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NEWS REPORT

Country:	Estonia
Title:	Amendments to the Penal Code
Date:	16 June 2017
Expert:	Anu Laas
<u>Context</u>	
Issue at stake:	The addition of an article on sexual harassment to the Penal Code (PC)
Ground of discrimination:	Sex
Source:	Miscellaneous
Field:	Other
Applicable law:	Article 153.1 of the Penal Code

Content

Law development: In 2014, Estonia signed the Council of European Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In 2015-2016 legal amendments were prepared and consulted with stakeholders. The Ministry of Justice has prepared amendments to the Penal Code ("PC") concerning stalking, FGM, forced marriages and the prohibition of buying sexual services from trafficking victims. Minimum requirements of the Istanbul Convention were taken into account. According to the Istanbul Convention sexual harassment is subject to criminal or other legal sanctions. In Estonia sexual harassment is defined and prohibited by the Gender Equality Act (GEA).¹ In 2009-2017, there were no court cases concerning sexual harassment due to the poor enforcement of the GEA. Civil proceedings are costly and time consuming.

Key points of analysis: In February 2017, a Bill amending the Penal Code was presented to the Legal Affairs Committee of the Parliament.² The work of the Legal Affairs Committee includes preparing legislative drafts regulating private law, criminal law and internal security. A member of the Committee proposed that sexual harassment should become a criminal offence. The first reading on 15 March 2017 has opened the floor for further proposals and opinions by the end of March 2017.

¹ Article 3 of the GEA states that sexual harassment is direct discrimination based on sex. Definition of sexual harassment is provided by Article 3(1)(5) of the GEA. Unfortunately, sexual harassment is seen in connection with employment and an employer should ensure that employees are protected from gender-based harassment and sexual harassment in the working environment.
<https://www.riigiteataja.ee/en/eli/521012016001/consolide>, accessed 31 May 2017.

² Karistusseadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 385 SE (Amendments to the Penal Code and Associated Acts 385 SE),
<https://www.riigikogu.ee/tegevus/eelnoud/eelnou/f9a7291c-8c46-4ad8-a740-4e1c55c83964/Karistusseadustiku%20muutmise%20ja%20sellega%20seonduvalt%20teiste%20seaduste%20muutmise%20seadus>, accessed 31 May 2017.

The Minister of Justice has stressed that sexual harassment as a criminal offence could lead to over-criminalisation. The Minister has reminded the legislator to carefully consider which violations in which areas deserve to be punished. The Minister of Social Affairs and several civil society organizations³ have supported the proposed legal amendment on sexual harassment to the PC.

Sexual harassment was discussed at several Legal Affairs Committee meetings in April and May of 2017. Finally, a compromise was reached and it was decided that sexual harassment is a misdemeanour and should be placed in the Division on Offences against Equality of the Penal Code. The new Article 153.1 of the PC defines sexual harassment as 'an act of physical sexual nature committed intentionally against somebody's will and aiming to degrade', which is punishable by a fine of up to three hundred fine units⁴ or detention. A legal person can be held accountable for sexual harassment and may be punished with a fine of up to EUR 2000.

Extra-judicial proceedings concerning misdemeanours are conducted by the Police and Border Guard Board. This is a complicated procedure, because the misdemeanour procedure does not always involve the victim, a complainant could be a witness. Article 16 of the Code of Misdemeanour Procedure stipulates that the participants in the proceedings are; the person subjected to the proceedings and the counsel of the person.⁵ The involvement of the witness during the investigation procedure is limited, he/she has no right to examine the files of the investigation and has no right to appeal the decision. Police investigations will not lead to the development of a legal conceptualisation of sexual harassment. The second and third reading of the amendments to the Penal Code are scheduled in June 2017 and will be passed on 14 June 2017.⁶

Liisa Oviir, a member of the Legal Affairs Committee has proposed to define sexual harassment as 'any form of unwanted physical conduct or activity of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment'. This act is punishable by a fine or detention of up to one-year imprisonment. Debates on sexual harassment have led to the position that it is impossible to find evidence on disturbing, humiliating or offensive environments. Furthermore, there were more members of the Committee to support the idea that sexual harassment may occur as an act of misdemeanour and cannot be seen as a crime. Others argued that flirtations with unwanted sexual attention is not a crime. Some have stressed that sexual harassment isn't a serious enough issue to tackle, others have pointed out that this article could be misused and there will be too much work for police investigators and takes time from 'more important and serious cases'.

The Minister of Justice and the Prosecutor General have held the position that the Penal Code of Estonia has several Articles, which allow wider interpretation, and case law could explore important legal terms. Legal amendments should be thoroughly rethought and, if possible, avoided. The first argument by the Minister of Justice against the new article on sexual harassment in the PC was a reminder that sexual harassment is mentioned in the GEA and articles on sexual assault and rape exist in the PC.

Representatives from the Ministry of Social Affairs have supported the amendment on sexual harassment to the PC, but have pointed out that it should not be limited to physical acts, but also to any verbal and non-verbal act against somebody's will.

³ Estonian Union for Child Welfare, Estonian Women Lawyers Association, NGO Life Line (Eluliin) and representatives of the Women's Shelters.

⁴ Article 47(1) of the PC stipulates that for a misdemeanour, a court or a body conducting extra-judicial proceedings may impose a fine of three up to three hundred fine units. A fine unit is the base amount of a fine and is equal to 4 euros.

⁵ <https://www.riigiteataja.ee/en/eli/513032017003/consolide#fae89aba-9935-4e21-854c-eb725d903fa7>, accessed 14 June 2017.

⁶ These amendments to the Penal Code were adopted on 14 June 2017.

Internet sources:

CEDAW Committee (2016), Concluding observations on the combined fifth and sixth periodic reports of Estonia, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fEST%2fCO%2f5-6&Lang=en, accessed 31 May 2017.

Karistusseadustiku muutmise ja sellega seondult teiste seaduste muutmise seadus 385 SE (Amendments to the Penal Code and Associated Acts 385 SE), <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/f9a7291c-8c46-4ad8-a740-4e1c55c83964/Karistusseadustiku%20muutmise%20ja%20sellega%20seondult%20teiste%20seaduste%20muutmise%20seadus>