in this area will not be so clear from 1 July 2009 if the new Law on Employment Contracts enters into force (this law does not enlist any grounds of discrimination but it makes references to the Law on Equal Treatment and the Law on Gender Equality). See also Table 1.



Law on Public Service (Article 36 ¹ (2))	sex, ethnic origin, race, colour, religion or other beliefs, age, disability, sexual orientation, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees; upon discrimination on the basis of any of these attributes, the Law on Equal Treatment or the Law on Gender Equality applies
(new) Law on Employment Contracts, valid from 1 July 2009 (Article 3)	References to the Law on Equal Treatment and Law on Gender Equality.
Law on Gender Equality (Article 1 (1))	sex
Law on Wages (Article 5)	sex, ethnic origin, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the defence forces (increasing or reducing wages); marital status, family obligations, membership in citizens' associations or representation of the interests of employees or employers (reducing wages)

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*
Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

The national current *anti-discrimination legislation* does not include special definitions of racial or ethnic origin, religion or belief, age or sexual orientation. There is no case law to address this issue either.

The new Law on Equal Treatment (Article 5) stipulates a definition of 'disability' which includes: 1. terminology of the Law on Social Benefits for Disabled Persons⁴⁴ (Article 5) but without references to the necessity of personal assistance, guidance or supervision for a disabled person; 2. references to everyday (day-to-day) activities which are very similar to those provided in Article 1 (1) of the Disability Discrimination Act (UK):

⁴⁴ Puuetega inimeste sotsiaaltoetuste seadus, RT I 1999, 16, 273; RT I 2002, 39, 245

For the purposes of this act, disability is the loss of or an abnormality in an anatomical, physiological or mental structure or function of a person which has a substantial and long-term adverse effect on the performance of everyday activities.

According to the case C-13/05, Chacón Navas⁴⁵:

- “The concept of ‘disability’ must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life” (paragraph 43).
- “In order for the limitation to fall within the concept of ‘disability’, it must therefore be probable that it will last for a long time” (paragraph 45)
- “There is nothing in Directive 2000/78 to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness” (paragraph 46).

Thus, such elements of the Estonian definition as “the loss of or an abnormality in an anatomical, physiological or mental structure or function of a person”, “substantial and long-term adverse effect” are in line with the concept of disability worded in case C-13/05. Furthermore, the currently proposed Estonian legislation seems to be (in most of probable cases⁴⁶) even wider and more inclusive because it makes a reference to the consequences of impairment in day-to-day activities, not in professional life.⁴⁷

While the Law on Equal Treatment does not provide for definition of racial or ethnic origin, religion or belief, age or sexual orientation, some guidelines are included into the explanatory note, which was attached to the bill (see below).

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a ‘religion’; or a “disability”, sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national legislation against discrimination?

Estonian anti-discrimination law does define the term ‘disability’ (see previous section).

Recital 17 of Directive 2000/78/EC was not specifically reflected in the national legislation against discrimination.

It is worth mentioning that the Law on Gender Equality does not refer to sexual orientation.

The explanatory note which was attached to the draft Law on Equal Treatment included the following clarifications regarding the protected grounds:⁴⁸

⁴⁵ European Court reports 2006 Page I-06467

⁴⁶ In theory in some cases impairment in professional activities may be wider than impairment in day-to-day life as it was proved by the UK case law which sought to refer to *Navas* definition.

⁴⁷ The initial version of the bill (then bill no. 67) was to protect against disability discrimination in all areas of social life. Later the Parliament decided to limit the protection to professional life only. However, the wording of definition of ‘a disability’ remained unaltered and it was used for the draft no. 384, which was finally adopted.

⁴⁸ See explanatory note attached to the Draft no. 384 SE (11th Riigikogu); available at <http://www.riigikogu.ee> (20.03.2009).

- *Race* ('rass') – a group of people with certain hereditary features;
- *Ethnicity* ('rahvus') – ethnic origin; not to be mixed with *nationality/citizenship* ('kodakondsus');
- *Religious, political and other beliefs* ('Usutunnistus, poliitilised või muud veendumused') – religious beliefs refer to a religious 'world view'; political and other beliefs are all non-religious beliefs.⁴⁹

There is no mandatory registration of ethnic origin in Estonian identification documents. In fact, people are free to choose any ethnic affiliation. Estonian legislation includes only the definition of a 'national minority' which is normally understood as a 'privileged' ethnic minority group. One of the basic elements of the definition of national minority members is that they are citizens of Estonia who "differ from Estonians by their ethnic affiliation, cultural and religious idiosyncrasies, or language" (Article 1 of the Law on Cultural Autonomy of National Minorities). The State Programme "Integration in Estonian Society 2000-2007" (approved by the Government of the Republic in 2000) made a distinction (in section 6.2.1) between a 'national minority' and an 'ethnic minority'. Those who came to live in Estonia after the Second World War as a result of migration were classified as ethnic minorities. This differentiation is rarely used in practice.

At the moment in Estonia the terms 'ethnic origin' ('etniline päritolu') and 'nationality' ('rahvus') are normally used as synonyms while ethnic affiliation is understood by many policymakers and ordinary persons in primordial terms. Conversely, the term 'citizenship' ('kodakondsus') is ethnically neutral. According to the 2000 national census results there were representatives of more than 100 ethnic groups residing in Estonia (including Roma as a single ethnic group). As of 1 January 2008 the total Estonian population was 1,340,935 (ethnic Estonians made up 68.7% (920,885) and ethnic Russians 25.6% (343,568)). Other relatively big ethnic groups were Ukrainians, Byelorussians, Finns, Tatars, Latvians, Poles, etc.⁵⁰

According to the data of the Population Registry⁵¹, in 1992 only 68% of all population were citizens of Estonia. As of 2 March 2009 persons who were not citizens of Estonia (non-citizens) made up 16.1% of the total population: 7.7% were stateless former Soviet citizens ('persons with undefined citizenship') and 8.4% were citizens of foreign States. The largest group of foreign citizens in Estonia are citizens of the Russian Federation, which are mostly former Soviet citizens who have adopted Russian citizenship after 1991 while remaining resident in Estonia.⁵²

The explanatory note does not include clarification for such grounds as 'age' and 'sexual orientation' (but provides the reasons of their incorporation into the text of the draft law).

- c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

There are no such provisions in current or draft Estonian legislation.

⁴⁹ Atheism in Estonia is normally qualified as a non-religious belief.

⁵⁰ Statistical Office of Estonia; public database available at: <http://www.stat.ee> (10.03.2009).

⁵¹ *Rahvastikuregister*

⁵² Ministry of Foreign Affairs; Information available at: <http://www.vm.ee> (15.03.2009).



- d) *Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
- *Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

There are no data about any relevant court cases and other procedures. The issue of multiple discrimination is not explicitly addressed in national legislation. There are no plans to adopt or modify legal rules to this end. Additional guidelines/requirements on national or European level might be of great importance.

- e) *How have multiple discrimination cases involving one of Art. 13 grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

There are no data about any relevant court cases.

2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

National law or case law is silent about these issues.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

National law or case law is silent about these issues.

The case C-303/06 (Coleman) was not mentioned in the explanatory note of the draft Law on Equal Treatment. The outcomes of the Coleman case have not been considered upon adoption of the Law on Equal Treatment in December 2008. The analysis of Estonian disability definition is provided in section 2.1.1.a of this report. This definition does not *explicitly* refer to discrimination based on association with disability (disabled persons). This statement is equally valid for all other grounds. It is not clear in which way the Coleman case will be considered by Estonian judiciary.

However, it is worth mentioning that both the current Law on Employment Contracts (Article 10) and Law on Public Service (Article 36-1 (2)) ban discrimination on such grounds as marital or family status or family-related duties. These provisions might be used in case of discrimination based on disability of family members of an employee/public official.



2.2 Direct discrimination (Article 2(2)(a))

a) *How is direct discrimination defined in national law?*

As of 1 January 2009 two laws include detailed definitions of the term: the Law on Gender Equality and the Law on Equal Treatment.

According to the new Law on Equal Treatment ‘direct discrimination’ shall be taken to occur where, on the basis of an attribute specified in Article 1 (1) of this act (i.e. ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation), one person is treated less favourably than another is, has been or would be treated in a comparable situation (Article 3 (2)). This definition is identical with that of the Directives.

b) *Are discriminatory statements or discriminatory job vacancies announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)*

The new Law on Equal Treatment does not specifically address this issue.

The Law on Gender Equality provides that offers of employment and training which are directed at persons of one sex only are prohibited unless a difference of treatment constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate; or in case of positive action measures (Article 8). This provision can be relevant in cases of multiple discrimination.

In 2007 certain barkeeper H. made statement to the media that he had instructed his personal not to provide services to people making orders in Russian.⁵³ The local NGO ENAR-Estonia addressed the Chancellor of Justice (ombudsman and equality body) with the request to warn the barkeeper about illegal and discriminatory character of his actions. The Chancellor refused to deal with this request claiming absence of competence. The Chancellor argued that in case of discrimination by private legal and natural persons he may only deal with concrete victims on the basis of Article 19 (2) of the Law on the Chancellor of Justice (conciliation procedure; see section 6.1) not with a statement in a newspaper.⁵⁴ Thus, this case was solved with the reference to purely procedural norms and it took place before the adoption of the Law on Equal Treatment with its detailed antidiscrimination provisions concerning access to services. However, Estonian legal doctrine will hardly recognise an organisation as a victim of ethnic or racial discrimination (see section 3.1.2 of this report for details).

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

According to the ‘new’ Law on Equal Treatment (Article 9 (3)):

“The following is not deemed to be discrimination in labour relations:

⁵³ "Eesti Ekspress", 23 August 2007

⁵⁴ Chancellor of Justice; Written communication no. 14-1/071647/0707713 of 13 November 2007.



- 1) grant of preferences on grounds of representing the interests of employees or membership in an association representing the interests of employees if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary;⁵⁵
- 2) grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work”.

The same exceptions can be found in Article 10¹ of the current Law on Employment Contracts. This law also allows a suitable working and rest time regime which satisfies the religious requirements of an employee.

The Law on Equal Treatment has also introduced provisions (Article 10) regarding occupational requirements, which are almost identical with that in the Directives 2000/43 and 2000/78 (including rules established in the interests of organisations the ethos of which is based on religion or belief). These provisions are completely in line with the Directives.

Article 10¹ of the Law on Employment Contracts in its previous version permitted to take into account the sex, level of language proficiency, age or disability of an employer if justified. As it was mentioned above, the new Law on Equal Treatment (and its provisions regarding genuine occupational requirement) is applicable in case of discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation.

Importantly, the Law on Equal Treatment has also established general exception in Article 9 (1):

This act shall be without prejudice to measures laid down by law which are necessary for the maintenance of public order, for public security, for the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others. These measures achieving the aim shall be proportionate to it.

This wording is seemingly based on two provisions:

- Article 2 (5) of the Directive 2000/78 (however, there are no references to ‘a democratic society’ but to the principle of proportionality)⁵⁶
- Article 11 of the Estonian Constitution ("Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted".)

In general, the exception provided in Article 9 (1) of the Law on Equal Treatment provision cannot be regarded as being in line with the Directive 2000/43, which provides more advanced protection against ethnic or racial discrimination.

⁵⁵ In practical terms this provision was designed to protect specific status of trade union members and trade union activists/officials in employment relations.

⁵⁶ Initial version of the draft law (bill. 67) did not permit these measures in the context of ethnic and racial discrimination. As stated in the explanatory note, this approach was based on understanding of the Directives. This initial version, however, was amended by the parliament without any public debates. This amended version was used for the drafts nos. 262 and 384 (the latter was adopted in December 2008).



Difference in treatment on the basis of ethnic or racial origin in the form of *direct* discrimination is justified in case of genuine and determining occupational requirement (Article 4 (1) of the Directive 2000/43 and Article 10 of the Law on Equal Treatment). Differential treatment in the framework of the positive action measures is another possibility (Article 5 of the Directive). No other exceptions are possible. It will be very important to monitor practical implementation of Article 9 (1) of the Law on Equal Treatment.

This provision does not contradict, however, the Directive 2000/78 in the context of discrimination on the grounds of religion or belief, disability, age or sexual orientation. Article 9 (1) is based on exception provided in Article 2 (5) of the Directive (see section 4.8 of this report for more details).

The Law on Equal Treatment (Article 29 (5)) has introduced to the Law on Public Service a new Article 36¹ (3). It maintains that unequal treatment on the basis of language proficiency is permitted if provided for in the Law on Public Service or in Law on Language. See section 2.3.e for detailed analysis.

d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

There are no specific provisions to address this issue in Estonian current or draft legislation (other than those mentioned in section 2.2.a).

2.2.1 Situation Testing

a) Does national law permit the use of 'situational testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court?. For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation?

The national law does not specifically address the use of 'situational testing'. There is no case law on this matter either. There are no indications that foreign case law may influence the situation in Estonia in this regard.

The Code of Civil Procedure⁵⁷ provides for the following concept of evidence (Article 229):

- 1) "Evidence in a civil matter is any information which is in a procedural form provided by law and on the basis of which the court, pursuant to the procedure provided by law, ascertains the existence or lack of facts on which the claims and objections of the parties and other participants in the proceedings are based and other facts relevant to the just adjudication of the matter.
- 2) Evidence may be the testimony of a witness, statements of a party or third party, documentary evidence, physical evidence, an on-the-spot visit of inspection or an expert opinion..."

⁵⁷ Tsiviilkohtumenetluse seadustik, RT I 2005, 26, 197; 2005, 49, 395



The formal interpretation of these provisions leads us to believe that situation testing could be recognised by Estonian courts.

- b) *Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

The author believes that the main reason for the lack of relevant case law is not necessary reluctance but low level of awareness about such methods of proves.

- c) *Outline important case-law within the national legal system on this issue.*

No data available.

- d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs, equality body, etc)*

The author is also not aware of any cases in which Estonian trade unions, NGOs or any other institutions have applied this method in practice.

2.3 Indirect discrimination (Article 2(2)(b))

- a) *How is indirect discrimination defined in national law?*

According to the new Law on Equal Treatment, indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons, on the basis of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation, at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 3 (4)). This provision is identical with those in the Directives.

- b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

The law does not provide much detail regarding the test which must be satisfied to justify indirect discrimination (see 2.3.a).

The new Law on Equal Treatment has introduced provisions (Article 10) regarding occupational requirements, which are almost identical with that in the Directives 2000/43 and 2000/78 (including rules established in the interests of organisations the ethos of which is based on religion or belief). These provisions are completely in line with the Directives.



According to Article 10¹ of the Law on Employment Contracts, “allowing a suitable working and rest time regime which satisfies the religious requirements of an employee” is not regarded as discrimination (see also section 2.2.c of this report).

In the context of justification of *indirect* discrimination Article 9 (1) of the Law on Equal Treatment can also be used (see sections 2.2.c and 4.8 of this report).

c) Is this compatible with the Directives?

The relevant provisions of the Law on Equal Treatment and Law on Employment Contracts (see section 2.3.b above) appear to be in line with the Directives.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

The Law on Equal Treatment does not stipulate how a comparison is to be made in cases of age discrimination. Similar provisions cannot be either found in the other valid or draft legislation.

e) Have differences in treatment based on language been perceived as indirect discrimination on the grounds of racial or ethnic origin?

According to Article 10¹ (3) of the current Law on Employment Contracts ‘language proficiency’ is one of the protected grounds. In other words in most fields of private employment such discrimination (both direct and indirect) is explicitly prohibited. This law is valid until 1 July 2008. The new Law on Employment Contracts does not contain specific anti-discrimination provisions. However, Article 2 (3) of the Law on Equal Treatment stipulates that this act does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified this Act, including level of language proficiency.

The amended Law on Public Service specifically refers to ‘a level of language proficiency’ as to a protected ground (Article 36¹ (2)). However, this provision shall be used in conjunction with the rule stipulated in Article 36¹ (3), i.e. ‘a level of language proficiency’ is a protected ground solely in the areas/relations outside the officially established language requirements (see details below).

In Estonia language proficiency requirements may be officially established in both public and private sectors of employment (Article 5 of the Law on Language). In general, it is interpreted in Estonia as officially established occupational requirements.

Provided language (language proficiency) discrimination may constitute indirect discrimination on the grounds of racial or ethnic origin, we shall check if officially established linguistic requirements can be objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary (Article 2 (2) of the Directive 2000/43).

In general the Law on Language established the standards to ensure that official linguistic requirements are justified and proportionate.



As regards the sphere of private employment,

[t]he use of Estonian by companies, non-profit associations and foundations, by employees thereof and by sole proprietors is regulated if it is in the public interest, which, for the purposes of this Law, means public safety, public order, general government, education, public health, consumer protection and occupational safety. The establishment of requirements concerning proficiency in and use of Estonian shall be *justified and in proportion to the objective* being sought and *shall not distort the nature of the rights* which are restricted (Article 2¹ (2)) (italics added).

The Law on Language does not include justification of linguistic requirements for public officials. However, the Estonian is the only official language (*riigikeel*) in Estonia and such requirements are presumably legitimate. The law also includes standards to ensure the principle of proportionality:

Public servants and employees of state institutions governed by governmental institutions and institutions of local governments, as well as legal persons of the public law and the employees of their institutions, notaries, bailiffs, sworn translators and the employees of their offices shall be proficient and use the Estonian language *at a level required for performing official duties or work tasks* (Article 5 (2)) (italics added).

Within the limits of its competence (as provided for in the Law on Language, Article 5 (5)) language requirements are stipulated by decrees of the Government of the Republic. Alternatively, employers are supposed to monitor language proficiency of their employees if required by valid legislation.⁵⁸

It is worth mentioning, however, that Estonian lawmakers decided to avoid any possible complications related to language proficiency requirements for public officials. Article 36¹ (3) of the amended Law on Public Service reads as follows: “A difference of treatment which is based on the level of language proficiency is not deemed to be discrimination if such difference of treatment is permitted by this Act or the Law on Language”. This exception is hardly in line with Directive 2000/43.

To sum up, official Estonian language proficiency requirements are permissible in the context of the Directive 2000/43 if they meet the criteria established to justify indirect discrimination on the grounds of racial or ethnic origin. Considering specific provisions of the Law on Language, such requirements shall meet the criteria of legitimacy and proportionality. If they fail to meet these criteria, they may be regarded as discriminatory (and courts shall be ready to use legitimacy and proportionality test in individual cases). This is also the case for public officials because non-proportionate language proficiency requirements violate Law on Language and therefore cannot be regarded as ‘permissible’ unequal treatment.

In June 2008 the Chancellor of Justice (ombudsman and equality body) started the procedure on the basis of the application of the NGO Legal Information Centre for Human Rights (LICHHR). It concerned alleged discrimination of teachers of minority origin.

⁵⁸ The justification tests for linguistic requirements are developed in the frame of heated debates in 1990s and early 2000s. The general understanding in Estonia is that the State has more rights to interfere in public sector than in private one.



The application was submitted on the basis of Article 15 of the Law of the Chancellor of Justice, which ensures everyone's right of recourse to the Chancellor to review the conformity of an act or other legislation of general application with the Constitution or the law. The applicant organisation claimed that several legal provisions are in violation of Article 12 of the Constitution (ban of discrimination).

From 1 September 2008 the Law on Basic Schools and Upper Secondary Schools and the Law on Vocational Educational Institutions have been amended to introduce the so-called beginners' allowances (*lähtetoetused*), which are to be paid to those who will start their teachers' career outside the largest Estonian cities of Tallinn or Tartu. One of the established requirements for recipients is the Estonian language proficiency at the 'highest level' (then one of three officially established proficiency levels in Estonia). However, according to the valid legislation most of teachers in Russian-language schools should possess only 'middle level' proficiency certificates (as required by then valid governmental regulation no. 249 of 16 August 1999). The applicant believed that the above-mentioned provisions will constitute direct linguistic and indirect ethnic discrimination of teachers of minority origin (legitimate but disproportionate unequal treatment).

The Chancellor of Justice came to the conclusion that more advanced requirements for those applying for beginners' allowances as compared with teachers' professional requirements are not equal to the breach of the constitutional anti-discrimination provision. The Chancellor emphasised that ban of discrimination is not absolute but it can be limited by other constitutional provisions. Article 6 of the Constitution established Estonian as the only official language of the country. This provision shall be regarded as constitutional value. Consequently linguistic requirements for teachers are constitutional as such regardless concrete requirements for a proficiency level. Beginners' allowances are not deemed to be shared among all teachers. They were introduced in the framework of the state's policies and the official bodies did have a right to establish specific requirements for those applying for such benefits.⁵⁹ In other words, the Chancellor of Justice argued that the state may introduce specific requirements in access to certain benefits as compared with general occupational requirements. In some areas any linguistic requirements might be justified and they shall not be deemed as ethnic/linguistic discrimination.

2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.*

National law does not address the issue of statistical evidence in the context of discrimination. There is no case law or any other important practical examples in this field in Estonia.

- b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

⁵⁹ Chancellor of Justice; Written communication no. 6-1/080952/00805796 of 15 August 2008



Statistical evidence is not commonly used. One may argue that the main reason therefore is not necessary reluctance, but lack of awareness of legal practitioners about such methods of prove. There are no indications that foreign case law may influence the situation in Estonia in this regard.

However, Estonian law does not explicitly ban the use of statistical evidence in courts (see also the definition of evidence in civil procedure in section 2.2.1). Furthermore, the explanatory note to the draft Law on Equal Treatment refers to statistical and sociological data in the context of indirect discrimination⁶⁰.

c) *Please illustrate the most important case law in this area.*

There is no case law in Estonia to address the issue at stake.

d) *Are there national rules which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

In Estonia the rules regarding the collection of data on individuals are stipulated in the Law on Personal Data Protection adopted in 2007⁶¹. The first Law on Personal Data Protection was adopted in 1996⁶² and the system of data protection is still under construction in the country. To the best of the author's knowledge the issue of data protection in the anti-discrimination context has never been publicly addressed. One of the reasons for that is that the first comprehensive anti-discrimination norms (substantive law) were adopted as late as 2004.

Data on ethnic or racial origin, disability, religion or belief or sexual orientation are regarded as sensitive personal data by the Law on Personal Data Protection (Article 4 (2)), and quite rigid rules were stipulated for their processing. The main principles of the processing of data read as follows (Article 6):

- 1) "the principle of legality – personal data may be collected in an honest and legal manner;
- 2) the principle of purposefulness – personal data may be collected only for specified and legitimate purposes and personal data shall not be processed in a manner which fails to comply with the purposes of data processing;
- 3) the principle of minimality – personal data may be collected only to the extent which is necessary for the purposes for which they are collected;
- 4) the principle of restriction on use – personal data may be used for other purposes only with the consent of the data subject or with the permission of a competent body;
- 5) the principle of data quality – personal data shall be kept up to date and shall be complete and necessary for the given purpose of the data processing;
- 6) the principle of security – security measures to prevent the involuntary or unauthorised alteration, disclosure or destruction of personal data shall be applied in order to protect the data;

⁶⁰ See explanatory note attached to the Draft no. 384 SE (11th Riigikogu); available at <http://www.riigikogu.ee> (09.03.2009).

⁶¹ *Isikuandmete kaitse seadus*, RT I 2007, 24, 127

⁶² RT I 1996, 48, 944

- 7) the principle of individual participation – a data subject shall be notified of data collected on him or her, access to data pertaining to the data subject shall be ensured to him or her and the data subject has the right to demand the rectification of inaccurate or misleading data”.

In its 2006 communication, the Data Protection Inspectorate stressed that the opportunities of employers are limited by both the principle of minimality and Article 30 (2) of the Law on Employment Contracts, which prohibits the requesting of documents which are not prescribed by law or governmental decrees. In fact, an employer may under certain circumstances possess only that information which pertains to the health or disability of his or her employee. As for educational and medical institutions, they may under certain conditions collect information on the disabilities of their students or clients. Institutions that provide communal housing services are not supposed to collect any sensitive personal data, stated the Inspectorate⁶³. The new Law on Personal Data Protection in 2007 did not change this approach. It does not elaborate on the issue when an employer seeks to collect data in the context of the fight against discrimination. Under such circumstances it is rather difficult for employees or clients to get any statistical evidence to prove cases of indirect discrimination. Furthermore, this is no information about an attempt of any employees to collect data in order to design positive action measures.

Without appropriate administrative practice we may only *presume* that the fight against discrimination could be recognised as a legitimate purpose for personal data processing. Importantly, in its 2008 communication the Data Protection Inspectorate does not question the legitimacy of intended collection of sensitive personal data by an NGO who would like to operate hotline to deal with cases of discrimination covered by the Directives 2000/43 and 2000/78.⁶⁴

Personal data may be processed only with the permission of the data subject (Article 10 (1) of the Law on Personal Data Protection). Processing of sensitive personal data without the consent of a data subject is permitted if the personal data are processed on the basis of law, international agreement, directly applicable EC or European Commission act, for protection of the life, health or freedom of the data subject or other person in exceptional circumstances (Article 14 (1)). Consent for the processing of personal data means a freely given specific, informed and written (in a way of exception oral) indication of the wishes of a data subject (Article 12 (1)-(2)). Before obtaining the consent of a data subject for the processing of personal data, the processor shall notify the data subject of the name of the (chief) processor or a representative thereof and the address of the place of business of the processor (Article 12 (3)). Processors are required to register processing of sensitive personal data with the Data Protection Inspectorate (if they are not an authorised processor) (Article 27 (1)).

At the same time, there are no limits on the courts to use general statistical or census data if appropriate. For instance, according to the Law on Wages “[a]n employer does not have the right to disclose information concerning the wages calculated, paid or payable to an employee or information concerning the employee’s wage conditions without the consent of the employee or basis arising from the law” (Article 8 (3)).

⁶³ Data Protection Inspectorate; Written communication no. 1.2-2/05/457 of 25 January 2006

⁶⁴ Data Protection Inspectorate; Written communication no. 2.1-5/08/214 of 3 April 2008



However, this prohibition does not apply in cases where information is required requested by a court, the Prosecutor's Office, a pre-trial investigation authority, the Tax and Customs Board, the Statistical Office, the Labour Inspectorate or the Commissioner for Gender Equality and Equal Treatment (new equality body introduced by the Law on Equal Treatment), and also in the cases prescribed in the Law on Anti-corruption⁶⁵ and in other acts (Article 8 (3¹)).

The last national census took place in Estonia in 2000. Its database includes information on citizenship, ethnic origin, native language, religion, a situation of disability for one year or longer, place of birth, place of birth of parents, year of arrival in Estonia, etc (Law on Population and Housing Census⁶⁶, Article 9). Estonia also keeps a Population Register, which includes data on citizenship, place of birth, when and from where a person arrived in Estonia, etc. Additionally, the register includes references to a person's close relatives (such as parents) and therefore to their personal information. Information on ethnic origin and native language is collected with the person's consent. The register does not deal with data on religion or disability as such. However, the registry will include data stating that the person has restricted active legal capacity and has been divested of his or her active legal capacity with regard to the right to vote by a court judgment (Law on Population Register⁶⁷, Article 21 (1) 13). The databases of neither the 2000 census nor the Population Register include information regarding sexual orientation. Both the Law on Population and Housing Census and the Law on Population Register provide for rigid rules of personal data protection.

2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The concept of harassment in Estonia is rather new and is mostly related to the process of transposition of the Directives. Since 1 May 2004 two laws have included detailed definitions of harassment: the Law on Employment Contracts and the Law on Gender Equality. Even before that, the Law on the Cultural Autonomy of National Minorities prohibited actions “[t]o ridicule and to obstruct the practice of ethnic cultural traditions and religious practices and to engage in any activity, which is aimed at the forcible assimilation of national minorities (Article 3 (2)).”

The new Law on Equal Treatment defines harassment as a form of direct discrimination when unwanted conduct related to ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 3 (3)). This definition is fully in line with the both Directives.

This definition substituted the provision regarding harassment provided for in the previous current Law on Employment Contracts which had presupposed ‘subordination’ or ‘dependency’ between a perpetrator and a victim of harassment.

⁶⁵ *Korruptsioonivastane seadus*, RT I 1999, 16, 276

⁶⁶ *Rahva ja eluruumide loenduse seadus*, RT I 1998, 52/53, 772

⁶⁷ *Rahvastikuregistri seadus*, RT I 2000, 50, 317



Additionally, several articles of the Penal Code include provisions that could be used by victims of the most violent acts of harassment. For instance, the Penal Code makes punishable a threat to kill, to cause damage to a person's health or to cause significant damage to or destroy property (Article 120), as well as physical abuse (Article 121).

b) Is harassment prohibited as a form of discrimination?

The new Law on Equal Treatment defines harassment as a form of direct discrimination.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

No. Under circumstances of 'non-violent' harassment, a victim can also use those legal means that provide for the protection of honour and dignity in cases of insult and defamation. According to Article 25 of the Constitution, "everyone has the right to compensation for moral and material damage caused by the unlawful action of any person". The new Penal Code has decriminalised these offences. However, they are still subject to civil liability. This is to emphasise that Estonian courts recognise the right to compensation for moral damages caused by private persons and state officials alike⁶⁸. However, according to the Law on Obligations⁶⁹, compensation for non-material damage caused by breach of an individual's right (including defamation) must be paid only if it is justified by the circumstances of the case (Article 134 (2)).

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case-law) prohibit instructions to discriminate?

If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The formal legal and grammatical interpretation of Article 12 of the Constitution leads to the conclusion that it bans instructions to discriminate on any ground.

According to Article 3 (5) of the Law on Equal Treatment, an instruction to discriminate against persons on the basis of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is deemed to be discrimination

As for criminal offences, provisions regarding accomplices (abettors) may be used. "An abettor is a person who intentionally induces another person to commit an intentional unlawful act" (Article 22 (2) of the Penal Code). According to the general rules, "a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender". These provisions can be applied in the context of Article 151 (incitement to hatred or violence) and Article 152 (violation of equality) (see also section 2.1 of this report).

⁶⁸ See e.g. Decision of the Civil Law Chamber of the Supreme Court of 29 November 2000; published in RT III 2000, 29, 316

⁶⁹ *Võlaõigusseadus*, RT I 2001, 81, 487; RT I 2002, 60, 374

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. e.g. does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden? Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

Article 11 of the new Law on Equal Treatment reads as follows:

“(1) Grant of preferences to disabled persons, including measures aimed at creating facilities for safeguarding or promoting their integration into the working environment, shall not constitute discrimination.

(2) Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

(3) Upon determining whether the burden on the employer is disproportionate as specified in subsection 2, the financial and other costs of the employer, the size of the agency or enterprise and the possibilities to obtain public funding and funding from other sources shall also be taken into account”.

Thus, the concept of reasonable accommodation (Article 11 (2)-(3) of the Law on Equal Treatment) is identical with that in the Directives. The same act stipulates the definition of ‘disability’ (Article 5) which is used ‘for the purposes of this act’, i.e. also in the context of provisions regarding reasonable accommodation.

As for Article 11 (1) of the Law on Equal Treatment, it does not include a novel in the context of the Estonian law.⁷⁰ Importantly, this provision does not provide for any positive obligations of an employer. However, it permits ‘special’ approach to disabled workers (including positive action measures). To highlight practical importance of Article 11 (1), we shall present it in the context of other relevant legal provisions. So, according to Article 10 (1) of the Law on Occupational Health and Safety⁷¹, an employer shall create suitable working and rest conditions for disabled workers (as well as for pregnant women, women who are breastfeeding and minors). Furthermore, “[t]he work and workplace of a disabled worker shall be adapted to his or her physical and mental abilities” (Article 10 (4)). This provision was amended with the following clarification⁷² (valid since 1 March 2007):

⁷⁰ This provision has previously been contained in Article 10¹ (3) of the current Law on Employment Contracts (before it was amended upon the adoption of the Law on Equal Treatment).

⁷¹ *Töötervishoiu ja tööohutuse seadus*, RT I 1999, 60, 616

⁷² RT I 2007, 3, 11



“Adaptation means the making of the buildings, workrooms, workplaces or work equipment of the employer accessible and usable for disabled persons. This requirement also applies to commonly used routes and rest rooms and/or accommodation areas used by disabled workers”. These changes were to transpose the requirements of point 20 of Annex I of the Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace.⁷³ A special working environment council⁷⁴ shall assist in the creation of suitable working conditions and work organisation for female workers, minors and disabled workers (Article 18 (6) 5 of the Law on Occupational Health and Safety).

- b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of “disproportionate burden” in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

This is no such a duty provided for in national law.

- c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

There are reasons to believe that Estonian lawmakers did not presume that failure to meet the duty of reasonable accommodation count as discrimination

The provisions regarding reasonable accommodation can be found in the Law on Equal Treatment, where relevant Article 11 is titled ‘Taking of measures regarding disabled persons’. It was placed in Chapter II of the act (‘Principles of Equal Treatment’). The definition of ‘discrimination’ was placed in Chapter I (‘General provisions’). There are no cross-references between definition of ‘discrimination’ and provisions regarding reasonable accommodation.

- d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

There are no relevant provisions in Estonian legislation.

According to Article 10¹ of the current Law on Employment Contracts (valid until 1 July 2009), “allowing a suitable working and rest time regime which satisfies the religious requirements of an employee” is not regarded as discrimination (see also section 2.2.c of this report). However, the Law on Employment Contracts does not prescribe any positive obligation on the part of an employer to satisfy the special needs of religious workers and does not regard a lack of such ‘preferences’ as discrimination. The similar provisions cannot be found in the new Law on Employment Contracts passed in December 2008.

The Law on Equal Treatment (Article 9 (3)) does not regard as discrimination in labour relations:

⁷³ See explanatory note attached to the Draft no. 975 SE (10th Riigikogu); available at <http://www.riigikogu.ee> (01.05.2008)

⁷⁴ A working environment council is a body for co-operation between an employer and the workers’ representatives which resolves occupational health and safety issues in the enterprise (Law on Occupational Health and Safety, Article 18 (1))



1) grant of preferences on grounds of representing the interests of employees or membership in an association representing the interests of employees if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary; 2) grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work.

e) *Does the national law clearly provides for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

There are no relevant provisions in Estonian valid or draft legislation.

f) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

According to Article 3 (9) of the Law on Building⁷⁵, “[i]f required for the purpose of use of the construction works, the works, parts thereof which are for public use and the premises and sites thereof shall be accessible to and usable by persons with reduced mobility and by visually impaired and hearing impaired persons”. The detailed requirements are established in the decree of 28 November 2002 by the Minister of Economic Affairs and Communications⁷⁶ for both public places (including infrastructure) and public buildings (e.g. administrative buildings, hospitals, educational institutions etc.). According to Article 19 of the decree, the rules regarding the accessibility of buildings for disabled people are equally applicable to existing public buildings if they are renovated.

The Law on Building does not relate to the transposition of the anti-discrimination directives⁷⁷. Violation of its norms would be unlikely to be treated in Estonia as discrimination on the ground of disability. Additionally, under those circumstances where Estonian legislation does not provide for detailed obligations as regards the reasonable accommodation of disabled people, it will be difficult to use the norms of the Law on Building in disputes between an employer and disabled workers or potential workers.

The Law on Traffic⁷⁸ stipulates specific norms to organise mobility for physically disabled people and parking for vehicles servicing such people (Chapter 10).

g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

There is no general duty established in Estonian law to provide accessibility by anticipation.

⁷⁵ *Ehitusseadus*, RT I 2002, 47, 297

⁷⁶ *Nõuded liikumis-, nägemis- ja kuulmispuudega inimeste liikumisvõimaluste tagamiseks üldkasutatavates ehitistes*, RTL 2002, 145, 2120

⁷⁷ See explanatory note attached to Draft no. 805 SE (9th *Riigikogu*); available at <http://www.riigikogu.ee> (20.04.2008).

⁷⁸ *Liiklusseadus*, RT I 2001, 3, 6; RT I 2002, 92, 531



According to the Law on Electronic Communications⁷⁹, if two or more applications are received at the same time, priority, in the entry into a subscription contract for the provision of a communications service in the place of residence of a disabled person, shall be given to an application submitted by a person with a profound or severe disability in the meaning of the Law on Social Benefits for Disabled Persons or by his or her caregiver (Article 94 (5)).

h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

The Law on Labour Market Services and Benefits⁸⁰ (valid since 1 January 2006) provides unemployed disabled people with special services, including ‘accommodation of the workplace and means to work’. This service might be granted on the basis of an administrative contract between the Labour Market Board and an employer, in which the state will compensate the employer for up to 50% of the expenses that are necessary for that accommodation, up to a specified maximum amount (Article 20). Another service, namely ‘providing free use of a technical appliance necessary for work’, might be offered on the basis of an administrative contract between the Labour Market Board and an employer or a disabled person (Article 21). Two other new services are ‘support at the interview [with a potential employer]’ and ‘work with [the assistance of] a support person’ (Articles 22-23). According to Article 9 (5) of the Law, all of these services will only be granted to disabled persons if they are necessary to overcome the disability-related obstacle to his or her employment, and if other employment services (e.g. information on the situation in the labour market, employment mediation, vocational training, etc) have been ineffective.

The provisions of this law might be of added value for a worker who has become partially incapacitated for work in the employer’s enterprise as a result of an occupational accident or occupational disease. According to the Law on Occupational Health and Safety (Article 10 (3)), an employer is required to enable, pursuant to the procedure provided by employment laws, such a worker to continue work suitable for him or her in the enterprise.

The Estonian law established the system of protection of disabled persons in five basic areas:

1. Payment of social benefits for disabled persons which are dependant on the level of disability. The Law on Social Benefits for Disabled Persons (Article 4) establishes the following social benefits for disabled persons:
 - a) disabled child allowance;
 - b) disabled work-age person allowance;
 - c) disabled pension-age person allowance;
 - d) caregiver’s allowance;
 - e) disabled parent’s allowance;
 - f) education allowance;
 - g) work allowance;
 - h) rehabilitation allowance;
 - i) in-service training allowance.

⁷⁹ *Elektroonilise side seadus*, RT I 2004, 87, 593

⁸⁰ *Tööturuteenuste ja -toetuste seadus*, RT I 2005, 54, 430



2. Special conditions in the labour market:
 - a) the Law on Labour Market Services and Benefits provides for special services for disabled people (see above);
 - b) an employer shall create suitable working and rest conditions for disabled workers (the Law on Occupational Health and Safety) (see above);
 - c) the Law on Holidays⁸¹ foresees an extended annual holiday for persons who are granted a pension for incapacity for work or the national pension on the basis of incapacity for work; additional days shall be financed from the state budget funds (Articles 9 (2)2 and 26 (1)1 of the Law on Holidays).
 - d) tax reduction and tax benefits:
 - i. the state promotes the employment of disabled persons by paying social tax within certain limits for a worker who receives a pension for incapacity for work (see section 2.7)
 - ii. the Law on Income Tax⁸² provides that income tax is not charged on:
 - 1) compensation paid to a disabled person for the use of a personal motor vehicle for transport between his or her residence and place of employment if it is impossible to make the journey using public transport or if the use of public transport would cause a material decrease of the person's ability to move or work (Article 13 (3) 2¹). Such compensation is not regarded as fringe benefits (Article 48 (5¹)) (it is relevant because in Estonia an employer shall pay income tax on fringe benefits).
 - 2) medical devices which are granted by an employer to an employed person whose loss of capacity for work has been established to be 40 per cent and more (in the case of an auditory disability, decrease of auditory ability of 30 decibels and more) and the value of which does not exceed 50 per cent of the total size of payments subject to social tax made to the employee or public servant during one calendar year (Article 13 (3) 8).
3. special guarantees in the field of education (see section 3.2.8)
4. special guarantees for persons with reduced mobility, visually impaired and hearing impaired persons or persons with profound or severe disability (see above).
5. special guarantees for those using public transport; the Law on Public Transport⁸³ provides for the following benefits:
 - i. on domestic lines in railway, road and waterway traffic (including commercial lines), carriers are required to carry without charge disabled children, persons over 16 years of age with profound disability, persons who accompany persons with profound or severe visual imparity and guide dogs who accompany blind persons (Article 27 (1));
 - ii. in public regular services provided in road and waterway traffic on urban or other domestic train routes where points of departure and destination of passengers are located within the limits of one city, school pupils, persons who accompany persons with a profound disability, persons who accompany disabled children shall be granted travel fare concessions in the amount of up to 50% of the full price of a ticket (Article 29).

⁸¹ *Puhkuseseadus*, RT I 2001, 42, 233

⁸² *Tulumaksuseadus*, RT I 1999, 101, 903; RT I 2001, 11, 49; RT I 2004, 59, 414

⁸³ *Ühistranspordiseadus*, RT I 2000, 10, 58



2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

There are no special provisions in the law regarding sheltered or semi-sheltered accommodation/employment for disabled workers. However, the state promotes the employment of disabled persons by paying social tax within certain limits for a worker who receives a pension for incapacity for work (Law on Social Tax⁸⁴, Article 6 (1) 5).⁸⁵ Such work is considered as ordinary employment.

The Law on Labour Market Services and Benefits also stipulates the so-called wage allowance. For six months the state will pay within certain limits⁸⁶ 50% of a wage of a person who belongs to a group of risk (unemployed persons who were more than 12 months running registered unemployed (6 months in case of persons aged 16-24) or who were released from a prison within 12 months before registration as unemployed (Article 18)). Many disabled people may benefit from this regulation because unemployment rate among them (including long-term unemployment) is traditionally high.

- b) *Would such activities be considered to constitute employment under national law?*

Yes, these activities will constitute employment.

⁸⁴ Sotsiaalmaksuseadus, RT I 2000, 102, 675

⁸⁵ These provisions are used in practice.

⁸⁶ The minimum wage established by the Government of the Republic.



3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Three relevant national laws (the Law on Equal Treatment, the Law on Gender Equality and the Law on the Chancellor of Justice) do not include any specifications regarding the rights of EU and non-EU nationals or residential status in the anti-discrimination context.

Article 30 of the current Law on Employment Contracts stipulates that in order to enter into an employment contract, a foreign citizen or stateless person shall present a work permit in the cases prescribed by law. As for public officials, only Estonian citizens can be state or municipal public officials while exceptions are possible for citizens of the EU (Law on Public Service, Article 14).

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

In Estonia there are very few relevant provisions to be found. However, it would be safe to claim that in local legal tradition only natural persons could be recognised as victims of discrimination in the context of the Directives 2000/43 and 2000/78.

As was mentioned in section 1 of this report, Article 12 of the Constitution should be observed by the state, public authorities, natural and legal private persons (and both legal and natural persons might be regarded as ‘discriminators’). According to grammatical interpretation, this provision provides only natural persons with protection against discrimination. However, “[t]he rights, freedoms and duties set out in the Constitution shall extend to legal persons in so far as this is in accordance with the general aims of legal persons and with the nature of such rights, freedoms and duties” (Article 9 (2)). Thus, the constitutional provision makes it possible to grant legal persons protection against discrimination (provided there are changes in local legal theory in the future). It is worth mentioning that the Supreme Court recognised the equality before the law (the first sentence of Article 12 (1) of the Constitution) as the right belonging to both natural and legal persons.⁸⁷ There were no similar cases as regards prohibition of discrimination (the second sentence of Article 12 (1) of the Constitution).

Article 152 of the Penal Code bans unlawful restriction of the rights of a ‘human being’ or granting of unlawful preferences to a ‘human being’ (*inimene*).

⁸⁷ Decision of the Constitutional Review Chamber of the Supreme Court of 6 March 2002; published in RT III 2002, 8, 74 (section 13)



As for offenders, the relevant anti-discrimination provisions of the Penal Code (listed in section 2.1 of this report) are applicable solely to natural persons (with the exception of the provisions regarding incitement to hatred, Article 151).

The Chancellor of Justice is a special quasi-judicial body and a body for the promotion of equality. Everyone (formally both natural and legal persons) enjoys the right to apply to the Chancellor with complaints regarding discrimination perpetrated by both natural and legal persons (Article 19 of the Law on the Chancellor of Justice). However, we would not expect legal persons to be recognised as victims of discrimination by this institution. These are no practical examples to confirm or reject this assumption.

The Law on Equal Treatment refers to the rights of persons (*isikud*). Still, in this context the law seems to refer to natural persons (unless proven otherwise by Estonian judiciary). The same law provide for definitions of ‘employee’ (using the term ‘a persons’) and ‘employer’ (using the phrase ‘a natural or legal person’). According to the current Law on Employment Contracts the employee may only be a natural person (Article 2). As for employers, they could be either legal or natural persons (Article 3). The same approach can be found in Article 4 of the ‘new’ Law on Employment Contracts (Article 1 (1)).

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

Estonian anti-discrimination legislation is silent about these issues⁸⁸. According to the general rule, however, “[i]f one person engages another person in the person’s economic or professional activities on a regular basis, the person shall be liable for any damage unlawfully caused by the other person on the same basis as for damage caused by the person, if the causing of damage is related to the person’s economic or professional activities” (Article 1054 (1) of the Law on Obligations).

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

Article 12 of the Constitution is applicable to all spheres of life (see section 1 of this report).

⁸⁸ This problem was specifically addressed only in the Law on Gender Equality. Article 6 (2) of this Law established that the activities of an employer shall also be deemed to be discriminating if “he or she fails to ensure that employees are protected from sexual harassment in the working environment”.



The scope of the Law on Equal Treatment as regards employment, self-employment and occupation is identical with that in the Directives.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is prohibited in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion (Article 2 (1) 1 and (2) 1).

Article 10 of the Law on Employment Contracts and Article 36¹ (2) of the Law on Public Service add to the list of grounds: sex, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is prohibited in relation to entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination of employment contracts or contracts for the provision of services, release from office (Article 2 (1) 2 and (2) 2). Article 10 of the Law on Employment Contracts and Article 36¹ (2) of the Law on Public Service add to the list of grounds: sex, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees.

Additionally, Article 5 of the Law on Wages includes a general ban on discrimination (in force since March 1994):



“It is prohibited to increase or reduce wages on the grounds of an employee’s sex, ethnic origin, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the defence forces.

It is prohibited to reduce wages on the grounds of marital status, family obligations, membership in citizens’ associations or representation of the interests of employees or employers”.

There are no specific discrimination-related provisions regarding occupational pensions in Estonia. The general provisions of the Law on Equal Treatment seem to be applicable in this context.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning course?

The Law on Equal Treatment is applicable in access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 2 (1) 3 and (2) 3). Thus, the law regulates anti-discrimination issues in the area of professional training outside employment relations or as regards adult life long learning professional courses.

All five grounds of discrimination plus colour are explicitly covered. Article 10 of the Law on Employment Contracts and Article 36¹ (2) of the Law on Public Service add to the list of grounds: sex, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is prohibited in relation membership of, and involvement in, an organisation of employees or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 2 (1) 4 and (2) 4).



Article 10 of the Law on Employment Contracts and Article 36¹ (2) of the Law on Public Service add to the list of grounds: sex, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees.

Law on Trade Unions⁸⁹ stipulates that the rights of employees or persons who seek employment shall not be restricted on grounds of their membership in trade unions, on being elected representatives of trade unions or on other legal activities related to trade unions (Article 19 (2)). The prohibited restrictions of rights include any form of unequal treatment possible (Article 19 (3)).

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The Law on Equal Treatment is applicable in the field of social protection, including social security and healthcare (Article 2 (1) 5). Only such grounds of discrimination as ethnicity, race, and colour are covered.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of ‘social advantages’ or if discrimination in this area is likely to be unlawful.

The new Law on Equal Treatment is applicable as regards social advantages (Article 2 (1) 5). Only such grounds of discrimination as ethnicity, race, and colour are covered.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

⁸⁹ Ametiühingute seadus, RT I 2000, 57, 372



Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated “special” education is favoured and supported.

The Law on Equal Treatment is applicable in the field of education (Article 2 (1) 6). Only such grounds of discrimination as ethnicity, race, and colour are covered.

According to Article 4 (1) of the Law on Education⁹⁰ the state and local self-government shall ensure for every person an opportunity to receive obligatory education (this requirement is essentially based on Article 37 of the Constitution). In conjunction with Article 12 of the Constitution this provision might be interpreted to the effect that obligatory education should be provided without any discrimination on any grounds. Several other provisions might be used by state and local government authorities to this end. For instance, “[d]epending on the need of students to receive special education, special support, special treatment due to behavioural problems, or treatment, a basic school or a upper secondary school may be a school for students with special needs or alternatively a sanatorium school” (Article 4 (1) of the Law on Basic School and Upper Secondary School⁹¹). The Minister of Education and Research establishes special rules enabling disabled persons to study in vocational schools (Article 14 (4) of the Law on Vocational School⁹²). The Law on Adult Education⁹³ established certain guarantees for adults who want to continue their studies. For instance, local authorities shall provide for interested adults basic and secondary education, shall facilitate the provision of professional education and shall support the provision of training to unemployed persons, persons seeking work, other socially underprivileged persons and disabled persons (Article 7).

In Estonia specific policies are employed to address the needs of disabled persons in education. The general understanding among authorities is that disabled pupils shall study in mainstream classes / schools, if possible. In 2005 the Chancellor of Justice (ombudsman and equality body) specifically addressed the issue whether laws guarantee sufficient access to basic education for children with disabilities. As a result the Chancellor requested the Minister of Education and Research to draw the attention to a number of insufficiencies in the Law on Basic School and Upper Secondary School.⁹⁴ The situation has seemingly improved in recent years. According to the data of the Ministry of Education and Research as early as in 2006/2007 academic year the overwhelming majority of all pupils with special needs (20,639 out of 24,346) was able to study in ordinary schools and most of them (19,216) in ordinary (mainstream) classes.⁹⁵

The language of instruction of Estonian kindergartens and schools is Estonian or Russian. Additionally, a few students receive their school education in Finnish and English. There are no problems concerning the segregation of ethnic minorities in the Estonian school system. There are few comprehensive and reliable data concerning discrimination of minorities in educational system.

⁹⁰ *Eesti Vabariigi haridusseadus*, RT I 1992, 12, 192

⁹¹ *Põhikooli- ja gümnaasiumiseadus*, RT I 1993, 63, 892; RT I 1999, 42, 497

⁹² *Kutseõppeasutuse seadus*, RT I 1998, 64-65, 1007; RT I 2001, 68, 406

⁹³ *Täiskasvanute koolituse seadus*, RT I 1993, 74, 1054; RT I 1998, 71, 1200

⁹⁴ Annual report 2005 of the Chancellor of Justice, Tallinn, 2006, p. 65.

⁹⁵ Estonian Educational Database, provided by: Ministry of Education and Research; on file with the author.



In general, there are no legal restrictions in access to any level of education, vocational training and other forms of life-long or informal learning for immigrants and ethnic minorities.

In some areas educational opportunities of persons not proficient in Estonian can be limited (e.g. higher education). Even more complicated can be the situation of minorities proficient neither in Estonian nor in Russian (Roma children,⁹⁶ new immigrants etc). In academic year 2007/2008 Estonia started a transition of Russian-language upper secondary schools to partial training in Estonian.

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour is prohibited in relation to access to and supply of goods and services which are available to the public (Article 2 (1) 7). The law does not provide further details. No other grounds are applicable in this regard.

Additionally, several provisions of the Law on Trading⁹⁷ and the Law on Public Transport⁹⁸ might be useful in the non-discrimination context. They were not drafted as a means to fight discrimination in access to goods and services. However, practising lawyers might refer to these provisions in the interests of victims of discrimination.

As for access to the supply of goods and services, Article 4 (2) 1 of Law on Trading makes it an offence for a trader “illegally to restrict or favour the sale of goods or services or to influence consumers through disparagement of the goods or services of other traders, through the prohibited use of a business name or in any other manner which is contrary to good trade ethics and practice”. Article 30 of the same Law foresees liability (fines) for ‘violation of requirements established for sale of goods or services’.

The Requirements for Carriage by Bus, Tram or Trolleybus and for Taxi Service and for Carriage of Baggage⁹⁹ (adopted by a decree of the Minister of Economy and Communications) includes an explicit ban against taxi drivers denying taxi service without good reasons, some of which are listed in Article 16 (4) of the same requirements (Article 16 (3)). Violations of these rules are punishable by fine according to Article 54² of the Law on Public Transport.

⁹⁶ European Commission against Racism and Intolerance, *Third Report on Estonia, adopted on 24 June 2005 made public on 21 February 2006*, CRI(2006)1, section 138

⁹⁷ *Kaubandustegevuse seadus*, RT I 2004, 12, 78

⁹⁸ *Ühistranspordiseadus*, RT I 2000, 10, 58

⁹⁹ *Sõitjate bussiliiniveo, bussijuhuveo, taksoveo ja pagasiveo üldeeskiri*, RTL 2004, 71, 1176



- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

The national legislation does not elaborate these issues.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination of the Roma and other minorities or groups and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour is prohibited in relation housing (Article 2 (1) 7). The law does not provide further details. No other grounds are applicable in this regard.

The problem of ethnic or racial segregation in housing does not exist in Estonia to any noticeable degree. There is no data to prove any positive or negative changes in the area in recent years.

The only ethnic minority group that seems to experience disproportionate difficulties in access to qualitative housing are Roma. However, there were no special studies of the problem and these assumptions might be based only on information provided by leaders of this community. As for other minority groups, on the basis of a sociological study conducted in 2006, one may conclude that the comfort characteristics (indoor amenities available within the private space occupied only by the household) were better in dwellings of ethnic non-Estonians as compared with those of ethnic Estonians. However, the situation of minority members was more problematic as regards available dwelling space, especially in Tallinn.¹⁰⁰

National legislation does not provide any requirements to guarantee or to promote the availability of housing which is accessible to people with disabilities and older people.

¹⁰⁰ Database of Estonian Social Survey 2006



4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The Law on Equal Treatment stipulates a provision regarding genuine and determining occupational requirements (Article 10 (1)), which is worded almost identically to that in the Directives: a difference of treatment which is based on an attribute related to ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such an attribute constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

Complaints concerning the activities of natural persons or legal persons in private law do not fall under the competence of the Chancellor of Justice (a special quasi-judicial institution and a body for the promotion of equal treatment) if they “concern professing and practising of faith or working as a minister of a religion in religious associations with registered articles of association” (Article 35⁵(2) of the Law on the Chancellor of Justice). This rule is similar to the relevant provision of the Law on Gender Equality (Article 2 (2)).

The Law on Equal Treatment stipulates in Article 10 (2)-(3) relevant provisions regarding employers with an ethos based on religion or belief, which are worded almost identically to that in the Directives:

“(2) In the case of occupational activities within religious associations and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.”¹⁰¹

(3) This Act shall thus not prejudice the right of religious associations and other public or private organisations, the ethos of which is based on religion or belief, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos”.

¹⁰¹ There are no provisions in Estonian law to specifically address the issue of discrimination on the grounds other than religion or belief in the context of organisations, the ethos of which is based on religion or belief.

- b) *Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)*

There are no specific provisions or case law in this area in Estonia.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

There are general anti-discrimination provisions in Article 36¹ of the Law on Public Service:

“(1) State and local government agencies shall ensure the protection of persons against discrimination and comply with the principle of equal treatment pursuant to the Law on Equal Treatment and the Law on Gender Equality.

(2) It is prohibited to discriminate against a public servant or a person applying for public service on grounds of sex, nationality (ethnic origin), race, colour, religion or other beliefs, age, disability, sexual orientation, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of public servants or membership in an organisation of public servants. Upon discrimination on the basis of any specified attribute, the Law on Equal Treatment and the Law on Gender Equality applies.

(3) A difference of treatment which is based on the level of language proficiency is not deemed to be discrimination if such difference of treatment is permitted by this Act or the Law on Language.”;

The Law on Equal Treatment does not elaborate this issue further. Article 9 (1) of the law stipulated that “differences of treatment on grounds of age shall not constitute discrimination, if, within the context of law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary” (see detailed analysis in section 2.2.c).

For certain groups of public officials, maximum age limits have previously been established, e.g. 50-60 years of age for military servicemen (Article 112 of the Law on Military Defence Service¹⁰²); 55-60 years of age for policemen (on the basis of Article 49 of the Law on Police Service¹⁰³); 58-60 years of age for some categories of prison officials (Article 152 of the Law on Imprisonment¹⁰⁴). Exceptionally, service may be prolonged. Military servicemen are entitled to special pensions under the above-mentioned Law on Military Defence Service.

¹⁰² *Kaitseväeteenistuse seadus*, RT I 2000, 28, 167; RT I 2003, 31, 195

¹⁰³ *Politseiteenistuse seadus*, RT I 1998, 50, 753

¹⁰⁴ *Vangistusseadus*, RT I 2000, 58, 376, RT I 2002, 84, 492

Police and prison officers, as well as some other groups of officials and non-officials (e.g. miners, civil pilots, etc), are entitled to special pensions under the separate Law on Pensions for Years in Service¹⁰⁵ and other legal acts.

The Minister of Defence (for military servicemen) and the Government (for policemen) shall provide for requirements concerning the state of health necessary for the performance of duties (Article 79 (5) of the Law on Military Defence Service and 8 (2) of the Law on Police Service). According to Article 111 of the Law on Military Defence Service, a serviceman shall be released from contractual service within one month of the date of the decision of the medical committee by which “he or she was declared unfit for active service for health reasons”. On the basis of Article 117 (1) 5 of the Law on Public Service, a public official may be released from the service if his or her health “does not allow the official to perform his or her duties continuously as required”. This provision is valid for policemen, prison officers and most other groups of public officials.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

There are no relevant provisions other than those mentioned in the previous section.

c) Are there cases where religious institutions can select people (on the basis of their religion) to hire or to dismiss from a job - when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?

There are no such cases or such opportunities established in Estonian law. On the basis of the Convention between the Government of the Republic of Estonia and the State of the Holy See, the Catholic Church has only the right to establish and manage its *own* schools, in accordance with Canon Law and the legislation of the Republic of Estonia concerning non-state schools.¹⁰⁶

4.4 Nationality discrimination (Art. 3(2))

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?

What is the relationship between ‘nationality’ and ‘race or ethnic origin’, in particular in the context of indirect discrimination?

Is there overlap in case law between discrimination on grounds of nationality and ethnicity (ie where nationality discrimination may constitute ethnic discrimination as well)?

¹⁰⁵ Eesti Vabariigi väljateenitud aastate pensionide seadus, RT 1992, 21, 294

¹⁰⁶ Eesti Vabariigi ja Püha Tooli vaheline kokkulepe katoliku kiriku õigusliku staatuse kohta Eesti Vabariigis, RT II 1999, 7, 47, section 7



Estonian law does not make difference between status of a foreign citizen, a stateless person or a person with ‘undefined citizenship’ (mostly former Soviet citizens). Naturally, in some areas citizens of other EU countries can be in a privileged position as compared with third country nationals (e.g. access to public service).

As mentioned above, Article 12 of the Estonian Constitution establishes an explicit ban on discrimination on any ground, including nationality (citizenship). Article 11 stipulates that rights or freedoms may be restricted only in accordance with the Constitution. Article 9 (1) guarantees rights and freedoms for both citizens of Estonia and foreigners on its territory. Nevertheless, the Estonian Constitution permits a differential treatment of non-citizens in certain social fields (Articles 28, 29, 31). Still, in most cases resident aliens in Estonia enjoy the same free access to social benefits as Estonian citizens. Estonian citizens as well as aliens with any type of a residence permit are subject to the Law on Social Welfare¹⁰⁷ (Article 4), the Law on Social Benefits for Disabled Persons (Article 3), the Law on State Pension Insurance¹⁰⁸ (Article 4), the Law on State Family Benefits¹⁰⁹ (Article 2), the Law on Labour Market Services and Benefits (Article 3), etc.

In general, in the non-official domain, there are quite few limits on non-citizens’ employment as compared with Estonian citizens. For instance, a non-citizen cannot be a sole proprietor who provides security services, a security officer or a head of in-house guarding units (Article 22 (2) of the Law on Guard Service¹¹⁰). According to the general rule, non-citizens cannot work as state or municipal officials (Article 14 of the Law on Public Service). Nevertheless, the 2004 amendments¹¹¹ to the Law on Public Service have allowed exceptions to be made for citizens of the EU member states (now Article 14 (3)).

Citizens of EU Member States make up a very small percentage of the alien population of Estonia. The majority of minority members are stateless persons (including ‘persons with undefined citizenship’) or Russian citizens (see section 2.1.1 for further details).

There are no specific anti-discrimination principles relating to the entry into Estonia or residence in Estonia of third-country nationals and stateless people. However, it is generally accepted that constitutional anti-discrimination provisions are applicable in such cases (even including cases of entry visa applications¹¹²). The margin of appreciation of Estonian authorities is understood to be very broad. The Decision of the Administrative Law Chamber of the Supreme Court¹¹³ states the following: “According to international law, a State possesses the right to decide the presence of a foreigner on its territory. The Constitution does not provide a foreigner with a basic right to live and to stay in Estonia. There will be no discrimination according to the meaning of Article 12 of the Constitution if the requirements for granting a permanent residence permit are related to membership of a particular group”.

¹⁰⁷ *Sotsiaalhoolekande seadus*, RT I 1995, 21, 323; RT I 2001, 98, 617

¹⁰⁸ *Riikliku pensionikindlustuse seadus*, RT I 2001, 100, 648

¹⁰⁹ *Riiklike peretoetuste seadus*, RT I 2001, 95, 587

¹¹⁰ *Turvaseadus*, RT I 2003, 68, 461. An in-house guard unit is a unit of an undertaking, state authority or local government authority which guards property owned or possessed by the undertaking, state authority or local government authority (Article 18 (1)).

¹¹¹ RT I 2004, 29, 194

¹¹² Ministry of Foreign Affairs; Written communication of 24 May 2004 no. 27.1/653

¹¹³ Decision of the Administrative Law Chamber of the Supreme Court of 4 May 2001; published in RT III 2001, 16, 170



The Law on Equal Treatment does not provide protection against discrimination on the basis of citizenship (Article 1 (1)). Furthermore, the explanatory note attached to the draft law clarifies that ethnicity, ethnic origin ('*rahvus*') as a protected ground shall not to be mixed with nationality/citizenship ('*kodakondsus*').

The Chancellor of Justice (as an ombudsman) may deal with nationality discrimination in public domain (relevant provisions do not include any limitations – Article 19 (1) of the Law on the Chancellor of Justice).

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

There are no legal provisions that explicitly or implicitly rely on Art 3 (2) in Estonian anti-discrimination law.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

The issue is not specifically addressed in Estonia.

The new Law on Equal Treatment does not include any detailed provisions regarding family benefits. However, it bans discrimination of persons on the grounds of ethnic origin, race or colour in relation to social protection, including social security and healthcare, and social advantages (Article 2 (1) 5).

As mentioned above, the current Law on Employment Contracts (valid until 1 July 2009) prohibits discrimination on the grounds of sexual orientation, marital or family status, family-related duties and social status (Article 10 (3)) (see the full list of grounds of prohibited discrimination in section 2.1 of this report). However, “grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work” shall not be deemed to be discrimination (Article 10¹). Identical provision can be found in Article 9 (3) 2 of the Law on Equal Treatment. The Law ensures the protection of persons against discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation.

In other words, some preferences that might be important for cohabiting couples and families shall not be regarded as discrimination. These preferences are worded in ‘neutral form’ and most of them refer not to ‘couples’, ‘family’ or ‘family life’, but to pregnancy, confinement, giving care to children and parents etc.



This ‘neutral form’ might be very important in the context of sexual orientation discrimination. In Estonia the concept of ‘family’ does not tend to cover couples of the same sex. According to the Law on Family¹¹⁴, the right to become spouses (to found a family) is reserved to representatives of the opposite sexes (Article 1 (1)).

The Law on Wages prohibits to reduce wages on the grounds of the marital status and family obligations (Article 5).

The concept of registered partnership does not exist in local legislation.

b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

The issue is not specifically addressed in Estonia. See details in previous section.

As for the Law on Gender Equality, it does not regulate problems relating to discrimination on the grounds of sexual orientation.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

Article 9 (1) of the Law on Equal Treatment stipulates that it does not “prejudice the maintaining or adopting of specific measures which are in accordance with law and are necessary to ensure public order and security, prevent criminal offences, and protect health and the rights and freedoms of others. Such action shall be in proportion to the objective being sought” (see detailed analysis in sections 2.2.c and 4.8). There are no other specific *general* exceptions to health and safety rules applying to people with disabilities.

In Estonia, very special attention is paid to health and safety in certain industries. Government Decree no. 214 of 22 July 1992 approved the lists of industries where prior and periodic medical examinations are required¹¹⁵. The lists are divided into four groups: 1. work dangerous for one's health (work connected to chemical, biological, physical factors, and aerosols); 2. dangerous work (such as gas pipeline service); 3. work where control is necessary to prevent the spread of contagious diseases (production of food, providing services to children and young people etc); 4. work where control is necessary in the interests of public safety (connected to transport).

As for dress and personal appearance, no exceptions relating to health and safety were established for ethnic or religious minorities.

¹¹⁴ *Perekonnaseadus*, RT I 1994, 75, 1326

¹¹⁵ *Tööde loetelu, kus nähakse ette töötajate eelnev ja perioodiline tervise kontrollimine*, RT 1992, 34, 454.



At the same time legal acts may provide for rigid dress requirements in certain areas of production (e.g. the decree of the Minister of Social Affairs on the production of medicaments¹¹⁶).

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

Estonian legislation does not provide much detail on this issue. The Law on Equal Treatment (Article 9 (2)) will introduce provisions almost identical with that of Article 6 (1) of the Directive 2000/78 (the first sentence): “Differences of treatment on grounds of age shall not constitute discrimination, if, within the context of law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary.”

Qualifying requirements for the access of various age groups to several state-provided benefits may not be the same in Estonia. For instance, according to the Law on State Pension Insurance a pension of a disabled person (‘pension for incapacity for work’) may be received by a person with a certain record of work years. These requirements are not the same for different age groups (Article 15).

In case *Mangold* the European Court of Justice decided that Article 6 (1) of the Directive 2000/78/EC shall be interpreted as precluding a provision of national law, which authorises the conclusion of fixed-term employment contracts, without justification, with workers aged 52 and over, “unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer”¹¹⁷. There are no similar restrictions in Estonian legislation.

- b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Again, Estonian legislation does not provide much detail on this issue. The Law on Equal Treatment (Article 9 (2)) introduced provisions almost identical with that of Article 6 (1) of the Directive 2000/78 (the first sentence). Thus, qualifying requirements for the access of various age groups to several state-provided benefits may not be the same in Estonia. For instance, according to the Law on State Pension Insurance a pension of a disabled person (‘pension for incapacity for work’) may be received by a person with a certain record of work years. These requirements are not the same for different age groups (Article 15).

¹¹⁶ *Ravimite tootmise eeskiri*, RT I 2005, 2, 4

¹¹⁷ EU/Official Journal C 36, 11/02/2006, p. 10-11



- c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?*

The Law on Funded Pensions¹¹⁸ provides for the conditions and procedure for “the making of contributions to and payments from funded pensions with the purpose of creating the opportunity for persons who have made contributions to a funded pension to receive additional income, besides state pension insurance, after reaching pensionable age” (Article 1). According to Article 66 (1) of the Law, persons born before 1 January 1983 are not required to make contributions to a mandatory funded pension. However, persons born in 1942-1982 are entitled to make contributions to a mandatory funded pension only if they submit a choice application¹¹⁹ in 2002-2010 (the deadline is different for various age groups (Article 66 (2)).

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

The Law on Equal Treatment (Article 9 (2)) has introduced provisions almost identical with that of Article 6 (1) of the Directive 2000/78 (the first sentence).

Both the Law on Equal Treatment (Article 9 (3) 2) and the Law on Employment Contracts (Article 10¹) do not regard as discrimination privileges related to pregnancy and birth; taking care of minor children, disabled adult children and parents.

According to the Law on Holidays (Article 9 (2)) an extended annual holiday (35 calendar days) shall be granted to minors and persons who are granted a pension for incapacity to work or the national pension on the basis of incapacity to work pursuant to the Law on State Pension Insurance.

Special rules are applied to the termination of employment contracts with minor workers under the current Law on Employment Contracts (valid until 1 July 2009). For instance, an employer does not have the right to terminate such contracts due to unsatisfactory results within a probationary period (Article 93).

Estonian legislation also imposes certain limitations for minors’ employment in the interests of protecting their health and moral integrity (Article 2-1 of the current Law on Employment Contracts). The Law on Working and Rest Time¹²⁰ bans overtime for minors (Article 8 (1)) and bans or imposes limits on work in the evening or night time (Article 11). The same Law introduces a general reduction in working time for minors (Article 5).

¹¹⁸ *Kogumispensionide seadus*, RT I 2004, 37, 252

¹¹⁹ An application to be submitted in order to acquire units of a pension fund. Most importantly, it shall include the name of the pension fund chosen by the person (Articles 14 (1) and 15 (1) of the Law on Funded Pensions). This application is necessary to join the system of funded pensions.

¹²⁰ *Töö- ja puhkeaja seadus*, RT I 2001, 17, 78



Certain special rights of minor workers and workers with important family responsibilities are also recognised by ‘new’ Law on Employment Contracts (valid since 1 July 2009).

According to Article 10 (1) of the Law on Occupational Health and Safety, an employer shall create suitable working and rest conditions for disabled workers, pregnant women, women who are breastfeeding, and minors. See sections 2.6.a for details.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

According to Article 2 (1) of the current Law on Employment Contracts a natural person who has attained 18 years may be an employee. Under certain circumstances a minor aged 13 or older could also be an employee (Article 2¹). A minimum age requirement for higher and senior officials is 21; other officials shall be aged 18 or older (Article 14 of the Law on Public Service).

By way of exception, Estonian law has provided other minimum age requirements for several important public positions (such as the President of the Republic under Article 79 (3) of the Constitution). Additionally there may also be maximum age requirements (e.g. for military servicemen, policemen and prison officers; see section 4.3 for details). Some laws may require a minimum number of years of work in a particular area for certain positions as a precondition of employment (e.g. Law on the Office of Public Prosecutor¹²¹).

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

The Law on State Pension Insurance (Article 7) stipulates (for both men and women) that persons who have attained 63 years of age and whose pension qualifying period earned in Estonia is 15 years have the right to receive an old-age pension. The same article provides a transition period for women born between 1944 and 1952. Old-age pensions with favourable conditions can be received by people with a certain type of disability, people who have raised disabled children or three or four children (Article 10).

¹²¹ Prokuratuuriseadus, RT I 1998, 41/42, 625; RT I 2004, 66, 457



A person who receives a state old-age pension may work and collect his or her pension. However, the survivor's pension and national pension¹²² shall not be paid to people who are employed (Article 43 (1) of the Law on State Pension Insurance). Additionally, an early-retirement pension¹²³ will not be paid to a working pensioner before he or she has attained pensionable age (Article 43 (1¹)).

- b) *Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

The Law on Funded Pensions provides for the conditions and procedure for “the making of contributions to and payments from funded pensions with the purpose of creating the opportunity for persons who have made contributions to a funded pension to receive additional income, besides state pension insurance, after reaching *pensionable age*” (Article 1) (italics added).

In general, payments from employer-funded pension arrangements shall not be influenced by an individual's wish to work longer.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

A state-imposed mandatory retirement age is stipulated only for some categories of military and law-enforcement officials. See section 4.3 for details.

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

The national law does not explicitly permit retirement age to be set by contract, collective bargaining or unilaterally (although this does not apply to some categories of military and law-enforcement officials - see section 4.3 for details). Furthermore, such arrangements would nowadays probably be recognised as discriminatory (see comments under 4.7.4 e).

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?*

In general the Law on Equal Treatment, the Law on Employment Contracts and the Law on Public Service provide the same protection against dismissal for workers irrespective of their age (and this applies to both men and women).

¹²² A national pension is paid to a person of pensionable age, a disabled person etc with an insufficient pension qualifying period (Law on State Pension Insurance, Article 22 (1)).

¹²³ “A person who has worked for the pension qualifying period ... for grant of an old-age pension has the right to receive an early-retirement pension up to three years before attaining the pensionable age” (Law on State Pension Insurance, Article 9 (1)).



Until recently it was possible to dismiss workers and to release officials from service solely due to age s/he attained. The relevant provisions of that Law on Employment Contracts (private employment) were abolished by the Parliament on 8 February 2006¹²⁴. This was a reaction to a report of the Chancellor of Justice¹²⁵ (an ombudsman-like institution and equality body) that had been submitted to the Parliament. The Chancellor requested to review the related provisions of the Law on Employment Contracts. In his report the Chancellor claimed that the provisions of the Law on Employment Contracts might conflict with the non-discrimination principle of the Constitution and EU law and that there were seemingly no good reasons to justify such unequal treatment of older workers.

Similar regulation was established in Article 120 of the Law on Public Service. Article 131 (3) of the Law provides three months' wages by way of compensation to officials made redundant due to age. By its decision of 1 October 2007¹²⁶ the Supreme Court claimed that this article (and the related provisions) violates Article 12 (1) of the Constitution, which provides for equality before law and bans discrimination on any ground.

The case in the Constitutional Review Chamber of the Supreme Court was initiated by the Tallinn Administrative Court who refused to recognise as constitutional Article 120 of the Law on Public Service (it was a case of two officials released from service due to age on the basis of this provision). The Tallinn Administrative Court and the Chancellor of Justice (ombudsman and equality body) in their opinion to the Supreme Court argued that Article 120 violates *inter alia* the Directive 2000/78/EC.

In its decision the Supreme Court did not refer to the Directive but to its own previous decision that the prohibition to treat equal persons unequally would be violated if two persons, groups of persons or situations were treated arbitrarily unequally. An unequal treatment can be regarded as arbitrary if there is no reasonable cause therefore. If there is a reasonable and appropriate cause, unequal treatment in legislation is justified. However, in this particular case unequal treatment is neither reasonable nor justified and evidently arbitrary.

4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

The provisions regarding redundancy in the current Law on Employment Contracts were not changed in April 2004 when this act was amended with specific anti-discrimination provisions. According to Article 99 of the Law, upon the termination of employment contracts due to lay-offs, a preferential right to remain at work should be enjoyed by representatives of employees, followed by full-time staff members and workers with better performance results. However,

¹²⁴ Published: RT I 2006, 10, 64

¹²⁵ Report published at <http://www.oiguskantsler.ee/index.php?pageID=105> (20.04.2008)

¹²⁶ Decision of the Civil Law Chamber of the Supreme Court of 1 October 2007; published RT III 2007, 34, 274



“[i]n the case of equal performance results, preference is given to employees who have contracted an *occupational disease* or received a work *injury* by fault of the employer; who have worked for the employer *longer*; who have dependants; or who are developing their professional skills and expertise in an educational institution which provides special education” (*italics added*).

Similar provision can be found for public officials under Article 116 (2) of the Law on Public Service). Thus, according to these rules, people with employment-related disabilities and older workers may under certain circumstances have a preferential right to remain at work.

No similar rules can be found in the new Law on Employment Contracts (valid since 1 July 2009). An employer shall consider equal treatment principles in case of staff redundancy (Article 89 (4)). However, preferences are reserved for an employee with a child aged 3 and less and for a representative of other employees (Article 89 (5)).

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

No. Compensation in cases of redundancy depends only on the length of employment of a worker for the employer (Article 90 of the current Law on Employment Contracts). The same rule is applicable to public officials (Article 131 (1) of the Law on Public Service).

In the ‘new’ Law on Employment Contracts (valid from 1 July 2009) compensation paid by an employer for redundancy is the same in all cases (one month) (Article 100).

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

Article 9 (1) of the Law on Equal Treatment stipulates that it “does not prejudice the maintaining or adopting of specific measures which are in accordance with law and are necessary to ensure public order and security, prevent criminal offences, and protect health and the rights and freedoms of others. Such action shall be in proportion to the objective being sought”.

This provision is hardly in line with the Directive 2000/43. Difference in treatment on the basis of ethnic or racial origin in the form of *direct* discrimination is justified in case of genuine and determining occupational requirement (Article 4 (1) of the Directive and Article 10 of the Law on Equal Treatment). Other exceptions are possible only in the frame of positive action measures (Article 5 of the Directive; see also analysis in section 2.2.c).

This provision does not contradict, however, the Directive 2000/78 (Article 2 (5)) in the context of discrimination on the basis of discrimination on the grounds of religion or belief, disability, age or sexual orientation. While ‘democratic society’ is not mentioned in Article 9 (1) of the Law on Equal Treatment, it included the principle of proportionality.



Any limitations of fundamental rights are normally interpreted in Estonia in conjunction with the directly applicable Article 11 of the Constitution. It provides for restrictions of human rights (including non-discrimination) in accordance with Constitution (i.e. on the basis of laws adopted by the parliament)¹²⁷ and only if “necessary in a democratic society” and “do not distort the nature of the rights and freedoms”.

The ‘Article 11 test’ has been established by the Supreme Court. As a result, the Estonian judiciary will regard any possible restriction of a fundamental right through prism of ‘suitability, necessity and proportionality’¹²⁸:

30. [...] The principle of proportionality proceeds from the second sentence of Article 11 of the Constitution. The Supreme Court *en banc* shall review the conformity of the restriction to the proportionality principle through the three characteristics thereof - suitability, necessity and proportionality in the narrowest sense. If a measure is manifestly unsuitable, it is needless to review the necessity and proportionality of it in the narrowest sense. If a measure is suitable but is not necessary, there is no need to check the proportionality of the measure in the strict sense. A measure that fosters the achievement of a goal is suitable. For the purposes of suitability a measure, which in no way fosters the achievement of a goal, is indisputably disproportionate. The requirement of suitability is meant to protect a person against unnecessary interference of public power. A measure is necessary if it is not possible to achieve a goal by some other measure which is less burdensome on a person but which is at least as effective as the former. In order to decide on the proportionality of a measure in the narrowest sense the extent and intensity of interference with a fundamental right on the one hand and the importance of the aim on the other hand have to be weighed...

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

The current Law on Employment Contracts bans the unequal treatment of full-time and part-time employees and people working on the basis of permanent and temporary employment contracts. However, differential treatment is possible if it justified by objective reasons under laws and collective agreements (Articles 13¹ and 13²). The same Law will not regard as discrimination “allowing a suitable working and rest time regime which satisfies the religious requirements of an employee” (Article 10¹).

No similar provisions can be found in the ‘new’ Law on Employment Contracts (valid from 1 July 2009).

¹²⁷ “The Constitution restrictions on fundamental rights and freedoms may be imposed only by legislative acts having the force of parliamentary Acts. Constitution provides for no other possibilities for imposing restrictions on fundamental rights and freedoms”. Decision of the Supreme Court *en banc* of 11 October 2001; published in RT III 2001, 26, 280

¹²⁸ Decision of the Supreme Court *en banc* of 13 March 2003; published in RTIII 2003, 10, 95



5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic*

The Law on Equal Treatment (Article 6) does not prejudice the maintaining or adopting of specific measures to prevent or compensate for disadvantages linked to ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. Such action shall be in proportion to the objective being sought. No other clarifications can be found in the text of the law. Article 10 of the Law on Employment Contracts and Article 36¹ (2) of the Law on Public Service add to the list of grounds: sex, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees.

As mentioned above, the current Law on Employment Contracts does not regard as discrimination making appropriate arrangements related to work and free time to satisfy employees' religious needs (Article 10¹). No similar provisions can be found in the 'new' Law on Employment Contracts (valid from 1 July 2009).

On the basis of the Law on Occupational Health and Safety, an employer shall create suitable working and rest conditions for disabled workers, pregnant women, women who are breastfeeding, and minors (Article 10 (1)) (see also section 2.6 for details).

- b) *Do measures of positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted., classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights based measures.*

The Estonian State promotes the employment of disabled people by paying social tax for a worker who receives a pension for incapacity for work (see section 2.7 for details). This can be treated as a positive action.

There are no quotas for the access of disabled persons to the labour market nor any quotas or legally established action measures related to Roma.

For ethnic non-Estonians poor knowledge of Estonian is a real obstacle for employment or (life-long) learning, especially for older generations. Estonian-language training is provided by the Estonian Labour Market Board in the frame of labour market training.

From late 1990s the main policy documents to deal with ethnic non-Estonians were society integration programs. According to the official approach, the integration of ethnic and national minorities and immigrants can be facilitated mostly through Estonian language training and Russian-language school reform. In 2008 the government approved a new program *Estonian Integration Strategy 2008-2013*. In the Strategy 'equal opportunities' are placed among the main principles of the policy document.



Various language training initiatives are regularly paid by publicly funded Integration Foundation. In 2008 the Foundation launched the *Promotion of language training program 2007-2010*¹²⁹ with the aim “to promote equal opportunities to receive education and to manage on the labour market irrespective of the first language, age and ethnicity”. Target groups are ethnic minorities; teachers; youth. The program is supported with EEK 60.17 million (around EUR 3.87 million) and it is co-funded by the European Social Fund and the Estonian Ministry of Education and Research. Basic activities of the program are: 1. additional training of Estonian for higher education students; 2. labour force assignments within Estonia with the language practicing purpose; 3. preparations for professional qualification exams for adults with poor command in Estonian; 4. additional training of Estonian for occupational schools students; 5. additional training for teachers of Estonian as a second language; 6. additional training for teachers working with adults; 7. training of Estonian for teachers and directors of Russian-medium educational institutions; 8. training of future teachers to work with non-Estonian-speaking students; 9. additional training for teachers and directors of Russian-medium occupational schools; 10. Estonian and Russian-speaking youth (14-19 years old) common informal activities; 11. additional training of speech doctors working with Russian-language children and students; 12. elaboration and implementation of programs and subject materials of Estonian language and for training in Estonian in occupational schools.¹³⁰

¹²⁹ In Estonian: *Keeleõppe arendamise programm 2007-2010*.

¹³⁰ Materials of the program are on file with the author.



6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

In relation to each, of the following questions please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

a) What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?

In general, a victim of discrimination may address quasi-judicial institutions or courts for the protection of his or her rights.

Article 23 of the Law on Equal Treatment stipulates that discrimination disputes shall be resolved by court and labour disputes committees.¹³¹ Additionally, conciliation procedures may be conducted by the Chancellor of Justice (discrimination in private domain). In this context a decision of courts, a labour dispute committee or agreement between parties in a conciliation procedure are legally binding (see below).

The Chancellor of Justice (public domain) and Commissioner for Gender Equality and Equal Treatment (public and private domain) are entitled to conduct ombudsman-like procedures which results are not legally binding (see below).

1. Quasi-judicial institutions

A. Chancellor of Justice

In the context of the implementation of the Directives, the Estonian Chancellor of Justice was provided in 2003 with new rights and was given an obligation to deal with discrimination in both the private and public domains. An overview of the structure and functions of this office is given in section 7 of this report.

¹³¹ Töövaidluste komisjonid



According to Article 19 of the Law on the Chancellor of Justice,

- 1) “Everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by way of filing a petition to request verification whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties ... adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration.
- 2) Everyone has the right of recourse to the Chancellor of Justice for the conduct of a conciliation procedure if he or she finds that a natural person or a legal person under private law has discriminated against him or her on the basis of:
 - a) sex;
 - b) race;
 - c) ethnic origin;
 - d) colour;
 - e) language;
 - f) origin;
 - g) religion or religious beliefs;
 - h) political or other opinion;
 - i) property or social status;
 - j) age;
 - k) disability;
 - l) sexual orientation; or
 - m) other attributes specified by law.
- 3) No court judgment shall have entered into force in the matter of the petition, and at the time of the filing of the petition, the matter shall not be subject to judicial proceedings or mandatory quasi-judicial complaint proceedings.”

This is a version of Article 19, which has been valid since 1 January 2004¹³². Complaints (petitions) mentioned in section 1 of Article 19 may include information about discrimination. There are very few limitations regarding material scope.

The Chancellor may refuse to review a filed complaint (petition) if the person has the possibility to file a challenge or resort to any other legal remedies (Article 34 (2)). The Office of the Chancellor of Justice interprets this provision to the effect that their body is supposed to influence, not to duplicate work of other public control institutions¹³³. Any decision of the Chancellor in this regard will be adopted *ad hoc*. Furthermore, there are no special rules to deal with discrimination-related complaints (as of March 2009)¹³⁴.

During proceedings in a matter, the Chancellor of Justice shall establish the facts relevant to the matter and, if necessary, collect evidence on his or her own initiative for such purpose. Additionally he or she may obtain the opinion of specialists in relevant issues (Article 21 of the Law on the Chancellor of Justice).

¹³² RT I 2003, 23, 142

¹³³ Chancellor of Justice; Written communication no. 14-1/060262/0601253 of 14 February 2006

¹³⁴ Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009



The Chancellor shall have unrestricted access to documents, other materials and areas which are in the possession of the agencies under investigation, and to the parties to the conciliation proceedings (Article 27 (1)). He or she also has the right to collect information and explanations from the agencies under investigation and the parties to the conciliation proceedings. These agencies, the parties of the proceedings and other persons and agencies shall communicate such information and explanations as required under the terms prescribed by the Chancellor of Justice (Articles 28 and 29). According to Article 30, in the course of proceedings the Chancellor may “take testimonies from persons concerning whom there is information that they know facts relevant to the matter and are capable of providing truthful testimonies concerning such facts”.

a. Chancellor of Justice: discrimination by *public* institutions

According to the Law on the Chancellor of Justice, in the case of *discrimination by public institutions*, a procedure can be initiated on the basis of a victim’s application or at the Chancellor’s own initiative (Article 34 (1)). The Chancellor has the right to commence disciplinary proceedings against officials who obstruct the activities of the Chancellor or his or her adviser (Article 35 (2)). Proceedings are completed when the Chancellor of Justice formulates his or her position, assessing whether the activities of the agency under investigation are legal and in compliance with the principles of sound administration (Article 35¹(1)). The Chancellor may provide criticism and suggestions and express his or her opinion in other ways, or make proposals for the elimination of the violation (Article 35¹(2)). Such an opinion of the Chancellor of Justice is not of a legally binding nature. However, the law foresees a mechanism to ensure the fulfilment of the Chancellor’s suggestion and proposals:

“Article 35². Insurance of compliance with proposal of Chancellor of Justice

- 1) An agency who receives a suggestion or proposal from the Chancellor of Justice shall inform the Chancellor of Justice, within the term set by him or her, of the details of compliance with the suggestion or proposal.
- 2) The Chancellor of Justice has the right to make inquiries concerning compliance with his or her suggestions and proposals. An agency who receives an inquiry shall answer without delay.
- 3) Upon non-compliance with a suggestion or proposal of the Chancellor of Justice or failure to answer an inquiry of the Chancellor of Justice by an agency, the Chancellor of Justice may report such fact to the authority which exercises supervision over the agency, to the Government of the Republic or to the *Riigikogu*.
- 4) The Chancellor of Justice may inform the public of his or her suggestions or proposals, and compliance or failure to comply therewith”.

Additionally, the Chancellor may make a recommendation for the provision of legal aid to petitioners or for the exemption of petitioners from state fees in court proceedings in matters within his or her competence (Article 35³).

There are other competencies of the Chancellor of Justice which can be relevant in discrimination context.



Everyone has the right of recourse to the Chancellor to review the conformity of an act or other legislation of general application with the Constitution or the law (Article 15).

b. Chancellor of Justice: Discrimination by *natural persons and legal persons in private law*

Cases of *discrimination by natural persons and legal persons in private law* can be solved through a special conciliation procedure. The aim of this procedure is to reach an agreement between a victim and a person suspected of discrimination. The conciliation procedure can be initiated only on the basis of a victim's application (Article 35⁵). However, an alleged discriminator is not obliged to participate in it (Article 35¹¹ (1)). Provisions regarding a shift in the burden of proof are not applicable in this procedure (see section 6.3 for details).

In a conciliation procedure, the Chancellor shall set the time and place for holding a session and shall notify the petitioner and respondent thereof (Article 35⁹ (2)). The role of the Chancellor at the session is of crucial importance:

“Article 35¹². Proposal to resolve dispute and enter into agreement

- 1) The Chancellor of Justice shall make a proposal to resolve the dispute and enter into an agreement, and shall communicate such proposal to the parties to the conciliation proceedings at the end of a session, or shall set a term during the session within which he or she will communicate the proposal to the petitioner and respondent.
- 2) In the proposal, the Chancellor of Justice shall present his or her substantiated opinion on the discrimination allegations formed by him or her in the course of the proceedings based on the evidence obtained and the established facts. In the proposal, the Chancellor of Justice may suggest that the respondent perform appropriate acts, and take measures for payment of compensation and restitution of the petitioner's rights. The Chancellor of Justice may propose that the respondent compensates for the reasonable expenses which the petitioner has borne or that the respondent bears the costs of the services of specialists, interpreters, translators or witnesses”.

A person who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative (Article 23 (2)).

The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff (Article 35¹⁴). If a conciliation procedure fails, a victim may address the court for the protection of his or her rights (Article 35¹⁵).

It is guaranteed that a person may file a complaint to the Chancellor of Justice within one year in the case of discrimination by public institutions and within four months in the case of discrimination by a natural person or a legal person in private law (Article 34 and Article 35⁶).



However, according to the law in any case the Chancellor will not deal with complaints if they concern 1) the professing or practising of faith or working as a minister of a religion in religious associations with registered articles of association; 2) relations in family or private life; 3) the exercising of the right of succession (Article 35⁵ (2)).¹³⁵

The Chancellor of Justice is a quasi-judicial impartial institution and s/he shall not provide independent assistance to victims of discrimination in pursuing their complaints about discrimination (in practice, however, the Chancellor's Office will inform an applicant about his or her rights).

No state fee is to be paid in cases of recourse to the Chancellor of Justice.

In 2007, the Chancellor investigated the aspect of equal treatment in 60 cases (23 cases in 2006), including five petitions for initiating conciliation proceedings.¹³⁶ In 2008 the Chancellor started three conciliation procedures related to alleged discrimination (including one procedure related to alleged discrimination on the grounds of citizenship and ethnicity). As of this writing two of them are pending; one procedure was terminated without outcome (because an alleged discriminator decided not to participate in this non-obligatory procedure).¹³⁷

B. Labour Dispute Committees

In Estonia individual labour disputes are solved by labour dispute resolution bodies, namely labour dispute committees and courts (Article 4 (1) of the Law on Resolution of Individual Labour Disputes¹³⁸). The labour dispute committees are established within the local labour branches of the Labour Inspectorate¹³⁹ (Article 11 (1)).

The parties have recourse to a labour dispute resolution body for resolution of labour disputes within four months after the date following the date on which they became aware or should have become aware of the violation of their rights (and one months to dispute the justification for termination of an employment contract) (Articles 5 and 6 of the Law on Resolution of Individual Labour Disputes).

¹³⁵ The explanatory note attached to the draft law explained that these exceptions were the result of 'historical development and social traditions. For instance, in some religions only males are entitled to work as a minister; the state shall not change these traditions and habits by force. It is also unreasonable if someone addresses the Chancellor of Justice in order to contest a grandfather's will by which a larger part of his property goes to sons, not to daughters. The state's interference into these relations cannot be justified'. See explanatory note attached to the Draft no. 1265 SE (9th Riigikogu); available at <http://www.riigikogu.ee> (01.06.2009)

¹³⁶ Chancellor of Justice, *Õiguskantsleri 2007. aasta tegevuste ülevaade* (Overview of Activities of the Chancellor of Justice in 2007), p. 315.

¹³⁷ Chancellor of Justice; Written communication no. 5-3/0900838 of 5 March 2009.

¹³⁸ *Individuaalse töövaidluse lahendamise seadus*, RT I 1996, 3, 57

¹³⁹ According to Article 25(1) of the Law on Occupational Health and Safety, the Labour Inspectorate shall arrange for the exercise of state supervision in the working environment over compliance with the requirements of legislation regulating occupational health and safety and labour relations. In the framework of an ordinary administrative procedure, this institution may make a precept to an employer concerning different violations of labour-related legal acts, including anti-discrimination provisions (Article 145 of the Law on Employment Contracts).



Estonian scholars argued that the procedure of the labour dispute committees could not be used by persons applying for employment because this institution is competent to deal solely with disputes between employers and employees¹⁴⁰. The recently adopted Law on Equal Treatment solved this problem by including into the definition of ‘an employee’ also those applying for employment (Article 4).

The labour dispute committees follow a procedure established in the Law on Resolution of Individual Labour Disputes (and the Code of Civil Procedure).

Their decisions shall be based on law and shall be substantiated (Article 22 (2) of the Law on Resolution of Individual Labour Disputes). If the parties do not agree with a decision of a labour dispute committee, they have recourse to the courts, which may hear the same labour dispute (Article 24 (1)). According to Article 25 of the Law,

- 1) “A decision of a labour dispute committee enters into force after expiry of the term for recourse to a court if no party files a statement of claim to a county court...
- 2) A decision of a labour dispute committee which has entered into force is binding on the parties
...”

Furthermore, such a decision is enforceable by bailiff (Article 26 (2)).

Recourse to labour dispute committees is exempt from state fees (Article 9 (1)). However, the commissions do not deal with financial claims which exceed the amount of 50 thousand Estonian crores or about 3,200 EUR (Article 4 (1-1) (civil courts will be dealing with bigger claims).

In 2006 labour disputes commissions received altogether seven complaints with demands related to the issue of discrimination, in 2007 – 7 and in 2008 - 6¹⁴¹.

C. Commissioner for Gender Equality and Equal Treatment

The ‘new’ Law on Equal Treatment foresees creation of the position of the Commissioner for Gender Equality and Equal Treatment (hereinafter the Commissioner). In fact, the authorities decided to widen the competence of the Commissioner for Gender Equality, a specialised body introduced by the Law on Gender Equality: Thus, the commissioner now deals with other grounds of discrimination and will get some new responsibilities (see below).

The Commissioner shall provide opinions to persons who have submitted applications concerning possible cases of discrimination and, if necessary, persons¹⁴² who have a legitimate interest in monitoring compliance with the requirements for equal treatment (Article 17 (1)).

¹⁴⁰ Gaabriel Tavits, *Muudatused töölepinguliste suhete õiguslikus reguleerimises: kaitse otsinguil Euroopa Liidu abiga* (Changes in the Legal Regulation of Relations on the Basis of an Employment Contract: In Quest of Protection with the Assistance of the European Union), *Juridica* no.8, vol. 12 (2004), p.557

¹⁴¹ Labour Inspectorate; Written communications of 9 January 2007, no. 1-05/17675-1 of 26 September 2006, no. 1-05/234-1 of 18 January 2008, no. 1-05/4213-1 of 18 August 2008, and no. 1-05/234-1 of 11 February 2009.

¹⁴² In this context the Estonian term ‘a person’ (isik) shall refer to both natural and legal persons.



The purpose of an opinion is to provide an assessment which, in conjunction with the Law on Equal Treatment, international agreements binding on Estonia and other legislation, allows for an assessment of whether the principle of equal treatment has been violated in a particular legal relationship (Article 17 (2)).

In order to provide an opinion, a Commissioner has the right to obtain information from all persons who may possess information which is necessary to ascertain the facts relating to a case of discrimination, and demand written explanations concerning facts relating to alleged discrimination, and submission of documents or copies thereof within the term designated by the Commissioner. An opinion shall be provided within two months after submission of an application (Article 17 (4)-(5)).

Anyway, the above-mentioned procedure is not regarded as a “resolution of disputes concerning discrimination” (Article 23). A Commissioner’s opinion is not legally binding. As it was mentioned above, the Law on Equal Treatment bans discrimination on all five respective grounds plus colour (Article 1 (1)). However, the Law on Equal Treatment is applicable also in case of discrimination on other grounds enlisted in Article 10 of the current Law on Employment Contracts (valid until 1 July 2009) and in Article 36¹ (2) of the Law on Public Service. See section 2.1 of this report for details. Judicial interpretation will be helpful to confirm that a Commissioner may deal with grounds of discrimination enlisted in the Law on Employment Contracts and Law on Public Service.

An overview of proposed functions of the Commissioner is given in section 7 of this report. Suffice it to mention that both the Commissioner and the Chancellor of Justice have a mandate to deal with complaints of discrimination victims. However, specific tasks are assigned to the commissioner such as to advise and to provide *assistance* to people pursuing their complaints about discrimination or to publish specific *reports* regarding equal treatment (Article 16 of the Law on Equal Treatment).

2. Courts

A victim of discrimination can use criminal procedures (if he or she suffered from crimes stipulated by the Penal Code), administrative court procedures (complaints against the action of an official or state/municipal institution) or civil procedures (e.g. labour disputes in private domain; the issue of non-pecuniary damage).

Discrimination-related cases will be solved on the basis of general rules and standards. The only exception will be an application of provisions regarding a shift in the burden of proof established by the Law on Equal Treatment (see section 6.3 for details).

State legal aid is granted on the basis of the Law on State Legal Aid¹⁴³ to insolvent natural or legal persons in connection with proceedings in an Estonian court or administrative authority.

In Estonia 20% of the population does not speak Estonian (most of those speak Russian)¹⁴⁴ while Estonian is the only *official language* of court procedure.

¹⁴³ *Riigi õigusabi seadus*, RT I 2004, 56, 403

¹⁴⁴ Statistical Office of Estonia 2000 *Population and Housing Census: Citizenship, Nationality, Mother Tongue and Command of Foreign Languages II*, Tallinn: Statistical Office of Estonia, 2001, Table 15



Nevertheless, exceptions to this rule are possible (Article 5 of the Law on Courts¹⁴⁵). According to Article 10 (2) of the Code of Criminal Procedure, the assistance of a translator or interpreter shall be ensured for the participants in court proceedings and for those parties who are not proficient in Estonian.

Article 34 (1) of the Code of Civil Procedure stipulates that if a participant in a proceeding is not proficient in Estonian and s/he *does not have a representative*, “the court shall involve, if possible, an interpreter or translator in the proceeding at the request of such participant in the proceeding or at the court's own initiative. An interpreter or translator need not be involved if the statements of the participant in the proceeding can be understood by the court and the other participants in the proceeding”. If the court is not able to immediately involve an interpreter or translator, it shall “make a ruling whereby the participant in the proceeding needing the assistance of an interpreter or translator is required to find an interpreter, translator or a representative proficient in Estonian for himself or herself. Failure to comply with the demand of the court does not prevent the court from adjudicating the matter. If the plaintiff fails to comply with the demand of the court, the court may refuse to hear the action” (Article 34 (2)). Representatives and advisors of a participant in a procedure (including persons who have legitimate interest to check compliance with the requirements for equal treatment; see section 6.2) are not entitled to use translators/interpreters (Article 34 (5)). These provisions are valid for administrative court procedures as well, on the basis of Article 5 of the Code of Administrative Court Procedure¹⁴⁶. The above-mentioned rules will also be used in discrimination-related disputes.¹⁴⁷

A problem may also arise regarding the language of legal actions and complaints. At present, the courts reject most legal actions and complaints in Russian with reference to the provisions regarding official court language. According to general understanding, under some circumstances (e.g. prisoners) such complaints can be accepted by a judge who may use his or her right of discretion.¹⁴⁸ From 1 January 2009 the administrative court may provide translation of complaints and other materials on the account of the persons deprived of his or her liberty (Article 10 (9) of the Code of Administrative Court Procedure).

To a certain extent, language-related problems may be solved through the Law on State Legal Aid. Applications for state legal aid shall be submitted in Estonian (EU citizens and residents of EU countries can do it also in English) (Article 12 (5)). In 2008 the Supreme Court reemphasised the requirements regarding the language of application (a Russian-speaker unsuccessfully contested this requirement with the reference to Article 11 of the Universal Declaration of Human Rights).¹⁴⁹

As for *people with disabilities*, the use of sign language in courts is quite widespread in Estonia.

¹⁴⁵ *Kohtute seadus*, RT I 2002, 64, 390

¹⁴⁶ *Halduskohtumenetluse seadustik*, RT I 1999, 31, 425

¹⁴⁷ These rules are relatively fresh and as of this writing we cannot make any judgement on how they are actually implemented in practice.

¹⁴⁸ Chancellor of Justice; Written communication no. 5-3/0608588 of 5 January 2007

¹⁴⁹ Ruling of the Criminal Law Chamber of the Supreme Court of 29 April 2008; published in RT III 2008, 18, 122; case no. 3-1-1-24-08

We are not aware of any instances of the use of Braille. Public buildings (including courts) are normally wheelchair accessible (see also information about the Law on Building in section 2.6). Additionally, the Law on Traffic¹⁵⁰ (Chapter 10) establishes a legal framework for the organisation of road mobility for physically disabled people and parking for vehicles used by them; the granting of parking cards for people with physical disabilities; special rights for physically disabled drivers and drivers of vehicles servicing physically disabled or blind people.

b) Are these binding or non-binding?

As it was mentioned above decisions and recommendations of Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment are not legally binding. The only exception is the agreement in conciliation procedure approved by the Chancellor of Justice (in case of discrimination in private domain).

Surely, decisions of courts and labour disputes committees are legally binding if entered in force.

c) Can a person bring a case after the employment relationship has ended?

Yes. According to the general rule the parties have recourse to a labour dispute resolution body for resolution of labour disputes within four months after the date following the date on which they became aware or should have become aware of the violation of their rights (and one months to dispute the justification for termination of an employment contract) (Articles 5 and 6 of the Law on Resolution of Individual Labour Disputes). A claim provided for compensation of damage for discrimination expires within one year as of the date when the injured party becomes aware or should have become aware of the damage caused (Article 25 of the Law on Equal Treatment).

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

a) in support of a complainant

In the Estonian context one may discuss the engagements of such organisation on behalf (rather than in support) of a victim. See explanations in the next section.

According to the position of the Ministry of Justice, the requirements of Article 7 (2) of the Directive 2000/43 are reflected in the national legislation by virtue of Article 228 of the Code of Civil Court Procedure (a participant in a proceeding may use an advisor who may appear in court together with the participant in the proceeding and provide explanations; an adviser cannot perform procedural acts or file petitions). The Ministry does not employ any additional measures to transpose or implement the respective provision of the Directive. The Ministry does not believe that at the moment such special measures are necessary.¹⁵¹

An advisor will normally be a natural person.

¹⁵⁰ *Liiklusseadus*, RT I 2001, 3, 6; RT I 2002, 92, 531

¹⁵¹ Ministry of Justice; Written communication no. 10.1-8/3179 of 17 March 2008



b) on behalf of one or more complaints (please indicate if class actions are possible)

In general, in penal, civil and administrative court procedure, the workers of associations and other entities with a legitimate interest may be legal representatives and advisors of one or more victims of discrimination. Associations at stake have a guaranteed right of involvement in discrimination disputes in private employment and in the frame of the conciliation procedure at the Chancellor of Justice (see below).

According to the amended Law on Individual Labour Disputes (Article 14 (2¹)), upon resolution of discrimination disputes, a person¹⁵² who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative. The added value of this provision is the *guaranteed* recognition in this capacity of persons working for human rights NGOs or other relevant organisations/institutions. For instance, at the moment in the areas covered by this report only trade unions have a guaranteed right (Article 17 (7) of the Law on Trade Unions) to represent and defend their members in individual labour disputes in a civil court and labour dispute committees, normally with worker's proxy (Article 16 (2)). In practice, the proxy is issued to a concrete employee of a trade union or to a lawyer who is working for a trade union.

In general, a petitioner shall file a petition with the Chancellor of Justice in person or through an authorised representative (Article 23 (1) of the Law on the Chancellor of Justice). However, in conciliation proceedings for resolution of discrimination disputes (private domain), a person who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative (Article 23 (2)). The Chancellor would recognise even independent complaints filed by NGOs in the interests of a victim. In legal sense applications without explicit authorisation of a victim will be regarded as application with deficiencies. The conciliation process will be stopped if a victim fails to give his or her consent to the procedure¹⁵³.

Again, in the context of Estonian procedural norms and practices a representative of a discrimination victim will be a natural person (however, legal persons can also submit applications with the Chancellor of Justice in conciliation procedure – see above).

According to the Law on Equal Treatment, persons (meaning both natural and legal persons) who have a legitimate interest in monitoring compliance with the requirements for equal treatment may apply for an opinion of a Commissioner for Gender Equality and Equal Treatment (Article 17 (1)).

Class actions are not possible in Estonia.

¹⁵² At the moment there are no established rules or practice to report which natural or legal persons shall be recognised as those having legitimate interest to check compliance with the requirements for equal treatment.

¹⁵³ Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009



6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

Before 1 May 2004 Estonian legislation did not use the concept of a shift in the burden of proof. Nowadays, relevant provisions can be found in the Law on Equal Treatment and the Law on Gender Equality.

The Law on on Equal Treatment states the following:

“Article 8. Shared burden of proof

- (1) An application of a person addressing a court or a labour dispute committee shall set out the facts on the basis of which it can be presumed that discrimination has occurred.
- (2) In the course of proceedings, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, such refusal shall be deemed to be equal to acknowledgement of discrimination by the person.
- (3) The shared burden of proof does not apply in administrative or criminal proceedings.”

As it was mentioned above, the Law on Equal Treatment bans discrimination on all five respective grounds plus colour (Article 1 (1)). However, the Law on Equal Treatment is applicable also in case of discrimination on other grounds enlisted in Article 10 of the current Law on Employment Contracts (valid until 1 July 2009) and in Article 36¹ (2) of the Law on Public Service. See section 2.1 of this report for details.

As mentioned in section 6.1, an alleged discriminator may refuse to participate in a conciliation procedure at the Chancellor of Justice’s Office. According to the Law on Equal Treatment this principle will not be applicable to conciliation procedures (one of the possible reasons of this decision is that a conciliation procedure is voluntary).

To the best of the author’s knowledge, provisions regarding a shift of burden have not been applied by courts as yet.

The Law on Equal Treatment has introduced a new obligation: An alleged discriminator shall give within 15 days relevant written explanations in response to a written request supplied by a person who finds that he or she has been a victim of discrimination (Article 7). No penalty is foreseen for breach of this obligation.



6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)

The Law on Equal Treatment stipulates that discrimination shall also be taken to occur where one person is treated less favourably than others or negative consequences follow because he or she has submitted a complaint regarding discrimination or has supported a person who has submitted such complaint (Article 3 (6)).

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

There is no developed practice of implementing the new anti-discrimination provisions by courts or quasi-judicial institutions (see section 0.3 for details). In this section we can only give some information regarding general principles established under Estonian legislation.

The new Law on Equal Treatment provided for the right of an injured party to demand compensation for damage and termination of discrimination. Furthermore, a victim may demand a ‘reasonable amount of money’ be paid as compensation for non-pecuniary damage caused by the violation (Article 24 (1)-(2)). “Upon determination of the amount of compensation, a court shall take into account, inter alia, the scope, duration and nature of the discrimination” (Article 24 (3)). However, persons applying for employment or service with whom the employer refused to enter into an employment contract or a contract for the provision of services or who were not appointed or elected to office on the basis of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation shall not demand to be entitled to entry into the employment contract or contract for the provision of services or appointment or election to office (Article 24 (4)).

According to Article 152 (1) of the Penal Code (violation of equality), “[u]nlawful restriction of the rights of a human being (*inimene*) or granting of unlawful preferences to a human being on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention”. The same act, if committed at least twice, or “significant damage is thereby caused to the rights or interests of another person protected by law or to public interests”, is punishable by a pecuniary punishment or up to one year of imprisonment (Article 152 (2)). In 2002 – 2008 the police authorities did not commence procedures on the grounds of Article 152 of the Penal Code¹⁵⁴.

¹⁵⁴ Police Board; Written communications no. PA2-1.11.2/3177 of 18 July 2006 and no. PA_2.1-20.2/5648 of 12 January 2007; Ministry of Justice; Written Communications no. 8-2-04/10613 of 24 October 2007, of 21 January 2008 (e-mail) and no. 7.1-5/1862 of 10 February 2009



We have already mentioned that Article 25 of the Constitution provides for the right to compensation for moral and material damage caused by the unlawful action of any person. Until recently, court judgments regarding the payment of moral compensation were rare in Estonia. There is a degree of consensus in the local legal community that moral compensation is to be paid only in exceptional cases and that this compensation shall not be very large. For instance, in 2000 the Civil Law Chamber of the Supreme Court obliged the state to pay compensation for moral damages caused by the unlawful actions of a public official. These damages were recognised as being approximately equal to the average monthly salary “taking into consideration the level of prosperity in society”¹⁵⁵.

The obligation to pay compensation (supposedly including compensation for moral damage) may be included in the final agreement of a conciliation procedure (Article 35¹² (2) of the Law on the Chancellor of Justice). We await further implementation of this provision in future. Additionally, it is not so obvious how the Chancellor of Justice shall deal with the issue of compensation in cases of discrimination by public authorities.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

In December 2008 both Law on Employment Contracts (Article 117) and Law on Public Service (Article 135) were amended to the effect that upper limit of the compensation provided for illegal termination of an employment or service does not apply in case of discriminatory termination as specified in the Law on Equal Treatment or the Law on Gender Equality. The same rule was repeated in Article 30 (4) of the Law on Resolution of Individual Labour Disputes.

c) Is there any information available concerning:
- the average amount of compensation available to victims
- the extent to which the available sanctions have been shown to be - or are likely to be effective, proportionate and dissuasive, as is required by the Directives?

Without cases having been heard in the Supreme Court or at the Chancellor of Justice the author cannot provide the average amount of compensation available to victims or make any assessments as regards their effectiveness, proportionality or dissuasiveness.

¹⁵⁵ Decision of the Civil Law Chamber of the Supreme Court of 29 November 2000; published in RT III 2000, 29, 316



7. SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?(Body/bodies that corresponds to the requirements of article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so)*

There are two specialised bodies in Estonia for the promotion of equal treatment: the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment. In explanatory note attached to relevant bills one can find direct references to the Directive 2000/43.

Table 2. Equality bodies and list of protected grounds

Body	Grounds	Source
Chancellor of Justice	all grounds in public domain; in private domain: sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law	Law on the Chancellor of Justice (Article 19)
Commissioner for Gender Equality and Equal Treatment	sex, ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation; in labour relations also: marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces	Law on Equal Treatment (Article 1 (1) and 2 (3)); Law on Gender Equality (Article 1 (1)); Law on Employment Contracts, valid until 1 July 2009 (Article 10); Law on Public Service (Article 36 ¹ (2))



- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

The Chancellor of Justice is appointed by the Parliament, on the proposal of the President of the Republic, for a term of seven years (Article 140 (1) of the Constitution). In directing his or her office, the Chancellor of Justice has the same rights which are granted by law to a minister in directing a ministry (Article 141 (1)). The Chancellor is independent in his or her decision-making, and the Office has a budget of its own (fixed in the annual state budget). This body comes under the control of the State Audit Office¹⁵⁶, which is an independent state body exercising economic control (on the basis of Article 7 (1) of the Law on the State Audit Office¹⁵⁷).

According to Law on Equal Treatment, the Commissioner for Gender Equality and Equal Treatment is an independently acting expert appointed for five-year period by the Minister of Social Affairs. His or her activities, supported by the office, are funded by the state budget. The statute of the office is to be adopted by the Government of the Republic (Article 15).

- c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

There are certain duties of the *Chancellor of Justice* regarding the fight against discrimination¹⁵⁸ in Estonian society (Article 35¹⁶ of the Law on the Chancellor of Justice):

- 1) “to analyse the effect of the implementation of legislation on the condition of members of society;
- 2) to 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) to make proposals to the Government of the Republic, governmental and local self-government institutions, and employers to change legal acts;
- 4) to 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) to promote in co-operation with other persons and bodies the principles of equality and equal treatment.”

As an ombudsman institution the Chancellor may deal with discrimination in public domain on any ground and in virtually all spheres of legal regulation. In case of conciliation procedure (discrimination in private domain), there are certain limits as regards grounds and material scope (see section 6.1 of the report). However, all five relevant grounds are explicitly covered.

¹⁵⁶ Riigikontroll

¹⁵⁷ Riigikontrolli seadus, RT I 2002, 21, 117

¹⁵⁸ The Office of the Chancellor of Justice argues that their competence to deal with discrimination is quite wide while it is based on Article 12 of the Constitution (Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009). As it was mentioned above, Article 12 of the Estonian Constitution bans discrimination on any ground.



According to the Law on Equal Treatment, the *Commissioner for Gender Equality and Equal Treatment* shall (Article 16):

- 1) monitor compliance with the requirements of this Act and the Law on Gender Equality (see Table 1 of this report for full list of respective grounds);
- 2) *advise and assist persons* upon submission of complaints regarding discrimination;
- 3) provide opinions concerning possible cases of discrimination on the basis of the applications submitted by persons or on his or her own initiative on the basis of the obtained information;
- 4) analyse the effect of Acts on persons divided on the basis of the attributes specified in Article 1 (1) of the Law on Equal Treatment (i.e. race, ethnic origin, colour, religion or other beliefs, age, disability, sexual orientation) and on the situation of men and women in society;
- 5) make proposals to the Government of the Republic, government agencies, local governments and their agencies for amendments to legislation;
- 6) advise and inform the Government of the Republic, government agencies and local government agencies on issues relating to the implementation of the Law on Equal Treatment and the Law on Gender Equality;
- 7) *publish reports* on implementation of the principle of gender equality and equal treatment;
- 8) cooperate with other persons and agencies to promote equal treatment and gender equality;
- 9) take measures to promote equal treatment and gender equality.

Procedures available to the Commissioner for Gender Equality and Equal Treatment are described in section 6.1 of this report.

In a comparative context we can summarise the main tasks of two equality bodies as follows (Articles 19 and 35¹⁶ of the Law on the Chancellor of Justice and Article 16 of the Law on Equal Treatment):

First, victims of discrimination in the public domain will be able to address one of these institutions. The Chancellor and the Commissioner may conduct an ombudsman-style procedure and issue a legally non-binding decision¹⁵⁹ (Commissioner) or recommendation (Chancellor).

Second, victims of discrimination in the private domain may address the Chancellor with the request to start a conciliation procedure. If succeeded, the procedure will end up with legally binding decision. Alternatively, the Commissioner may be addressed to conduct an ombudsman-style procedure. His or her decision will not be binding in legal terms.

Third, only the Commissioner will have an explicit duty to advice and provide assistance to people pursuing their complaints about discrimination.

¹⁵⁹ “With the consent of the applicant, the Commissioner shall communicate the opinion to the person suspected of discrimination for knowledge or recommendation” (Article 17 (6) of the Law on Equal Treatment).



Forth, both the Chancellor and the Commissioner will be obliged to analyse the effect of the implementation of legislation to the condition of the members of the society and to make proposals to governmental bodies for amendments to legislation.

However, only the Commissioner will be responsible for drafting of specific reports dedicated to discrimination issues.¹⁶⁰

Fifth, both institutions will be obliged to promote equal treatment, to inform about relevant principles and to enhance cooperation in the field. The activities of the Commissioner are mostly limited to the scope of application of the Law on Equal Treatment and the Law on Gender Equality. The relevant competence of the Chancellor is based on Article 12 of the Constitution and therefore they have few limits as regards material scope and grounds of discrimination.¹⁶¹ See also section 1.a of the report.

d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

As it was mentioned in previous section of the report, the *Chancellor of Justice* is explicitly authorised to issue recommendations on discrimination issues but not to conduct relevant surveys nor to publish reports (Article 35¹⁶ of the Law on the Chancellor of Justice). In practice, however, as an independent official who shall review the legislation (Article 139 of the Constitution), the Chancellor prepares general annual reports on Estonian legislation and produces smaller reports (opinions) with legal analysis, *inter alia*, on discrimination issues. The Chancellor is not obliged to grant legal aid or other assistance to a victim of discrimination. However, in practice a victim will be provided with basic information on his or her rights if s/he approaches the Chancellor of Justice's Office with a written or oral request/complaint¹⁶².

As for the *Commissioner for Gender Equality and Equal Treatment*, s/he has an explicit duty to advice and to provide assistance to people pursuing their complaints about discrimination. S/he is also responsible for drafting of specific reports dedicated to discrimination issues (Article 16 of the Law on Equal Treatment).

As it was mentioned above, the Commissioner is obliged to monitor compliance with the requirements of the Law on Equal Treatment and the Law on Gender Equality; and to analyse the effect of the laws on persons divided on the basis of sex and on the basis of the attributes specifically mentioned in the Law on Gender Equality (ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation) (Article 16 of the latter law). Against such background one may conclude that the Commissioner is definitely entitled to conduct independent surveys in the field.

e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

¹⁶⁰ The law does not provide any details as who will be the addressee of these reports.

¹⁶¹ Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009

¹⁶² Chancellor of Justice; Written communication no. 5-3/0600912 of 1 February 2006

The *Chancellor of Justice* is a non-judicial impartial institution and it shall not provide independent assistance (other than as mentioned above) to victims of discrimination in pursuing their *court* complaints about discrimination.

His or her advisors are not supposed to bring discrimination-related legal actions or complaints to courts or to intervene in court proceedings. The Supreme Court asks for opinion of the Chancellor of Justice in landmark cases.

However, the Chancellor may use his or her right to file a request with the Supreme Court to review the constitutionality of legislation of general application (including discrimination-related cases). This opportunity is scrutinised in Article 6 of the Law on Constitutional Review Court Procedure. Additionally, “[e]veryone has the right of recourse to the Chancellor to review the conformity of a law or other legislation of general application with the Constitution or the law” (Article 15 of the Law on the Chancellor of Justice).

As for the *Commissioner for Gender Equality and Equal Treatment*, the Law on Equal Treatment (Article 16) foresees his or her duty to advice and provide assistance to people pursuing their complaints about discrimination. However, this is neither right nor obligation of the Commissioner to bring discrimination complaints or to intervene in legal cases concerning discrimination.

- f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions)*

The *Chancellor of Justice* is a quasi-judicial body and may deal with cases of alleged discrimination by a *natural person or a legal person in private law* (on the basis of sex, race, ethnic origin, colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation or other grounds specified by law) (see section 6.1. of this report for details).

According to Article 23 of the Law on the Chancellor of Justice, a petitioner shall file a complaint in person or through an authorised representative. “In conciliation proceedings for the resolution of discrimination disputes, a person who has a legitimate interest in checking compliance with the requirements for equal treatment may also act as a representative”. A petitioner has the right to file a complaint orally. As mentioned in section 6.1, the Chancellor cannot initiate the so-called conciliation procedure (discrimination by private natural or legal persons) without an application from a victim. However, this is possible in cases of discrimination by public bodies and institutions.

The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff (Article 35¹⁴). If conciliation proceedings are terminated or the Chancellor of Justice has stated failure to reach an agreement, the petitioner has, within thirty days as of the receipt of the notice, the right of recourse to a court or to an authority conducting pre-trial proceedings as provided by law for the protection of his or her rights. An agreement approved by the Chancellor of Justice shall be final and can not be contested in court, except if the Chancellor of Justice has materially violated a provision of conciliation procedure and such violation affects or may affect the content of the agreement (35¹⁵ (1)-(2)).



In 2004-2008 there were no conciliation procedures where final decisions were taken.

As regards *public domain* the Chancellor of Justice may deal with complaints regarding discrimination on any ground as an *ombudsman*. S/he formulates his or her position, assessing whether the activities of the agency under investigation are legal and in compliance with the principles of sound administration (Article 35¹(1)). The Chancellor may provide criticism and suggestions and express his or her opinion in other ways, or make proposals for the elimination of the violation (Article 35¹(2)). Such an opinion of the Chancellor of Justice is not of legally binding nature.

According to the approach of Estonian legislation the *Commissioner for Gender Equality and Equal Treatment* is not dealing with “resolution of disputes concerning discrimination” (Article 23 of the Law on Equal Treatment). Anyway, the commissioner’s opinion concerning possible cases of discrimination on the basis of the applications submitted by persons or on his or her own initiative is not legally binding.

g) *Is the work undertaken independently?*

The Chancellor of Justice is a constitutional body, which is the best guarantee for its existence. However, the functions of the Chancellor as an ombudsman and equality body are specified in a law, not in the Constitution. As a result these functions could potentially be withdrawn by the Parliament.

The Law on Equal Treatment introduced of the position of the Commissioner for Gender Equality and Equal Treatment who is to monitor the implementation of the Law on Gender Equality (sexual discrimination) and the Law on Equal Treatment (discrimination on the grounds of ethnicity, race, colour, religion or belief, age, disability or sexual orientation; some other grounds in employment relations). One of the possible reasons for that decision seems to be openly recognised unwillingness of the Chancellor of Justice to be the main (and in some areas the only) equality body in Estonia, which is responsible for anti-discrimination policies. The Chancellor believed that it could undermine his independence provided for in the Constitution, especially his independence vis-à-vis the European Commission.¹⁶³

The Commissioner for Gender Equality and Equal Treatment is relatively new body and we have no data to make any judgments regarding its independence. The Law on Equal Treatment says that the Commissioner is an independent expert appointed by the Minister of Social Affairs for five years. His or her activities, supported by the office, are funded by the state budget. The statute of the office is to be adopted by the Government of the Republic (Article 15).

h) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

The issue of Roma has not been prioritised by the Estonian equality bodies.

¹⁶³ Chancellor of Justice; Written communication no. 5-3/0608246 of 13 December 2006



8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

The problem of the fight against discrimination has only recently been recognised by Estonian officials. The changes that have been made were mostly prompted by the necessity to implement Directives 2000/43 and 2000/78 and the directives on gender equality.

The Office of the Chancellor of Justice, representatives of the Ministry of Justice, the Ministry of Social Affairs and some other institutions have repeatedly demonstrated their willingness to distribute relevant information in written form and on specific occasions (seminars, workshops etc).

The Office of the Chancellor of Justice¹⁶⁴ and the Minister of Justice¹⁶⁵ are not planning any awareness raising campaigns dedicated to the new Law on Equal Treatment.

- b) *to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and*

The Office of the Chancellor of Justice deems it necessary to promote dialogue with the third sector in this field. This is fully in line with Article 35¹⁶ of the law that regulates its activities (see section 7 of this report for details). Additionally, in the course of 2008 the Office cooperated with several Estonian NGOs dealing with anti-discrimination work¹⁶⁶.

- c) *to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

The most successful work in this area concerns the promotion of the rights of employees with disabilities. Thus, in recent years several seminars, awards, competitions and other initiatives have been organised by public authorities in co-operation with NGOs representing people with disabilities and employers' associations, e.g. the Estonian Employers' Confederation¹⁶⁷. Valuable initiatives in the field were also introduced by the Labour Market Board.

- d) *to specifically address Roma and Travellers*

¹⁶⁴ Ministry of Justice; Written communication no. 10.1-8/3559 of 23 March 2009

¹⁶⁵ Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009

¹⁶⁶ Chancellor of Justice; Written communication no. 5-3/0900838 of 5 March 2009

¹⁶⁷ *Eesti Tööandjate Keskliit*; information provided at <http://www.ettk.ee> (20.03.2008)



The issues related to Roma were not prioritised. However, one of the studies conducted in the frame of the Year of Equal Opportunities was dedicated to the situation of Roma women.¹⁶⁸

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

Without doubts, the principles of *lex specialis derogat legi generali* and *lex posteriori derogat legi priori* are known to Estonian law.

The provisions of the Estonian Constitution are directly applicable and the basic principle of equal treatment is provided for in Article 12.

According to the common rule in relation to undertaking transactions (including treaties of any kind) as stipulated in Articles 86 and 87 of the Law on General Principles of the Civil Code¹⁶⁹, a transaction which is contrary to the public order, good morals or the law is void. A breach of the constitutional provision will obviously be recognised as being contrary to good morals or as a significant violation of the law.

In cases of unlawful discriminatory practice against employees, Article 16 of the current Law on Employment Contracts can be applied. It specifies the invalidity of unilateral decisions of employers that are unfavourable to employees:

“Terms established by unilateral decisions of employers, which are less favourable to employees than those prescribed by law, administrative legislation, collective agreements or employment contracts are invalid. The law, administrative legislation, collective agreement or employment contract applies instead of the invalid terms.”

The employees can also claim that any discriminatory clauses in their employment contract are void. According to Article 125 (1) 8 of the same Law, “on the basis of an action by the victim, a labour dispute resolution body shall declare an employment contract invalid if it was entered into with the employee under the influence of fraud, violence, a threat, or a malicious agreement with the representative of the employer.”

According to Article 4 (2) of the Law on Collective Agreements¹⁷⁰, the terms and conditions of a collective agreement which are ‘less favourable to employees than those prescribed in a Law or other legislation’ are invalid.

¹⁶⁸ Altogether 15 Roma women were interviewed. Among main problems faced by respondents were unequal treatment in everyday activities, stereotypical attitudes of the society, low awareness level about their rights, lack of good education, bad position in the labour market and poor social-economic conditions, health problems related to poverty, stress, etc. Margaret Tali, Kersti Kollom, Mari-Liis Velberg. *Naised Eesti mustlaskogukondades: Uurimuse aruanne*, Tallinn, 2007, p. 58.

¹⁶⁹ *Tsiviilseadustiku üldosa seadus*, RT I 2002, 35, 216

¹⁷⁰ *Kollektiivlepingu seadus*, RT I 1993, 20, 353



b) Are any laws, regulations or rules contrary to the principle of equality still in force?

We are not aware of any regulations or rules which are manifestly contrary to the principle of equality and still in force in Estonia.



9. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

The main bodies to deal with non-discrimination-related issues are the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment. The functions and tasks of these institutions were described in section 7.

According to the Law on Government of the Republic,¹⁷¹ it is within the area of government of Ministry of Social Affairs to promote equal treatment as well as equality of men and women, including co-ordination of activities in this field, and the preparation of corresponding draft legislation (Article 67 (1)).

¹⁷¹ Vabariigi Valitsuse seadus, RT I 1995, 94, 1628



ANNEX

1. Table of key national anti-discrimination legislation
2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Estonia

01 January 2009

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>)	03 July 1992	unlimited (“ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or other grounds”)	Administrative	Not specified	Equality before the law; prohibition of discrimination
Law on Equal Treatment (<i>Võrdse kohtlemise seadus</i>)	01 January 2009	ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation other grounds can be covered by virtue of Article 10 of the Law on Employment Contracts and Article	Civil/administrative	Identical with Directives 2000/43 and 2000/78 for respective grounds.	Definitions of direct and indirect discrimination, harassment, provisions regarding victimisation, instruction to discriminate, genuine occupational

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
		36 ¹ (2) of the Law on Public Service: sex, level of language proficiency, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in an organisation of employees			requirements, reasonable accommodation, burden of proof, positive action measures, exceptions for associations and other public or private organisations the ethos of which is based on religion or belief. Detailed provisions regarding one of the 'specialised bodies' (a Commissioner for Gender Equality and Equal Treatment).
Law on Amendments to the Law on the Legal Chancellor and Related Laws (<i>Õiguskantsleri seaduse muutmise ja sellega seotud seaduste muutmise seadus</i>)	01 January 2004	Not specified (public sector); sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of	Administrative (with elements of civil)	Not specified (public domain); the Chancellor will ignore discrimination-related complaints that concern 1) the professing and practising of faith or working as a minister of religion in religious	Procedure in cases of discrimination by 1) state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties; 2) a natural

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
		discrimination provided for in the law (private sector)		associations with registered articles of association; 2) relations in family or private life; 3) the exercising of the right of succession (private domain)	person or a legal person in private law; responsibilities of the Chancellor as a body for the promotion of equality
Penal Code (<i>Karistusseadustik</i>)	01 Sept. 2002	Ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status (incitement and discrimination), genetic risks (discrimination)	Criminal	Not specified; acts of incitement should be public	Prohibition of incitement and discrimination (“incitement to hatred or violence” and “unlawful restriction of rights or granting of unlawful preferences”)
Law on Gender Equality (<i>Soolise võrdõiguslikkuse seadus</i>)	01 May 2004	Sex	Administrative/ Civil	All spheres of public life (excluding professing and practising faith or working as a minister of religion in a registered religious association and relations in family or private life)	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, changes regarding burden of proof, victimisation etc; responsibilities of public and private actors regarding the



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
					implementation of gender mainstreaming strategy.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Estonia

01 January 2009

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	Yes	Yes	No	Yes	Yes
Protocol 12, ECHR	Yes	No	---	---	---
Revised European Social Charter	Yes	Yes	No; however, it is worth mentioning that Estonia decided not to be bound by Article 26 (the right to dignity at work)	Additional Protocol to the European Social Charter Providing for a System of Collective Complaints - no	Yes
International Covenant on Civil and Political Rights	Yes	Yes	No	Yes	Yes
Framework Convention for the Protection of National Minorities	Yes	Yes	No; however, according to the Estonian declaration only Estonian citizens may be recognised as national minority members	---	Yes (in the case of self-executing norms)
International Convention on Economic, Social and Cultural Rights	Yes	Yes	No	---	Yes

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Elimination of All Forms of Racial Discrimination	Yes	Yes	No	No	Yes
Convention on the Elimination of Discrimination Against Women	Yes	Yes	No	No	Yes
ILO Convention No. 111 on Discrimination	Yes	Yes	No	---	Yes
Convention on the Rights of the Child	Yes	Yes	No	---	Yes
Convention on the Rights of Persons with Disabilities	Yes	No	---	---	---