

## Executive Summary

### Country Report Estonia 2011 on measures to combat discrimination

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#### 1. Introduction

Estonia is a multi-ethnic society. As of 1 January 2011 31.2% of total Estonian population were ethnic non-Estonians. The biggest minority groups were ethnic Russians (25.5%), Ukrainians (2.1%), Byelorussians (1.1%) and Finns (0.8%). The number of racial minority members and Roma is very small. In January 2010 non-citizens (persons without Estonian citizenship) made up about 16% of the total population, including 7% of de facto stateless former Soviet citizens ('persons with undefined citizenship'). The overwhelming majority of resident non-citizens have settled in the country before 1991. In 2008 the government approved a new program *Estonian Integration Strategy 2008-2013*.

Before the accession of Estonia to the EU there were no detailed anti-discrimination provisions. Positive changes in this regard were the result of harmonisation of Estonian legislation with the *acquis*. First, in 2003-2004 the Law on Gender Equality was adopted while the previous Law on Employment Contracts and the Law on the Chancellor of Justice were amended. Second, in December 2008 the parliament adopted the comprehensive Law on Equal Treatment.

According to the 2007 study commissioned by the Ministry of Social Affairs, quite many respondents (42%) referred to personal experience of discrimination on various grounds within last three years in the following areas: employment (24%), education (10%), services (26%), social relations (14%), media (12%), public administration and protection of public order (12%) ("Unequal Treatment on Grounds of Individual or Social Characteristics: Attitudes, Experiences and Awareness of the Population"). However, there is very limited information about instances of discrimination or relevant court cases.

It appears that the level of awareness regarding discrimination issues is still low in Estonian society. Special measures are needed to propagate opportunities to fight discrimination on the basis of the new Law on Equal Treatment, also in cooperation of official bodies with local NGO community.

#### 2. Main legislation

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



Article 12 of the Estonian Constitution establishes explicit prohibition of discrimination on any ground. A flexible and comprehensive mechanism for protection against discrimination may be based on this provision, which is directly applicable against both natural persons and public and private legal persons. The constitutional principle of non-discrimination, worded in general terms, is repeated in some other laws.

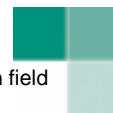
According to the Penal Code, the most severe violation of the principle of equal treatment constitutes a crime, e.g. Article 152 (violation of equality), Article 153 (discrimination based on genetic characteristics of the person) and Article 151 (public incitement to hatred, violence or discrimination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

In addition to generally worded anti-discrimination provisions in the Constitution and other laws, as well as relevant criminal provisions, the structure of Estonian anti-discrimination law is now shaped by three basic acts: the Law on Gender Equality (adopted 7 April 2004); the Law on the Chancellor of Justice (relevant amendments adopted on 11 February 2003); the Law on Equal Treatment (adopted on 11 December 2008; entered into force on 1 January 2009). The two latter acts were specifically amended/adopted to transpose the requirements of the EU anti-discrimination Directives 2000/43 and 2000/78.

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

The Law on Equal Treatment is to ensure the protection of persons against discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. This Law may also be used to fight discrimination of public officials on other grounds enlisted in 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 public officials or membership in an organisation of public officials. The Law on Equal Treatment has introduced a new equality body: the Commissioner for Gender Equality and Equal Treatment.

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



### 3. Main principles and definitions

The general principles of equality and non-discrimination in Estonian law can be found in the Constitution (primarily Article 12). The Law on Equal Treatment includes detailed definitions of direct and indirect discrimination, and harassment.

The Penal Code includes provisions that may protect victims from the acts of violation of equality and violent harassment.

In the Law on Equal Treatment provisions regarding victimisation, instruction to discriminate, genuine occupational requirements, reasonable accommodation of disabled, 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 are almost identical with those in the Directives.

The Law on Equal Treatment does not prejudice preferences to be granted on the following grounds: representation of the interests of employees or membership in an association representing the interests of employees (if appropriate); pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work.

It is worth also mentioning that 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 (in order to ensure public order and security, prevent criminal offences, and protect health and the rights and freedoms of others). Furthermore, the Law on Public Service excludes official linguistic requirements established for public officials from the scope of anti-discrimination requirements. These provisions might be in conflict with the Directive 2000/43.

According to the Law on Employment Contracts, an employer can terminate an employment contract *inter alia* for reasons of employee's long-term incapacity for work for health reasons. Similar provisions are applicable to public officials. Estonian law has provided certain minimum and maximum age requirements for several important positions in the public domain.

There are no rules and plans for adoption of such rules or case law dealing with situations of multiple discrimination or discrimination by association in Estonia.

### 4. Material scope

Article 12 of the Constitution bans discrimination in all spheres of activities which are regulated and protected by the state.



The material scope of the Law on Equal Treatment is identical with that of the Directives for respective grounds. Anti-discrimination requirements are additionally emphasised in the Law on Public Service (public officials).

In the private domain, the Chancellor of Justice in the context of conciliation procedures does not recognise discrimination-related complaints that concern the following: the professing and practising of faith or working as a person conducting religious services in religious organisations, relations in family or private life and exercise of the right of succession. In public domain the Chancellor as an ombudsman may deal with any questions if appropriate.

The scope of activities of the Commissioner for Gender Equality and Equal Treatment is limited to the scope of application of the Law on Equal Treatment and the Law on Gender Equality.

## **5. Enforcing the law**

In general discrimination disputes shall be resolved by a court or labour dispute committees (quasi-judicial body). Discrimination disputes shall also be resolved by the Chancellor of Justice by way of conciliation proceedings. People can also file an application for an opinion concerning possible cases of discrimination with the Commissioner for Gender Equality and Equal Treatment (the Commissioner deals with discrimination on the grounds of sex and the grounds applicable in the context of the Law on Equal Treatment).

The Law on Equal Treatment has established provisions regarding shift in the burden of proof similar to those in the Directives. A victim of discrimination may demand to terminate the discrimination and to pay compensation for the damage caused to him or her by the violation. Importantly, the Law on Equal Treatment stipulates that a victim may also demand 'a reasonable amount of money' be paid as compensation for non-proprietary damage. A claim for compensation for damage expires within one year as of the date when the victim becomes aware or should have become aware of the damage caused.

In Estonia individual labour disputes regarding discrimination can be solved by labour dispute resolution bodies (labour dispute committees and courts). The labour dispute committees follow a quasi-court procedure established in the Law on the Resolution of Individual Labour Disputes. Decisions must be based on law and must be substantiated. In 2011, the committees received altogether 13 complaints with demands related to the issue of discrimination (on any ground).

In case of discrimination (on any ground) by public institutions the Chancellor of Justice may be involved as an ombudsman and the procedure can be initiated on the basis of an application from the victim or on the Chancellor's own initiative. The opinion of the Chancellor regarding such cases consists of a suggestion, proposal or critical notes and is not of a legally binding nature. However, the Chancellor may

report about non-compliance or failure to cooperate to the authority which exercises supervision over the relevant agency, to the government or to the parliament.

The Chancellor of Justice may deal with discrimination by natural persons and legal persons in private law in the context of a special conciliation procedure.

The aim of this procedure is to reach an agreement between the victim and the person suspected of discrimination (all five relevant grounds are explicitly covered). The conciliation procedure can be initiated only on the basis of an application from the victim. The agreement between parties in this procedure is obligatory and enforceable by bailiff. It may also include an obligation to pay compensation. If the conciliation procedure fails, a victim may seek protection of his or her rights in court. In 2011, the Chancellor received two requests related to the conciliation procedure in cases of alleged discrimination.

In labour disputes and in conciliation procedures the law guarantees to a person who has a legitimate interest in monitoring compliance with the requirements for equal treatment the right to act as a representative of a victim of discrimination. Similar special rules have not been established for other procedures.

The Commissioner for Gender Equality and Equal Treatment *inter alia* provides opinions concerning possible cases of discrimination. 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.

There is no developed practice of judicial or quasi-judicial bodies dealing with discrimination-related offences in Estonia as yet.

There are very few NGOs in Estonia that provide assistance to discrimination victims. There were no examples of the use of situation testing or statistical evidences in anti-discrimination context in Estonian courts (however, they seem to be recognised by law).

## 6. Equality bodies

There are two equality bodies in Estonia: the Chancellor of Justice (mandate from January 2004) and the Commissioner for Gender Equality and Equal Treatment (mandate to deal with grounds other than sex from January 2009).

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



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 adopted by the Government of the Republic. As it was mentioned above, the Commissioner is dealing with discrimination on the grounds of sex and the grounds applicable in the context of the Law on Equal Treatment, including ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation.

The Chancellor of Justice and the Commissioner are entitled 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. Both institutions are obliged to promote equal treatment, to inform the official bodies about relevant principles and to enhance cooperation in the field. However, only the Commissioner has an explicit duty to advice and provide assistance to people pursuing their complaints about discrimination. This new body was made also responsible for drafting of specific reports dedicated to discrimination issues.