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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Estonia

Anu Laas

Reporting period 1 January 2017 – 31 December 2017

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1 Introduction

1.1 Basic structure of the national legal system

The highest authority of national legislation in Estonia is the Constitution of the Republic of Estonia. The highest legislative authority is the Estonian Parliament (Riigikogu) with 101 members. The President has veto power as well as the power to propose amendments to the Constitution.

The right to initiate draft laws is held by members, political groups and committees of the Parliament and the Government of the Republic. In November 2016, the Coalition under the leadership of the Liberal Party turned somewhat to the left and the New Cabinet was formed by the Centre Party, the Social Democratic Party and the Pro Patria and Res Publica Union (IRL). The Coalition has declared that a more unified and equal Estonia as a member of the EU and NATO is the goal.¹

Parliament is entitled to present a recommendation to the Government of the Republic to initiate the preparation of a draft law. The Women's Union of the Parliament was established on 19 October 2017.² The Union unites members from different parties, mainly female MPs, but there is also one male member. The main goals are women's empowerment and encouraging women's political participation.

Ministries take legislative initiatives, drafting laws and holding consultations, i.e. asking concerned interest groups and public representatives for their opinions and proposals.³ A regulatory impact analysis and assessment is performed, and any law-drafting initiative is presented to all ministries and social partners before a draft law is produced. The Government Office and its European Union Secretariat are the central coordination unit of Estonia's European Union policy.

The Ministry of Social Affairs should promote equal opportunities and gender equality and improve wellbeing.⁴ The main challenges are connected with capacity, issues of competency and the high pace of law making. There is also a problem with the speed of changes of legal texts; the fast-changing legal environment constitutes a threat to legal stability, an additional workload to ministries and to Parliament, and causes problems for law-enforcement authorities.⁵

In 2016, the Welfare Development Plan for 2016-2023 was adopted; this is the development plan for social security, inclusion and equal opportunities.⁶ The plan contains a gender equality strategy in the social sphere. Gender equality is seen in a narrow context, only as part of social welfare and social security. The strategy unit of the Government Office has a proposal to reduce the number of development plans and there are no plans

¹ Basic principles of the Government of Estonia, <https://valitsus.ee/en/basic-principles-government-coalition-0>, accessed 29 March 2018.

² Riigikogu pressiteade (*The Riigikogu Press Release*). Available in Estonian at: <https://www.riigikogu.ee/pressiteade/muu-pressiteade-et/riigikoqus-moodustati-naisteuhendus-3/>, accessed 29 March 2018.

³ Engagement practices, <https://riigikantselei.ee/en/supporting-government/engagement-practices>, accessed 29 March 2018.

⁴ Since 2014 two ministers serve at the Ministry of Social Affairs: the Minister of Social Protection and the Minister of Health and Labour.

⁵ Estonia, Ministry of Justice (2015), 'Õigusloome mahu vähendamise kava' (Reducing the burden of law drafting), available in Estonian at: <https://www.just.ee/et/eesmargid-tegevused/oiguspoliitika/oigusloome-mahu-vahendamise-kava>, 31 March 2018. http://www.just.ee/sites/www.just.ee/files/oigusloome_mahu_vahendamise_kava_2016.pdf, accessed 29 March 2018.

⁶ Estonia, Ministry of Social Affairs (2016), Welfare Development Plan 2016-2023, https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf, accessed 29 March 2018.

to work out a separate strategy for promoting gender equality and equal treatment as part of that process.

The Gender Equality and Equal Treatment Commissioner is an independent and impartial gender equality body that monitors compliance with the requirements of the Equal Treatment Act (ETA) and the Gender Equality Act (GEA). The Minister responsible for equality policies appoints the Commissioner for a five-year period.⁷ Discrimination claims on grounds of gender are made to the Gender Equality and Equal Treatment Commissioner who can issue non-binding written opinions. The Competence Centre for Equality was established in 2015 to increase the equality outcomes in planned projects of the Structural Funds.⁸

Discrimination disputes are resolved by the courts or out of court by the labour dispute committee. There were 25 discrimination disputes in 2016, but the report on the working environment does not mention any case of discrimination in 2017.⁹ Discrimination disputes have become common among labour disputes, but it is still evident from their resolutions that employees do not always understand what constitutes impermissible unequal treatment of an employee. Pregnancy and family responsibilities are claimed as the main basis of discrimination.

According to the public database of court decisions, sex discrimination cases are rare. The Chancellor of Justice resolves discrimination disputes in conciliation proceedings, but there has not been one conciliation proceeding carried out in 1999-2017. However, there were two claims of sex discrimination in 2017.

Estonia held the Presidency of the Council of the European Union from 1 July to 31 December 2017. In the Trio Declaration, the Ministers of Social Affairs of Estonia, Bulgaria and Austria stated that progress towards gender equality has recently stalled and that the subject is not being given sufficiently high priority on the political agenda. The Trio's renewed efforts promised to strengthen the political will to achieve positive change in the area of gender equality.¹⁰

1.2 List of main legislation transposing and implementing Directives

All Acts are available in English at <https://www.riigiteataja.ee/en/>. The translations published in Riigi Teataja (RT) are unofficial texts. English titles of Acts are those as used on the RT website. In Estonia, legislation has legal force only in Estonian.

- Advertising Act (AA, Reklaamiseadus in Estonian), Article 3(4), RT I 2008, 15, 108; RT I, 09.01.2018, 7, <https://www.riigiteataja.ee/en/eli/515012018002/consolide>;
- Chancellor of Justice Act (CJA, Õiguskantsleri seadus), RT I 1999, 29, 406; RT I, 28.12.2017, 20, <https://www.riigiteataja.ee/en/eli/509012018008/consolide>;
- Civil Service Act (CSA, Avaliku teenistuse seadus) RT I, 06.07.2012, 1; RT I, 28.12.2017, 48, <https://www.riigiteataja.ee/en/eli/502012018004/consolide>;
- Employment Contracts Act (ECA, Töölepingu seadus), RT I 2009, 5, 35; RT I, 28.12.2017, 43, <https://www.riigiteataja.ee/en/eli/506022018003/consolide>;
- Equal Treatment Act (ETA, Võrdse kohtlemise seadus), RT I 2008, 56, 315; RT I, 26.04.2017, 9, <https://www.riigiteataja.ee/en/eli/503052017002/consolide>;

⁷ Ms. Liisa-Ly Pakosta was appointed in October 2015.

⁸ The Competence Centre for Equality is funded from the EU Cohesion Fund (CF).

⁹ For more information, see section 3.2.3. of the present report. All discrimination cases are based on different grounds. Source: Tööinspeksioon (2018). Töökeskkond 2017 (Working Environment 2017), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooeokeskkonna_uelevaate_d/2015/Tookeskkond_2017_veebi.pdf, accessed 3 April 2018.

¹⁰ Trio Presidency Declaration on Equality Between Women and Men, https://www.eu2017.ee/sites/default/files/inline-files/EU2017EE%20Trio%20Presidency%20Declaration%20on%20Equality%20Between%20Women%20and%20Men_0.pdf, accessed 18 April 2017.

- Family Benefits Act (FBA, Perehüvitiste seadus), RT I, 08.07.2016, 1; RT I, 28.12.2017, 62, <https://www.riigiteataja.ee/en/eli/509022018001/consolide>;
- Family Law Act (FLA, Perekonnaseadus), RT I 2009, 60, 395; RT I, 09.05.2017, 29, <https://www.riigiteataja.ee/en/eli/507022018005/consolide>;
- Gender Equality Act (GEA, Soolise võrdsuslikkuse seadus), RT I 2004, 27, 181; RT I, 07.07.2015, 11, <https://www.riigiteataja.ee/en/eli/521012016001/consolide>;
- Health Insurance Act (HIA, Ravikindlustuse seadus), RT I 2002, 62, 377; RT I, 28.12.2017, 56, <https://www.riigiteataja.ee/en/eli/511012018002/consolide>;
- Insurance Activities Act (IAA, Kindlustustegevuse seadus), RT I, 07.07.2015, 1; RT I, 17.11.2017, 49, <https://www.riigiteataja.ee/en/eli/529012018003/consolide>;
- Labour Market Services and Benefits Act (LMSBA, Tööturuteenuste ja -toetuste seadus), RT I 2005, 54, 430; RT I, 28.12.2017, 70, <https://www.riigiteataja.ee/en/eli/515012018005/consolide>;
- Law of Obligations Act (LOA, Võlaõigusseadus), RT I 2001, 81, 487; RT I, 31.12.2017, 8, <https://www.riigiteataja.ee/en/eli/510012018003/consolide>;
- Occupational Health and Safety Act (OHSA, Töötervishoiu ja tööohutuse seadus), RT I 1999, 60, 616; RT I, 28.04.2017, 9, <https://www.riigiteataja.ee/en/eli/505052017007/consolide>;
- Penal Code (PC, Karistusseadustik), RT I 2001, 61, 364; RT I, 30.12.2017, 29, <https://www.riigiteataja.ee/en/eli/509012018005/consolide>;
- Registered Partnership Act (RPA, Kooseluseadus), RT I, 16.10.2014, 1, entered into force on 1 January 2016, but implementing legal acts not yet passed, <https://www.riigiteataja.ee/en/eli/527112014001/consolide>;
- Social Tax Act (STA, Sotsiaalmaksuseadus), RT I 2000, 102, 675; RT I, 28.12.2017, 76, <https://www.riigiteataja.ee/en/eli/522012018001/consolide>;
- State Pension Insurance Act (SPIA, Riikliku pensionikindlustuse seadus), RT I 2001, 100, 648; RT I, 28.11.2017, 28, <https://www.riigiteataja.ee/en/eli/518122017015/consolide>;
- The Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus), RT 1992, 26, 349; RT I, 15.05.2015, 2, <https://www.riigiteataja.ee/en/eli/521052015001/consolide>. The Constitution with commentaries from 2002 available only in Estonian, available at <http://www.pohiseadus.ee>;
- The Regulation of the Government of the Republic of 10 June 2010, No. 71 'The Statute of the Gender Equality and Equal Treatment Commissioner and the Chancellery' (Vabariigi Valitsuse määrus nr. 71, 10.06.2010 'Soolise võrdsuslikkuse ja võrdse kohtlemise voliniku ning kantselei põhimäärus', RT I 2010, 33, 170 (in Estonian);
- Unemployment Insurance Act (UIA, Töötuskindlustuse seadus), RT I 2001, 59, 359; RT I, 07.07.2017, 33, <https://www.riigiteataja.ee/en/eli/518122017010/consolide>;
- Victim Support Act (VSA, Ohvriabi seadus), RT I 2004, 2, 3; RT I, 28.12.2017, 52, <https://www.riigiteataja.ee/en/eli/509012018004/consolide>;
- Vital Statistics Registration Act (VSRA, Perekonnaseisutoimingute seadus), RT I 2009, 30, 177; RT I, 30.12.2017, 6, <https://www.riigiteataja.ee/en/eli/509022018002/consolide>.

2 General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. Article 12 of the Constitution sets forth the general principle of equality and non-discrimination. It prohibits discrimination and incitement to discrimination is also prohibited and punishable:

'Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds. Incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. Incitement to hatred and violence between social classes or to discrimination against a social class is also prohibited and punishable by law.'

Such wording is merely an expression of the general principle of equal treatment. The prohibition of discrimination based 'on other grounds' leaves the list open.

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

No. However, Article 27 stipulates equal rights of spouses. Equality of wife and husband is emphasised;¹¹ their rights and duties to raise and care for their children are highlighted. Case law has specified that due to family protection also women and men in free cohabitation have the same parental rights and duties as married couples.¹²

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

Yes.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. The Equal Treatment Act (ETA) entered into force on 1 January 2009. The Gender Equality Act (GEA) was adopted in 2004 and several amendments were made in 2009. Article 1(2)(1) of the GEA prohibits discrimination on the grounds of sex in the private and public sectors. Some draft amendments to the GEA were scheduled to be submitted in August 2016 and to be adopted in January 2017.¹³ These legal developments to tackle the gender pay gap came to a halt and the target set in the national action plan (NAP) was not achieved. There are plans to empower the Labour Inspectorate to monitor employers' remuneration policies and the equal pay principle.

Employees are protected against discrimination on the grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in the armed forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political opinions or membership in a political party, and religious or other beliefs.

¹¹ In Estonian: 'Abikaasad on võrdõiguslikud'.

¹² Supreme Court of Estonia, Judgment No. 3-3-1-16-00 of 19 June 2000.

¹³ Government of Estonia (2015), Action Plan 2015-2019, available at: <https://www.riigiteataja.ee/aktilisa/3030/6201/5006/231klisa.pdf>, accessed 21 April 2017.

The ETA prohibits discrimination of persons on the grounds of nationality (ethnic origin), race or colour in relation to education and access to vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience. The Act also establishes prohibition of discrimination on the grounds of religion or other beliefs, age, disability or sexual orientation in relation to access to vocational guidance, vocational training, advanced vocational training and retraining, including access to practical work experience.

EU directives adopted under Article 19 TFEU have been transposed into Estonian law (GEA, ETA). The two Acts have effectively created a hierarchy of protection depending on the ground of discrimination: the GEA prohibits discrimination in all areas of social life, while the ETA divides the protected areas depending on the basis of discrimination. Therefore, the ETA covers discrimination based on religion or belief, age, disability and sexual orientation only in the area of employment (as required by Directive 2000/78/EC) and discrimination based on racial or ethnic origin and colour is additionally covered in the area of services and social security (as required by Directive 2000/43/EC).

There is little awareness that the GEA and the Employment Contracts Act (ECA) could be applied to people working under the Law of Obligations Act (LOA) and job applicants in recruitment processes. The ECA should follow the requirements of the GEA and Article 3(2)(1) of the GEA stipulates that 'employee' means a person employed under the ECA, the Civil Service Act (CSA) on officials and support personnel and LOA (contracts for the provision of services), and persons applying for employment or service are also deemed to be employees.

3 Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No. In Estonian only 'sugu' is used; there is no distinction between the words 'sex' and 'gender'.¹⁴

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

No. However, an open-ended list of grounds of discrimination in Article 12 of the Constitution makes a discrimination claim due to gender reassignment possible. The Gender Equality Act is applicable to all areas of social life. Case law could contribute to the legal development regarding the protection of transsexuals' equal rights.

Sexual identity is not on the list of protected grounds. Sexual orientation is mentioned in the GEA and the ETA.

In Estonia transsexuals are discriminated against in several areas of life (getting state-funded treatment even if they have paid social security taxes, access to work, getting married, adopting children). Transsexuals are seen as a medical problem in Estonian legislation. Medical doctor Väli gives insight into gender reassignment problems in Estonia and has pointed out that many transsexuals only go through hormone therapy and do not move on to gender reassignment.¹⁵

Gender reassignment is not defined in Estonian legislation. There is a need to draft a comprehensive legal framework regarding gender reassignment and related services.

Estonian law allows the change of forename and other aspects of civil status. Article 7(3)(2) of the Names Act stipulates that a name should correspond to the gender of the person in question. Any changes to first names and ID data are strictly regulated, but it is a time-consuming process. In Estonia it is possible to obtain a new identity after a lengthy medical examination process. There is no need to have a certificate of sex reassignment surgery. Since May 2015 it is possible to obtain education certificates with a new name and personal identity code.¹⁶

Gender-reassigned persons are discriminated against in the access to health insurance to cover necessary treatments even when they have paid health insurance tax. Reassignment treatment to transgender persons is offered in Estonia, but the question relates to coverage. Hormonal treatment is partly (50 %) paid by the Estonian Health Insurance Fund. The Fund declares that the costs of health services required by the person in case of illness are covered. People who want to have their sex changed, should undergo medical examinations and procedures. Opinion No. 43 of 18 January 2016 of the Gender Equality and Equal Treatment Commissioner has pointed out that the Health Insurance Fund discriminates against transgender persons regarding treatment.

The Registered Partnership Act (RPA), which is gender neutral, was adopted on 9 October 2014 and entered into effect on 1 January 2016. The RPA is a step closer towards a more

¹⁴ In the Estonian context it is important to understand what it means if the word 'sugu' is used in a text. However, translation of gender could be *sotsiaalne sugu* (sugupool) and sex is *bioloogiline sugu*. Taking into account the context, different words are used in translation like *seksuaalne* or *sooline*.

¹⁵ Väli, M. (2015), 'Transseksualism – kui loodus eksib' (Transsexualism – if nature is mistaken) Tervis. Postimees, 5 April 2015, <http://tervis.postimees.ee/3144087/transseksualism-kui-loodus-eksib>, accessed 10 March 2018.

¹⁶ The first number of the ID code refers to a person's sex. For more information, see: <https://www.workinestonia.com/coming-to-estonia/personal-id-code/?lang=et>, accessed 10 March 2018.

tolerant and socially inclusive society. Unfortunately the RPA is not fully implemented: several regulations to achieve effective implementation were expected to be passed, but the Parliament rejected draft acts in 2015 and there has been no positive development on this in 2016-2017. On the contrary, in May 2017, the Conservative People's Party of Estonia drafted the Registered Partnership Repeal Act (461 SE).¹⁷ The draft, however, did not gain sufficient support and was rejected on 17 October 2017.¹⁸

In 2016-2017, two cases were assessed by the courts. Case No. 3-16-2415 concerned the recognition in Estonia of a same-sex marriage and granting a permanent residence permit.¹⁹ The second case, No. 3-16-1191, pertained to the question of whether the failure to enforce the Registered Partnership Act (RPA) amounted to a violation by the State of the applicant's fundamental right to privacy and family (Article 26 of the Constitution) as well as the right not to be discriminated against (Article 12 of the Constitution). The Tallinn Administrative Court in part upheld the action and ordered the respondent (the Ministry of Justice) to pay a compensation of EUR 1 500 for non-pecuniary damages.²⁰ The Tallinn Circuit Court then decided that the failure to adopt the implementing act of the RPA was unlawful and unconstitutional.²¹ However, the judgment did not agree with the claim that the appellant's fundamental rights had been violated. The discrimination claim was rejected with the statement that the applicant's situation was similar to other people who have entered into a registered partnership.

Both cases were pending before the Supreme Court at the end of 2017.²²

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes:

- Article 12 of the Constitution;
- Article 1(2)(1) of the GEA;
- Article 5(1) of the GEA;
- Article 6 of the GEA;
- Article 2 of the ETA;
- Article 3 of the ECA.

Direct discrimination based on sex is defined in Article 3(3) of the GEA. Direct discrimination based on sex occurs where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. Direct discrimination based on sex also means less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to rejection of or submission to

¹⁷ Kooseluseaduse kehtetuks tunnistamise seadus 461 SE (*Registered Partnership Repeal Act*), available in Estonian at: <https://www.riigikoгу.ee/tegevus/eelnoud/eelnou/548983f9-6986-4be9-981e-35af051b0a6d/Kooseluseaduse%20kehtetuks%20tunnistamise%20seadus>, accessed 18 April 2018.

¹⁸ Shorthand report, 17 October 2017, <http://stenogrammid.riigikoгу.ee/et/201710171000#PKP-21569>, accessed 18 April 2018.

¹⁹ Two women, citizens of Estonia and the USA, entered into a marriage in the USA (in Georgia) on 27 October 2015. In July 2016 a permanent residence permit was applied for according to Article 137 of the Aliens Act regarding an alien's spouse and family settlement together in Estonia. The Police and Border Guard Board (PBGB) of Estonia rejected this application due to the non-recognition of the same-sex couple's marriage in Estonia.

²⁰ Judgment of the Tallinn Administrative Court No. 3-16-1191 of 7 February 2017 (classified).

²¹ Judgment of the Tallinn Administrative Court No. 3-16-1191 of 14 February 2017; Judgment of the Tallinn Circuit Court No. 3-16-1191 of 23 November 2017, available in Estonian at: http://objektiiv.ee/wp-content/uploads/2017/12/Tln_RK-otsus-Reimo-Metsa-asjas_23-11-2017.pdf, accessed 21 June 2018;

²² The Supreme Court Order of 10 April 2018 pointed out that the failure to issue the regulating acts to the Registered Partnership Act does not per se give grounds for declaring the situation unconstitutional. The Supreme Court Order is available in Estonian at: <https://www.riigikohus.ee/et/laheidid/?asjaNr=5-17-42/9>, accessed 25 June 2018.

harassment. The Labour Inspectorate found two direct discrimination cases based on sex and one related to the performance of family obligations in 2017.²³

The definition complies with the EU definition.

The Gender Equality and Equal Treatment Commissioner delivers independent opinions on complaints. Its opinions are not publicly available but some overviews and statistics are available in its Annual Reports.²⁴ Some opinions are also available as examples on the Commissioner's homepage. All in all the number of complaints increased in 2017.²⁵

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Yes:

- Article 3(1)(3) of the GEA (more in 3.2.1.);
- Article 6 of the GEA (discrimination in professional life), Article 6(2)(1) of the GEA refers to the protection of pregnancy and parental obligations.

A pregnant employee has legal protection not only in the employment relationship, but also in recruitment processes. Pregnant job applicants should not be discriminated against. The provision complies with Article 2(2)(c) of Directive 2006/54.

The Gender Equality and Equal Treatment Commissioner has analysed several complaints in connection with the dismissal of pregnant employees and unfair treatment of employees after returning back to work after the leave period. Some complaints have concerned a situation where a woman returning to her previous place of employment after childcare leave was considered by her employer as a new employee which influenced both her tasks and salary which was therefore lower than the salary of colleagues who were doing the work of equal value but had not recently been on childcare leave. According to the opinion of the Commissioner, the employer had discriminated against the complainant based on gender.

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

A small number of claims have been submitted to equality bodies and courts. The content of the claims submitted to the Gender Equality and Equal Treatment Commissioner shows that applicants have tried and tested the boundaries of the concept. By way of illustration, there have been claims concerning the so-called ladies' beach,²⁶ claims regarding bars where women were attracted with entry free of charge (while men were expected to pay), events in museums where invitations to a car exhibition were reserved for boys, etc.

²³ There were 26 labour disputes in 2017. Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlused 2017 (*Labour disputes based on unequal treatment in 2017*), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Toeovaidlused/Ebavordse_kohtlemise_vaidlused_2017_1.pdf, accessed 21 April 2018.

²⁴ The Annual Reports are available in Estonian at: <http://www.volinik.ee/avalikud-dokumendid/>, accessed 26 June 2018.

²⁵ Võrdsete Võimaluste Volinik (2018), 2017. aasta aruanne (2017 Annual Report of the Equality Commissioner), http://www.volinik.ee/wp-content/uploads/2018/06/2017_aastaruanne_volinik.pdf, accessed 26 June 2018. An increasing number of complaints was reported by the Commissioner. In 2017, an increasing number of fathers were among complainants raising questions about the reconciliation of work and family life. According to the 2017 Annual Report of the Commissioner there were 440 complaints in 2017, 332 complaints in 2016 and 209 complaints in 2015.

²⁶ A hundred years ago beaches reserved for ladies allowed women in swimming costumes to enjoy privacy. Today Pärnu ladies' beach is still open for the same reason, allowing women to sunbathe and practice nudism without being disturbed.

Awareness of officials and employers about direct sex discrimination is increasing every year due to publications, training and the media. The Gender Equality and Equal Treatment Commissioner carried out a training programme in 2014-2016, and the personnel of the Labour Inspectorate were among the trainees. Therefore it is surprising that in its 2017 report on working conditions, the Labour Inspectorate did not mention 'discrimination' and did not analyse labour relations from a gender perspective either.²⁷ On the other hand, the Labour Inspectorate prepared a statistical overview on discrimination and unequal treatment disputes in 2017.²⁸ A total of 26 claims have been reported, but only 16 disputes were heard because the remaining 10 were resolved by means of a compromise. In six cases the applicants were unable to provide statements and facts clarifying the basis on which unfair or discriminatory treatment took place. These cases illustrate the fact that employees, compared to employers, have less knowledge about legally applicable concepts of discrimination and equal treatment.

Potential claimants have the right to ask the Equality Commissioner or the Equality Policies Department at the Ministry of Social Affairs for advice. In court proceedings some employers attempted to adduce evidence of other circumstances as a reason for dismissals (incompetence, emotionally unfit etc.). Article 7 of the GEA imposes a duty on the employer to provide explanations for any dismissal and in court cases employers' explanations were found to be stronger compared to the arguments of employees.

There is a need to increase awareness concerning the protection of rights and knowledge on how to gather evidence and how to prove discrimination or harassment cases in the courtroom.

There is also a lack of knowledge about civil dispute procedures and institutional requirements to bring about sex discrimination proceedings. Article 428(1)(2) of the Code of Civil Procedure points out that the court must terminate a proceeding without issuing a judgment if in disputes between the same parties on the same grounds concerning the same action, recourse to another court in the same matter is precluded where there is a decision of an Estonian court, a decision of a foreign court subject to recognition in Estonia, a decision of an arbitral tribunal which has terminated the proceeding and has entered into force, or a decision in pre-trial proceedings which has entered into force, including an agreement approved by the Chancellor of Justice.²⁹

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes:

- Article 5(1) of the GEA;
- Articles 3(1)(2) and 3(1)(4) of the GEA.

Article 3(4) of the GEA defines the concept of indirect discrimination based on sex as an apparently neutral provision, criterion, practice or activity that would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion, practice or activity is objectively justified by a legitimate aim, and the

²⁷ Tööinspektsioon (2017), Töökeskkond 2017 (Working conditions 2017), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooeokeskkonna_uelevaate_d/2015/Tookeskkond_2017_veebi.pdf, accessed 21 April 2018.

²⁸ Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlusasjad 2017 (*Labour disputes based on unequal treatment in 2017*), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooeovaidlused/Ebavordse_kohtlemise_vaidlused_2017_1_.pdf, accessed 21 April 2018.

²⁹ Code of Civil Procedure, <https://www.riigiteataja.ee/en/eli/506022018001/consolide>; Judgment of the Estonian Supreme Court of 22 March 2017 No. 3-2-1-167-16, available in Estonian at: <https://www.riigikohus.ee/et/laheid?id=asjaNr=3-2-1-167-16&sortVaartus=LahendiKuulutamiseAeg&sortAsc=false&kuvadaVaartus=Pealkiri&pageSize=25&defaultPageSize=25>, accessed 18 April 2018.

means of achieving that aim are appropriate and necessary. There has not been any case law providing an interpretation of indirect discrimination in 2017.

In the expert's view this definition complies with the EU definition.

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

A limited number of cases on indirect discrimination have been resolved. Statistical evidence is difficult to find due to poor sex disaggregated data.

3.3.3 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

There have been some court cases, asserting that there is no need to prove intention to discriminate, but that it is important that the outcome has created a situation where persons were treated differently, and unequal treatment has been discovered. Articles 3(1)(1) and 3(1)(2) of the GEA were applied.³⁰ Article 3(1)(1) provides the meaning of gender equality (the equal rights, obligations, opportunities and responsibility of men and women in professional life, when entering education, and when participating in other areas of social life) and Article 3(1)(2) defines equal treatment of men and women which means that there is no discrimination whatsoever based on sex, either directly or indirectly.

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

There are only a few cases on discrimination and no case law on indirect discrimination, which could indicate that knowledge of this concept is insufficient. There was only one case where indirect sex discrimination was found by the Labour Dispute Committee in 2017.³¹

3.4 Multiple discrimination and intersectional discrimination

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

No. Due to the wide scope of the GEA other laws could be applied in conjunction with the GEA.

Among discrimination claims submitted to the Gender Equality and Equal Treatment Commissioner in 2016 the following grounds of discrimination were dominant: sex (mostly in connection with pregnancy and parenting), citizenship and language skills, disability, age, ethnicity, sexual orientation, belief, and a couple of complaints on grounds of race.

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

No.

³⁰ Supreme Court of Estonia, Judgment of the Civil Chamber, No. 3-2-1-135-11 of 4 January 2012.

³¹ Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlusasjad 2017 (*Labour disputes based on unequal treatment in 2017*), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooeovaidlused/Ebavordse_kohtlemise_vaidlused_2017_1_.pdf, accessed 21 April 2018.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes. Article 5(2)(5) of the GEA.

Application of specific temporary measures to promote gender equality and to give advantages to the less-represented sex or to reduce gender inequality is not deemed to be direct or indirect discrimination based on sex. The meaning of 'temporariness' has not been specified in law or case law.

This definition in the expert's view does not entirely comply with the EU definition found in Article 157(4) TFEU. The ultimate goal to ensure full equality in practice between men and women in working life is not pointed out by Article 5(2)(5) of the GEA. However, Article 1(1) of the GEA declares that promotion of equality of men and women is a fundamental human right and the GEA is applicable for the public good in all areas of social life.

Case law on positive action is lacking in Estonia. However, positive discrimination has been used to recruit people with a reduced work ability, for instance by human resources officers of the ministries. Research findings show that the ministries are paying more attention to the recruitment of people with a reduced work ability and positive discrimination, but there is a lack of specific guidelines and examples of positive measures.³² Positive discrimination requires a broader debate in the public service and in society as a whole so that it could be implemented in the public sector and in private sector organizations.

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

Article 5(2)(5) of the GEA is an abstract and general statement and there is no requirement that these temporary measures must be compatible with the principle of proportionality. In all events, in cases of fundamental rights the 'necessity and proportionality' test applies, as is true for other cases of limitation of fundamental rights.

Debates on possible amendments to the electoral law regarding more gender-balanced candidate lists took place in 2017.³³ The Constitutional Committee members of the Parliament accepted that the zipper system (the list to alternate between men and women) for candidate lists constitutes positive discrimination, but they assumed that there could be a negative outcome. The nature of these potentially negative consequences was not explained, however. Supporters of the amendments under discussion stated that the introduction of gender quotas might increase women's political participation. The final decision by the members of the Constitutional Committee was to send the amendments to Parliament for a first reading. The first reading of the amendments, combined in draft act 424 SE, took place on 13 June 2017. The Parliamentary debate was dominated by male MPs who raised several arguments based on stereotypical assumptions of women's low interest in politics and decision-making. In the end, draft act 424 SE did not obtain the support of Parliament.³⁴

³² Tamm, A. (2017), *Positiivse diskrimineerimise mõju töövõimereformi rakendamisel vähenenud töövõimega inimeste värbamisele Eesti Vabariigi ministriumite näitel* (The impact of positive discrimination on implementing the work ability reform for recruiting people with reduced work ability following the example of the Republic of Estonia's ministries), Master's thesis, Tallinn University of Technology, accessed 3 March 2018.

³³ <https://www.equalitylaw.eu/downloads/4484-european-equality-law-review-2-2017-pdf-1-818-kb>, p. 82, accessed 3 March 2018.

³⁴ Riigikogu stenogramm, 13. Juuni 2017 (Shorthand Report by Parliament of 13 June 2017), <http://stenogrammid.riigikogu.ee/et/201706131000#PKP-21194> (in Estonian), accessed 3 March 2018.

It could be easier to apply the temporary specific measures if accompanied by Articles of the Constitution. Article 27(4) of the Constitution provides the protection of parents and children. Article 28(4) of the Constitution could be applied for positive discrimination, which stipulates that families with a large number of children as well as people with disabilities enjoy special care of the national Government and of local authorities. Article 50 of the Constitution provides protection for national minorities and their culture. Specific temporary measures could be applied to protect employees in connection with pregnancy and maternity.

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

No. However, according to the Welfare Development Plan 2016-2023, awareness-raising measures will be implemented in the coming years to raise entrepreneurs' awareness of the need and opportunities for improving gender balance at management level of organisations.³⁵ Mostly soft measures are planned that provide more information on gender stereotyping and prejudices, while the requirement to promote gender equality by business owners will be explained. Attention will be paid to women's career path and educational choices and opportunities. More attention is paid to attract girls to study science, technology and engineering. A need to support women's entrepreneurship is stressed, but no resources are planned.

There are no policy measures aimed at addressing the gender balance on company boards. In Estonia, micro-enterprises are in the majority and these businesses do not provide statistics and information about their HR policies and gender balance situation in their companies and on their boards. Gender balance could be studied from the Labour Force Survey data. From the database of the Central Commercial Register, the business register card, where the names and the ID-code of board members are published, could be applied. Processing the personal data of the Central Commercial Register makes a statistical analysis by gender possible. However, on micro-enterprises' boards the owner's female relatives can be found, while they have no decision-making authority.

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

No. However, the potential to introduce 'striped' or zippered candidate lists (alternating female and male candidates) in election processes and a voluntary quota system for promoting democracy within parties has been debated in recent years.

Women's lesser representation in decision-making is highlighted in the Welfare Development Plan 2016-2023 and the related Implementation Plan for 2017-2020, which sets out some activities for promoting gender equality.³⁶ Awareness-raising activities were planned to support the possible use of a zipper method in electoral lists, but the first attempt to amend the electoral law failed in Parliament on 13 June 2017 (see section 3.5.1).

³⁵ The Gender Equality Index published by the European Institute for Gender Equality provides an aggregated 'power' indicator that 'measures gender equality in decision-making positions across the political, economic and social spheres' which will be used to measure progress in this field. Estonia had a 'power' indicator of 28.2 (on a scale from 1 for total inequality to 100 for full equality) in 2015, which is one of the lowest among the EU member states. The score for 'economic power' was even lower – 23.2. Source: EIGE (2017), Gender Equality Index 2017: Main findings.

³⁶ Estonia, Ministry of Social Affairs (2016), Heaolu arengukava 2016-2023 (Welfare Development Plan for 2016-2023). Available in Estonian, <http://eelhoid.valitsus.ee/main#AXhSnu3L>; Tegevuskava 2017-2020 (Implementation Plan for 2017-2020), pp. 36, https://riigikantselei.ee/sites/default/files/elfinder/article_files/eesti2020_tegevuskava_2017-2020_istungile_27.04.17.pdf, accessed 18 March 2018.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. An amendment to Article 3(1)(3) of GEA entered into force on 23 October 2009. Direct discrimination based on sex occurs where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. Direct discrimination based on sex also means less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to rejection of or submission to harassment.

The concept of sexual harassment is defined in Article 3(1)(5) of the GEA, which states that sexual harassment occurs where any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature occurs, 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.

In connection with the Istanbul Convention's ratification process a debate about sexual harassment as a criminal offence has taken place. There are no court cases on sexual harassment and it could be argued that the existing legislation (GEA) is insufficient. However, Article 40 of the Istanbul Convention does not require sexual harassment to be criminalised. Some countries have nevertheless criminalised sexual harassment. In Estonia, amendments to the Penal Code entered into force on 6 July 2017. Article 153.1 of the PC defines sexual harassment as an intentional physical act of a sexual nature against the will of another person committed against him or her with degrading objectives or consequences. This is seen as a misdemeanour.³⁷ Extrajudicial proceedings concerning misdemeanours are conducted by the Police and Border Guard Board, which will be of no assistance in the development of a legal conceptualisation of sexual harassment. Misdemeanour cases do not provide for the status of a victim but only for the status of a witness. Since witnesses do not have access to the case file and to the statements given by the suspect, cases are only conducted as investigations and therefore do not contribute to legal clarity and the development of the law.

In 2017, the Labour Dispute Committee recognised the existence of sexual harassment in a case concerning a 54-year old male employee.³⁸ The Committee found that the employer had humiliated the employee and violated his dignity by sending him messages of a sexual nature and finally terminating his employment contract, which amounted to an unjustified dismissal.³⁹ This case was brought to the county court where it is still pending.

Sexual harassment at work is often not noticed or is ignored. Although sexual harassment is legally defined, naming it as such depends on subjective experience which, in turn, depends on the cultural context that shapes the meaning of sexual harassment. Lamesoo has interviewed nurses and asked about sexual harassment in hospital settings.⁴⁰ She found that regarding sexual harassment the question is not hierarchical power positions per se, but rather the way these positions are being interpreted. The nurses interpreted physicians' sexual advances as an abuse of their power position, assuming that these kinds

³⁷ Amendments to the PC were adopted and entered into force on 6 July 2017 (RT I, 26.06.2017, 6, <https://www.riigiteataja.ee/en/eli/509012018005/consolide>). Amendments to the PC were discussed by Parliament (385 SE) from February to June 2017. More: <https://www.equalitylaw.eu/downloads/4484-european-equality-law-review-2-2017-pdf-1-818-kb>, p. 81, accessed 18 March 2018.

³⁸ Decision No. 4-1/612/17 of 17 March 2017 of the Labour Dispute Committee of the Labour Inspectorate.

³⁹ Ibid.

⁴⁰ Lamesoo, K. (2017), *Social construction of sexual harassment in the post-soviet context on the example of Estonian nurses*. Dissertation, University of Tartu, http://dspace.ut.ee/bitstream/handle/10062/58187/lamesoo_katri.pdf?sequence=3&isAllowed=y, accessed 21 June 2018.

of incidents do not occur in formally equal occupational positions, i.e. with female physicians.

The Gender Equality and Equal Treatment Commissioner issued Opinion No. 35 on sexual harassment in 2015.⁴¹ This Opinion gives detailed instructions on how to identify sexual harassment and goes through a step-by-step process for prosecuting these cases.

In 2017, one sexual harassment case at the University of Tartu drew media attention. The parties involved were a male professor and a female doctoral student. The case was complicated due to intimate relationship between these persons in 2013-2014. In 2016, the doctoral student was dismissed and her thesis was not completed.⁴² The case reached the prosecutor's office in 2016 and a lawyer representing the doctoral student tried to reach a compromise. The university's management tried to steer clear of this case and did not take any steps.⁴³ It tried to avoid the first article in the media and provided the journalist with inadequate explanations and a victim-blaming position was adopted.⁴⁴ After media attention and an inquiry, the university's management recognized that the code of conduct had been breached and it held meetings and discussions on fair and equal treatment. The case was explored and explanations were given to employees and students. After this media attention the Labour Inspectorate studied the working environment and the working relations at the University of Tartu. Some recommendations were made to the university's management. The Prosecutor's Office informed the media that the investigation had come to an end due to the fact that the parties involved in this case had had an intimate relationship in the past and it was difficult to find a case of sexual harassment.⁴⁵

The definition of sexual harassment in the GEA in the expert's view complies with the EU definition found in Article 2(1)(c) of Directive 2006/54.

3.6.2 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?).

The scope is broader. Estonian legislation provides that sexual harassment is direct discrimination based on sex. Article 3(1)(3) of the GEA stipulates that direct discrimination based on sex also means less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to rejection of or submission to harassment. Article 2(1) of the GEA states that the GEA is applicable to all areas of social life. The GEA is applicable in areas of social protection, provision of goods and services, healthcare and housing. The GEA is not applicable to religious organisations, and in family and private life (Article 2(2) of the GEA).

The concepts of harassment on the ground of sex and sexual harassment have been regulated in the GEA since 2004. Before transposition of Directive 2006/54/EC, the GEA defined 'sexual harassment' in connection with the existence of subordination or a dependent relationship. The concept of 'sexual harassment' was brought in line with the Directive in 2009. In an amendment to the PC, Article 153.1 defines sexual harassment as

⁴¹ <http://www.volinik.ee/wp-content/uploads/2018/02/Arvamus-nr-35.pdf>, accessed 21 June 2018.

⁴² Research in gene technology is demanding – work in the laboratory is a prerequisite.

⁴³ Ibrus, K. (2017), Tartu Ülikool keeldus uurimast doktorandi seksuaalse ahistamise kaebust (The University of Tartu did not investigate the complaint by the doctoral student about sexual harassment), <http://digileht.epl.delfi.ee/uudised/tartu-ulikool-keeldus-uurimast-doktorandi-seksuaalse-ahistamise-kaebust?id=77230558>, accessed 27 June 2018.

⁴⁴ Analysis by Aro Velmet, available in Estonian at: https://arvamus.postimees.ee/4029245/aro-velmet-ahistamislugude-kasitlemisest-meedias-tartu-ulikooli-ja-uhe-korruptiivse-puhkuseisei-naitel?_ga=2.142138290.1233508601.1530015402-1668284640.1476091931, accessed 27 June 2018.

⁴⁵ <http://www.delfi.ee/news/paevauudised/krimi/prokuratuur-suudistuse-esitamiseks-tu-vanemteadurile-ei-ole-alust?id=77654414>, accessed 27 June 2018.

an intentional physical act of a sexual nature against the will of another person committed against him or her with degrading objectives or consequences (3.6.1).

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

No, several articles should be applied.

This definition in the expert's view complies with the EU definition in Article 2(1)(d) of Directive 2006/54. It is included in Article 3(1)(3) of the GEA, Article 3 of the ECA and Article 153.1 of the PC. Unfortunately, sexual harassment has appeared before the courts on only a couple of occasions and any further exploration of the concept has been modest.

Sexual harassment is prohibited and while studies have shown that sexual harassment does indeed exist, there are no cases related to sexual harassment.⁴⁶ One judgment by the Harju County Court o. 2-11-15080 of 23 December 2011 did deal with a sexual harassment complaint, but no factual evidence could be found.

Uibo (2014) has studied sexual harassment from a legal perspective and has proposed in order to improve the detection of potential forms of discrimination to supplement Article 28(2) of the ECA by including the employer's obligation to treat workers with dignity, attention and respect, including ensuring protection from harassment, sexual harassment and discrimination based on sex.⁴⁷

3.6.4 Please specify the scope of the prohibition on sexual harassment (e.g. does it cover employment and access to goods and services; is it broader?).

The GEA is applicable in all areas of social life. It can be stated that the legislation effective in Estonia ensures protection from sexual harassment in an employment relationship, allowing the use of various legal remedies, but the practical application of these legal remedies has been challenging. The law is also applicable to job applicants. The Gender Equality and Equal Treatment Commissioner has pointed out that it is prohibited to make degrading comments based on stereotypical prejudices about women and men. According to media coverage such comments have been made in educational institutions, but no case has been brought to the court. The media has also covered cases in connection with driver's education, where driving instructors have created a humiliating environment and have made disturbing proposals.⁴⁸

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

Yes, in Article 3 of the GEA and Article 3(3) of the ETA. Article 3(1)(3) of the GEA defines any less favourable treatment based on the person's rejection of or submission to such conduct as direct discrimination based on sex. Article 3(1)(5) of the GEA provides the meaning of sexual harassment and Article 3(1)(6) of the GEA is about gender-based harassment.

⁴⁶ Praxis (2014), *Sooline ja seksuaalne ahistamine töökohal (Gender and sexual harassment in the workplace)* (in Estonian), https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/sooline_ja_seksuaalne_ahistamine_tookohal_veebi.pdf, accessed 21 March 2018.

⁴⁷ Uibo, L. (2014), *Seksuaalne ahistamine töökohal (Sexual Harassment at the Workplace)*, Masters Thesis, University of Tartu, https://dspace.utlib.ee/dspace/bitstream/handle/10062/42656/uibo_lille.pdf?sequence=1, accessed 21 March 2018.

⁴⁸ Vaksman, L. (2015), 'Õppesõit lõppes ihualasti' (Driving lesson ended up naked), Postimees, 14.07.2015, available at: <http://pluss.postimees.ee/3260857/oppesoit-loppes-ihualasti>; Vaksman, L. (2015), Seisukoht: Sallime ahistajaid? (Do we accept harassers?), Õhtuleht, 18.09.2015, accessed 21 March 2018.

In this regard, the Estonian scholar Lamesoo has analysed discursive practices of sexual harassment among nurses. Her work demonstrates the multidimensionality and dynamism of discourses on sexual harassment, especially the central role played by the dynamics and ambiguities of power in sexual harassment. Lamesoo warns that: 'If we abandon the concept of sexual harassment and name the phenomenon gender harassment, it could lead to the belittling of these incidents.'⁴⁹

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes. According to the GEA, direct and indirect discrimination based on sex, including instruction to discriminate, is prohibited. It must be emphasised that the GEA does not only prohibit discrimination and thereby demand equal treatment of women and men.

Article 5(1) of the GEA stipulates that direct and indirect discrimination based on sex, including giving orders therefor, is prohibited.

Article 1(1) of the GEA provides that the purpose of this Act is to ensure equal treatment of men and women as provided for in the Constitution of the Republic of Estonia and to promote equality of men and women as a fundamental human right and for the public good in all areas of social life. Article 1(2) of the GEA specifies that discrimination on the grounds of sex in the private and in the public sector is prohibited and state and local government authorities, educational and research institutions, and employers should promote gender equality.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No cases can be reported.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

No. However, the GEA does not only prohibit discrimination and thereby demand equal treatment of women and men, but requires the promotion of gender equality as a fundamental human right and public good in all areas of social life. Therefore, avoidance of gender stereotyping and prejudices is indirectly stipulated in the GEA.

⁴⁹ Lamesoo, K. (2017), *Social construction of sexual harassment in the post-soviet context on the example of Estonian nurses*. Dissertation, University of Tartu, http://dspace.ut.ee/bitstream/handle/10062/58187/lamesoo_katri.pdf?sequence=3&isAllowed=y, accessed 21 March 2018.

4 Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

Yes, the principle of equal pay for equal work of equal value is indirectly defined in national legislation and several articles about non-discrimination in professional life were added in 2009. Article 6(2)(3) of the GEA stipulates that activities of an employer are deemed to be discriminatory, if the employer establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value.

Article 3 of the ECA explores the principle of equal treatment. An employer shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the ETA and the GEA. In several of its articles, the ECA refers to agreement between employee and employer. The Government of the Republic shall establish by regulation the minimum wage corresponding to a specific unit of time, and a regulation on the conditions and procedure for payment of average wages. Estonia's unionization rate of employees is low, which forms a solid basis for pay differentials. However, due to the large gender pay gap, a national action plan was adopted to tackle this in 2012. Widely amended, the Civil Service Act (CSA) entered into force on 1 April 2013 and attention has been paid to salary guides.⁵⁰

4.1.2 Is the concept of pay defined in national legislation?

Yes, but the definition of the concept of pay could be derived from several articles.

The ECA entered into force on 1 July 2009.⁵¹ A clear legal definition of pay is not provided in the ECA. Pay is remuneration for work according to a (written) agreement. Article 1(1) and 1(2) is about the employment relationship between employee and employer, where a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays the employee remuneration for such work. The wage is a monetary (Article 29(3) of ECA) or if agreed, in kind or other, form of benefits (Article 29(4) of ECA).

A definition of work of equal value is lacking in the GEA and there is no relevant national case law either. The terms 'same work' and 'work of equal value' occur in Article 6(2)(3).

This definition complies with the definition of Article 157(2) TFEU, where the meaning of 'pay' is the same. Articles 157(2)(a) and 157(2)(b) have not been directly transposed into Estonian legislation. The ECA stipulates that there should be working conditions, and a pay agreement between employer and employee. Then there is a general antidiscrimination article, which requires that an employer shall ensure the protection of employees against discrimination (Article 3 of the ECA).⁵²

⁵⁰ The Minister of Finance is responsible for the implementation of the CSA and pay policies in the public sector. The Minister is satisfied and states that the salary system is more transparent and fair, as it considers the employment market and the each person's responsibility and competitiveness, <https://www.rahandusministeerium.ee/en/personnel-policy-state>, accessed 23 April 2018.

⁵¹ The Wage Act (from 26 January 1994 to 30 June 2009), where Article 2 provided a definition of pay, was repealed; <https://www.riigiteataja.ee/akt/13100033>, accessed 23 April 2018.

⁵² No specific sanctions have been laid down for employers violating this regulation but where the rights of a person have been violated due to discrimination, he or she may demand from the person who has violated the rights that the harmful activity be terminated and that the damage be compensated for on the basis of and pursuant to the procedure provided by law.

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

Yes. Article 6(2)(3) of the GEA provides that discrimination occurs when the employer establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value.

4.1.4 Is a comparator required in national law as regards equal pay?

Yes, indirectly. Article 11.1(3) of the ETA is the only article where the question of comparison is discussed. This provides that a comparable employee means an employee working for the same employer, who is engaged in the same or a similar work, due regard being given to qualifications and skills of the employee. Where there is no comparable employee employed by the same employer, the comparison shall be made by reference to the applicable collective agreement. Where there is no collective agreement, an employee engaged in the same or similar work in the same region shall be deemed to be a comparable employee.

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

No. However, these requirements exist in national law indirectly. An employer should ensure the protection of employees against discrimination. Pay regulations and job descriptions and specifications are gender neutral. There has been no case law yet, but there are some opinions from the Gender Equality and Equal Treatment Commissioner, finding sex discrimination after job evaluation.⁵³

4.1.6 Does national (case) law address wage transparency in any way?

Yes. Article 7(3) of the GEA stipulates that an employee has the right to demand that the employer explain the bases for calculation of salaries and obtain other necessary information on the basis of which it is possible to decide whether discrimination has occurred.

Estonia has a large gender pay gap and there are problems with non-transparent wage policies and poor regulation in these matters. Article 28(13) of the ECA stipulates that the employer is obligated not to disclose information about wages calculated, paid, or payable to the employee without the employee's consent or without a legal basis. However, the employer should provide information about pay. In labour disputes the texts of employment contracts and a company's pay rules are important pieces of evidence, considering that a written employment contract contains the agreed remuneration payable for the work (wages), including remuneration payable based on the economic performance and transactions, other benefits if agreed upon, and the manner of calculation.⁵⁴

Article 63(1) of the CSA stipulates that a salary guide is a procedure for the determination and payment of salaries. The salary guide shall prescribe the basic salary or the basic salary range for the position, the conditions and procedure for payment of the variable salary, additional remuneration and benefits provided by law and the time and manner of the payment of the salary. The CSA provides a list of institutions and respective authorities (head of authorities, ministers, high-level representatives), which should establish salary guides. The local government council shall establish the salary guide for a local government

⁵³ Opinions of the Commissioner are not legally binding, but could be used in the labour dispute committee, <http://www.volinik.ee/arvamused>, accessed 23 April 2018.

⁵⁴ Article 5(1)(5) and Article 5(1)(6) of the ETA.

authority. Article 10(5) of the CSA stipulates that the procedure for drafting the salary guide and determination of the salary components for other public bodies should be specified by regulation of the Government of the Republic. The CSA entered into force on 1 April 2013. The regulation entered into force on 24 May 2013.⁵⁵ It could be said that the salary system is more transparent and fair, as it takes into account the employment market and each person's responsibility and competitiveness. The Ministry of Finance is responsible for the implementation of the Civil Service Act. The Public Administration and Public Service Department of the Ministry of Finance develops personnel and training policy, and organises salary management.

Some attempts have been made in public sector, where salary guides are required. The salary guide of the authority shall be disclosed on their web page. Estonian public sector wages have been available on the Internet. Article 65 of the CSA specifies disclosure of remuneration. It requires that the basic salary of an official as of the current calendar year should be published on the website of the authority at the latest on 1 May.⁵⁶ The basic salary, salary supplements and other income for the previous calendar year should be made public. The annual wage survey is carried out by the consultancy firm Fontes.⁵⁷

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country?

No. It is complicated to get information by gender from the public sector.

Article 26 of the Constitution on the right to privacy is used to justify pay secrecy in the private sector:

Everyone is entitled to inviolability of his or her private and family life. Government agencies, local authorities, and their officials may not interfere with any person's private or family life, except in the cases and pursuant to a procedure provided by law to protect public health, public morality, public order or the rights and freedoms of others, to prevent a criminal offence, or to apprehend the offender.

It is impossible to analyse pay differences by gender given this level of privacy protection. Statistics Estonia is currently analysing pay data from a Wages and Salaries Statistics Survey. In 2016, the sample included 12 350 enterprises, institutions and organisations.⁵⁸ Statistics Estonia has adopted a slightly different methodology compared to Eurostat wage statistics. Namely, Estonia includes a sample of micro enterprises and covers all economic activities. Eurostat administers the Earnings Survey, which covers all employees (full time and part time, but excluding apprentices) working in enterprises with 10 or more

⁵⁵ Riigi personali- ja palgaarvestuse andmekogusse andmete esitamise ja arvestuse toimingute teostamise kord. Vabariigi Valitsuse määrus nr 76, 16.05.2015 (Regulation of the Government of Republic No.76 of 16 March 2013 on administration of the state personnel and payroll database remuneration levels).

⁵⁶ Ametnike palkade avalikustamine (Disclosure of the wages of civil servants), <http://www.avalikteenistus.ee/index.php?id=41597&highlight=palgad>, accessed 23 April 2018; Fontes together with Mercer LLC is conducting the Mercer Total Remuneration Survey (TRS) in the Baltics. TRS is a salary and compensation survey which is carried out in more than 120 countries using the same methodology (www.fontes.ee).

⁵⁷ <https://www.rahandusministeerium.ee/et/riigi-personalipoliitika/personali-ja-palgastatistika>; <https://www.rahandusministeerium.ee/et/riigi-personalipoliitika/palgapoliitika>, 23 April 2018.

⁵⁸ In wages statistics the statistical unit is an enterprise, institution or organisation. The population of a survey consists of all economically active units. As a sampling framework the statistical profile is used which is based on the Estonian Enterprise Register. State and municipal institutions and organisations are completely enumerated. The same applies to enterprises with 50 or more employees. From the remaining part of the population, i.e. from enterprises with less than 50 employees, a stratified simple random sample is selected. The published average gross wages and salaries have been converted to full-time units, sex segregated data not provided: http://pub.stat.ee/px-web.2001/I_Databas/Economy/36Wages_and_salaries_and_labour_costs/09Wages_and_salaries/02Annual_statistics/02Annual_statistics.asp, accessed 23 April 2018.

employees and in all sectors of the economy except for agriculture, fisheries, public administration, private households and extraterritorial organisations.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

Article 5(1)(5) of the ECA explores the content of employment contracts, which include the agreed remuneration payable for the work (wages), including remuneration payable based on the economic performance and transactions, and the manner of calculation.

In Estonia individual pay agreements between employer and employee are dominant and it is often claimed that women agree to work with lower pay. CV Online has launched the website Palgad.ee which offers a wage comparison according to sectors and positions.⁵⁹

It is also claimed that specialists from abroad should be paid more.

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

Wages of out-sourced people are not available to the wider public.

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes. According to Article 6 of the GEA men and women in professional life, in education and in other areas of social life are entitled to equal rights, obligations, opportunities and liabilities.

National law does not have a definition of 'worker'. However, Article 3(2)(1) of the GEA defines 'an employee' as a person employed under an employment contract (working under the ECA) or a contract for the provision of services (working under the LOA), an official or any other person working under the CSA. Persons applying for employment or service are also deemed to be employees.

Persons who provide work under the law of obligations (LOA) are defined as 'a mandatary' (presuming that the mandatary performs the mandate in person, usually the duration and deadlines are specified) and 'a contractor' (presuming that the contractor is not required to perform the obligations arising from the contract in person, usually the duration and deadlines are specified).⁶⁰

⁵⁹ Palgad.ee is operated by CV Online and the website offers a comparison of the salaries of about 500 positions. The list of positions reflects the labour market in Estonia and is constantly updated. More: <https://www.palgad.ee/en/methodology>, accessed 23 April 2018.

⁶⁰ Here the meaning of the term 'worker' in the Estonian language and international legal texts should be explored. In Estonian it is a bit complicated to make a clear distinction between 'an employee' and 'a worker'. An employee and a worker could both be translated as 'töötaja' or 'tööline', and a person who works under the CSA is 'teenistuja'. In Estonian 'worker' has a broader meaning and an employee is associated with contractual relations. In legal texts, there is a quite clear distinction in English between an employee and a worker. In this sense it could be concluded that workers in the legal sense exist in Estonia. Mostly their work is covered by the law of obligations (LOA). There are also seasonal workers who do not have written (employment) contracts, but whose work is based on oral agreements, where both the ECA and the LOA could be applied, depending on the agreement. The LOA covers two types of contracts for work: authorisation agreements and contracts for services. In both cases the work provider is defined. Article 619 of the LOA defines 'a mandatary' as a person who undertakes to provide services to another person (the mandator) pursuant to an agreement (an authorization agreement to perform the mandate) and the mandator undertakes to pay remuneration to the mandatary therefor if so agreed. Article 622 of the LOA specifies that it is presumed that a mandatary shall

The mandatory and the contractor working under the LOA are covered by the GEA, but he/she enjoys far less protection.⁶¹

Performance of certain work in a specified period without social security obligations for the customer is attractive for third-sector organisations, where a lot of work is done either on project basis or on a voluntary basis.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Yes, in Article 29 of the Constitution on the right to choose the area of activity, profession and position of employment. Sex discrimination in professional life is prohibited by Article 6 of the GEA.⁶²

Article 2(1)(1) of the ETA explicitly stipulates that discrimination is prohibited if restrictive conditions are set for the access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as upon promotion. The ETA highlights grounds for discrimination in connection with the access to employment (nationality (ethnic origin), race or colour).

Article 3(1)(1) of the GEA pays attention to the access to gender equality, which covers the equal rights, obligations, opportunities and responsibility of men and women in professional life, when entering education and when participating in other areas of social life.

This scope is the same as the scope of Article 14(1) of Recast Directive 2006/54.

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes. Article 5(2) of the GEA explains situations, which are not considered discrimination. It describes differences in treatment due to a person's sex in relation to certain activities (compulsory military service only for men, joining women's or men's only organisations), in the access to employment, including training required for employment, and when supplying goods and services. There can be several reasons and justifications (context and nature of activities, sex as determining requirement etc.). Such differences in treatment should be justified by a legitimate objective and must be proportional to the objective.

Has such an assessment led to (legislative) changes?

No.

perform the mandate in person. A mandatory also has the right to use the assistance of third parties in performing the mandate.

Article 635 of the LOA defines a contractor as a person who undertakes to manufacture or modify a thing or to achieve any other agreed result by providing a service (work), and the other person (the customer) undertakes to pay remuneration as agreed by the contract of services.

⁶¹ Mandatories and contractors do not have any rights to holidays paid by the mandator or customer as expected for work done under the ECA. The mandatory and contractor do not have childcare and parental leave. Social security for persons working under the LOA depends on their own contributions. There is an option for the pregnant mandatory (or contractor) to apply for social security from the contractual partner if the work performed (working time, control, management, instructions and regulations by the customer) had all features of the work performed under the ECA in the framework of an employment contract. Then a claim could be made for a revision of the contractual relationship and if the Labour Inspectorate or court finds it applicable, the mandatory could also be entitled to all social guarantees applied to the ECA with the employment contract.

⁶² <https://www.riigiteataja.ee/en/eli/521012016001/consolide>, accessed 23 April 2018.

- 4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes. Article 5(2)(1) of the GEA stipulates that provisions concerning the special protection of women in connection with pregnancy and childbirth are not considered to be direct or indirect discrimination based on sex. Pregnancy and maternity protection is explicitly stipulated in the ECA, CSA and OHSA.

- 4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

Due to strong gender segregation in the labour market there might be a need to introduce specific temporary measures to give advantages to the underrepresented sex. It is possible that hidden indirect discrimination exists in relation to access to work, vocational training, employment, and working conditions.

Discrimination in professional life is prohibited and situations where discrimination may occur are listed in Article 6 of the GEA. Article 6 entered into force in October 2009. However, unfortunately, pregnant women and persons with family obligations still find it complicated to get a job. Article 6(4) of the GEA stipulates that employers and legal persons in private law or sole proprietors entered in the register of economic activities as labour-market service providers shall not request information (pregnancy, childbirth, parenting, performance of family obligations or other circumstances related to gender) which may place a job applicant in a less favourable situation.

According to Article 11 of the ECA, in pre-contractual negotiation processes, including job advertisements or job interviews, only questions with a legitimate interest can be asked. Hidden discrimination exists. Questions about the job applicant's personal life are common practice in Estonia.⁶³ The Gender Equality and Equal Treatment Commissioner received 332 claims in 2016. In 2015, out of 209 claims, 70 claims in connection with gender equality were made, and there were more women claimants than men. Claims in connection with pregnancy have increased in recent years.⁶⁴

⁶³ The media (newspapers, the Internet) are popular labour-mediation services providers. In cv forms, employers ask for the applicant's sex, age, often about family and children.

⁶⁴ Annual Report 2017 is not yet available, annual reports by the Commissioner available in Estonian: <http://www.volinik.ee/avalikud-dokumendid/>, accessed 23 April 2018.

5 Pregnancy, maternity, and leave related to work-life balance (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes, but not explicitly in a separate article. A pregnant employee is an employee who has informed the employer and has a health certificate issued by a GP or a gynaecologist (Article 18 and 93(3) of the ECA).

There are articles about pregnant employees and about employees who have a right to take pregnancy leave. The ECA and CSA include articles connected with working conditions, health and job protection. Non-discrimination and equal treatment are stressed in the GEA and ETA. Less favourable treatment of a person in connection with pregnancy and childbirth, parenting, and performance of family obligations constitutes direct discrimination.

This definition is consistent with the definition in Article 2 of Directive 92/85.

5.1.2 Are the protective measures mentioned in the Articles 4-7 of Directive 92/85 implemented in national law?

Yes. The ECA and the CSA include articles, where protection of pregnant employees is specified in employment relationships.

Working conditions should correspond to the state of health of employee who has informed her employer about her pregnancy (Article 18 of the ECA). A pregnant employee and an employee who has the right to pregnancy and maternity leave have the right to demand that the employer temporarily provides them with work corresponding to their state of health if the employee's state of health does not allow for the performance of the duties prescribed in the employment contract on the agreed conditions. If the employer cannot provide the employee with work corresponding to her state of health, the employee may temporarily refuse to perform the duties.

Article 18(5) of the ECA stipulates that upon termination of pregnancy and maternity leave a woman has the right to the improved working conditions that she would have been entitled to during her absence. Article 19(2) of the ECA states that an employee has the right to refuse to perform work if an employee is temporarily incapacitated for work. Article 21(3) of the ECA provides that a pregnant woman and an employee raising a child under the age of three or a disabled child may be sent on a business trip only with his or her consent. Article 44(5) of the ECA prescribes that working overtime cannot be demanded from a minor, a pregnant woman or an employee who has the right to pregnancy and maternity leave. Night work for pregnant employees is not prohibited; night work could be performed upon mutual agreement.

Similar protective measures are specified in the CSA. If an official is appointed to the service for a specified term, their contract shall be suspended for the period while the official is on maternity, adoptive or parental leave (Article 23(4) of the ECA). Working conditions of pregnant officials and officials who have a right to pregnancy and maternity leave are specified in Article 48 of the CSA.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes. The employer should be informed about the employee's pregnancy. Article 92(1) of the ECA and Article 100(1) of the CSA prohibit the dismissal of pregnant employees.

Exceptional cases are possible and legally accepted (economic reasons, bankruptcy, lay-off). Article 93 of the ECA stipulates specifics regarding the termination of an employment contract with a pregnant employee. In these cases the employees' representative, the Labour Inspectorate and the Unemployment Insurance Fund (UIF) should be consulted. The UIF is in charge of unemployment issues and obliged to pay redundancy benefit and benefits following the insolvency of an employer.

Employers should pay compensation in the event of collective redundancy (a redundancy of five or more employees), and then the UIF should contribute. In case of micro firms monthly contributions by employers and employees have been paid to the UIF, but it is impossible to receive monetary compensation from the UIF. This is unequal treatment of redundant employees, since those working in small firms are worse off.

When an employee is made redundant during her maternity leave the payment for maternity leave does not cease. Payment for pregnancy and maternity leave is calculated on the basis of the former salary, regulated by the HIA and paid by the Health Insurance Fund.

The Labour Dispute Committee of the Labour Inspectorate has solved several cases regarding the unlawful dismissal of pregnant employees, e.g. during the probationary (trial) period. Probationary periods are common and can last for four months. Fair and equal treatment is required. In this case the employer had terminated the contract with the employee due to her pregnancy and because in addition, this employee had a child under three years old at home. Employees must not be discriminated against on grounds of fulfilling family obligations. Pregnant employees have special protection. However, there are few court cases from the County Court where a pregnant employee has accused her employer of discrimination against a pregnant employee. If an employer can point to poor work results and prove that the dismissal was not due to pregnancy, the claimant will lose the case. It seems that employers have a stronger position in such disputes. This is mainly due to high litigation costs resulting in cases not being brought to the Supreme Court and only being resolved by the labour dispute committees or by the court of first instance. However, the Labour Inspectorate conducts a more careful investigation of whether employers stress the incompetence of a pregnant employee as the main reason for the dismissal.⁶⁵

5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Yes. Article 95 of the ECA requires that the cancellation of an employment contract is declared in writing. An employer shall justify the cancellation. An employee shall justify extraordinary cancellation.⁶⁶ For instance, the employee may cancel an employment contract extraordinarily due to a reason related to the employee's state of health or family duties.

The reason for dismissal must be given to the employee in writing or a format that can be reproduced in writing. In the civil service, an administrative act should be issued (Article

⁶⁵ Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlusasjad 2017 (*Labour disputes based on unequal treatment in 2017*), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooevaidlused/Ebavordse_kohtlemise_vaidlused_2017_1_.pdf, accessed 21 April 2018.

⁶⁶ Manners of the cancellation of employment contract is stipulated in Articles 85-94 of the ECA. An employee is not obligated to give the employer advance notice of extraordinary cancellation if, considering all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term for advance notice. The employee may cancel an employment contract extraordinarily due to a reason related to the employee, in particular if the employee's state of health or family duties do not allow him or her to perform the agreed work and the employer does not provide him or her with suitable work.

103(1) of the CSA). In this administrative act the reason for release should be specified (Article 103(2)(4) of the CSA).

Dismissal of a pregnant employee is possible under the ECA and the CSA in extraordinary cases (e.g. bankruptcy, economic difficulties of employer). Article 93 of the ECA provides specifications for cancellation of the employment contract with a pregnant woman or person raising a child under the age of three. Article 105(1) of the CSA provides that upon liquidation of the authority, it is allowed to release from service an official who is pregnant, who has the right to pregnancy and maternity leave or who is raising a child under the age of three.

In the case of a discrimination claim and a labour dispute an employer should provide substantiation. A dismissed pregnant official or official who has the right to pregnancy and maternity leave (or who is raising a child under the age of seven) has a right to claim compensation and reinstatement.

5.2 Maternity leave

5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

According to Article 59 of the Employment Contracts Act (ECA), which entered into force on 1 July 2009, a woman has the right to 140 calendar days of pregnancy and maternity leave.⁶⁷ Persons working under the Law of Obligations are not entitled to maternity leave if their contract has lasted less than one month. Self-employed women have a right to maternity benefit, but not to maternity leave.

All universal family benefits are applicable also for persons working under the LOA.

5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

No. The employee has the right to take or interrupt these leaves. Pregnancy leave before birth should start between 30 and 70 days prior to the expected birth, when a woman wants to get the benefit for 70 days paid by the State. During such leave, a benefit equal to the woman's average daily income is payable by the Health Insurance Fund. The pregnancy leave could be shorter than 30 days, but the benefit is paid for the number of days actually used as pregnancy leave. Maternity leave is 70 days and can be used only by the mother or adoptive parent. The mother could also continue to work, if there is a possibility, need or willingness. Fathers cannot take paid parental leave during 70 days after their child is born.⁶⁸ They can apply for paid parental leave when the child is 70 days old.

5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

Yes. Maternity and subsequent parental leave are job-protected leaves for employees and officials (working under the ECA and under the CSA). All employed mothers are eligible for maternity leave, including workers with temporary contracts if the contract lasts more than one month.⁶⁹ Self-employed people qualify for maternity benefits on the same conditions as employees and officials, even without taking up the leave.

⁶⁷ Pregnancy leave is 70 days, and maternity leave is 70 days – applicable only to the mother. After the maternity leave, parental leave follows, which could be taken by the father or another family member. Their job is protected until the child is three years old.

⁶⁸ Fathers can take 10 days paid paternity leave.

⁶⁹ The law was amended, and lately there has been a requirement for a contract of a minimum of three months to get social security.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave?

Yes. Maternity allowance is paid by the State. Article 54(1)(4) of the Health Insurance Act (HIA) prescribes the payment of 100 % (benefit for temporary incapacity for work).

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

The pregnancy and maternity leave allowance is higher (100 %) than the average pay for a day of sick leave (70 %).⁷⁰

According to Article 54(1)(4) of the HIA, maternity leave is a paid leave (100 % of the average income of the insured person per calendar day based on the data on payment of social tax available from the Tax and Customs Board. No ceiling applies.

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

Not usually, but some enterprises have introduced a maternity grant (single payment). Maternity benefits are paid by the State. Some local governments have introduced a single payment as a maternity grant.

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

Yes. Special cases exist:

- A precondition to receive payments from the Health Insurance Fund is to be an insured person;⁷¹
- The minimum wage (EUR 470 per month in 2017) is paid to mothers who did not work during the previous calendar year but have worked prior to the birth of a child;
- For women who have not worked before their pregnancy, the state minimum of maternity benefits will be paid (EUR 430 per month);
- People who worked under the LOA, at least a one-month contract is expected prior to application for benefits.

In connection with payment of benefits the ECA refers to the HIA. Article 58(4) of the ECA stipulates that there is a right to obtain compensation for pregnancy and maternity leave in accordance with the HIA. Article 50(3) of the HIA states that the types of benefit for temporary incapacity for work are sickness benefit, maternity benefit, adoption benefit and care benefit. The procedure for granting and payment of benefit for temporary incapacity for work is provided in the HIA.

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working

⁷⁰ In case of illness, quarantine, non-work and traffic injury and the complications or illnesses caused by it, the benefit is paid by the employer from day 4 to day 8. After day 9, sickness benefits are paid by the Health Insurance Fund.

⁷¹ Article 5 of the HIA provides a definition of the insured person. A payer of social tax (employer, the State agency, local authority, contractor, spouse, person herself or himself) must pay social tax in accordance with the procedure, in the amounts and within the time limits provided for in the Social Tax Act. This is also true for a person considered equal to such persons on the basis of the HIA or on the basis of a contract specified in Article 22 of HIA, <https://www.riigiteataja.ee/en/eli/511012018002/consolide>, accessed 6 March 2018.

conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

Yes. Article 18(5) of the ECA and 48(5) of the CSA provide that upon termination of pregnancy and maternity leave, a woman has the right to the improved working conditions which she would have been entitled to during her absence.

Article 23 of the CSA provides special provisions for persons who have been appointed to the service for a specified term. Article 23(4) points out that the service position will be suspended for an official who is on maternity, adoptive or parental leave.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes, in Article 61 of the ECA.

Adoptive leave is 70 days of the date of entry into force of the court judgment approving the adoption (if a child is under 10), paid by the State for 100 %.

5.3.2 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Yes. Article 92 of the ECA provides that an employer may not cancel an employment contract on the ground that the employee is pregnant or has the right to pregnancy and maternity leave, or that the employee performs important family obligations. Article 93 of the ECA specifies cancellation of an employment contract with a pregnant woman or person raising a child below the age of three.

Estonia also provides family benefits for adoption. Adoption allowance is a single allowance paid to an adoptive parent from whom an adopted child does not descend and who is not a stepparent of the child, if childbirth allowance has not been paid to the family for the same child earlier.

The amount of the adoption allowance is EUR 320 per adopted child.

5.4 Parental leave

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

Yes. Article 62 of the ECA is about parental leave, and states that a mother or father has the right to parental leave until his or her child reaches the age of three. Parental leave may be used by one person at a time.

Parental leave immediately follows maternity leave. The father of a child has the right to the parental benefit once the child has reached the age of 70 days. If the initial recipient of the parental benefit is the father, the mother must prove that she is not on parental leave. A more flexible parental leave regulation has been discussed and some legal amendments were adopted in December 2017.⁷² Amendments regarding additional earning and parental benefit payments and allowances for multiple births of three or more children entered into force on 1 March 2018.⁷³ Amendments regarding paternity leave for 30 days

⁷² Perehüvitiste seadus (Family Benefits Act), RT, I, 08.07.2016,1; RT I, 28.12.2017, 62, <https://www.riigiteataja.ee/en/eli/509022018001/consolide>, accessed 27 June 2018.

⁷³ An overview of the planned changes regarding parental leave and benefits is available in English: <https://news.err.ee/632922/government-approves-amendments-to-estonia-s-parental-leave-benefits-system>, accessed 27 June 2018.

and more flexible leave arrangements and planning by parents will enter into force on 1 July 2020.

Parental leave is generous due to its length and payment scheme. It however presents the disadvantage of a rigid arrangement and restricted procedures (i.e. it is impossible to combine work and parental leave, additional earning can only be gained through another employer, parental leave can be taken by the mother or father, but not at the same time, etc.). Reforms are planned and draft legislation is currently under discussion. A parliamentary debate is expected in 2018-2022.⁷⁴

5.4.2 Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

Yes.

5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

Yes.

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

In the public sector: Until the child reaches the age of three. Leave is a family entitlement.

5.4.5 Is the right of parental leave individual for each of the parents, a family entitlement or a combination of the two? How many months are reserved for each parent on a take-it or leave it basis?

Parental leave may only be used by one parent at a time. The entire period of the parental leave is transferable, but cannot be used by parents at the same time.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

Maternity leave and parental leave cannot be taken in the form of part-time work, except for self-employed persons. Parents or persons giving the actual care could work temporarily, but then they should interrupt their leave. Carers could work for another employer during their parental leave, but then they lose part of their monthly parental benefit.

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

The notice period is 14 days, as stipulated in the ECA and in the CSA.

⁷⁴ Biin, H. (2017), Estonia: Reform of the parental leave and benefit system to better reconcile work and family life. ESPN Flash Report 2017/62, ec.europa.eu/social/BlobServlet?docId=18228&langId=en, accessed 10 March 2018.

5.4.8 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

No. However, under all provisions in respect of childcare and parenting leave, the adoptive parent has the same rights. Adoptive parents may enjoy time off for the care of dependant(s) as specified in law.

Adoptive leave is 70 days of the date of entry into force of the court judgment approving the adoption (if a child is under 10), and is 100 % paid by the State. Parental leave may be used by one person at a time. Article 65(2) of the ECA states that the actual caregiver of a child has the right to the parental leave. Article 161 of the Family Law Act (FLA) stipulates that the adopted child acquires the legal status of a child of adoptive parents or parent.

5.4.9 Is there a work and/or length of service requirement in order to benefit from parental leave?

Yes. Article 5(2)(1) of the HIA states that an insured person is someone who has worked on the basis of an employment contract concluded for a term exceeding one month or for an unspecified term and for whom the employer must pay social tax. This also applies to persons receiving remuneration or service fees on the basis of a contract for services, a mandate or a contract under the law of obligations for the provision of any other services, which is concluded for a term exceeding one month or for an unspecified term.

Two types of benefit are available to all families who meet the eligibility conditions, whether or not parents take parental leave. Parental benefit is paid at 100 % of the average earnings (calculated on employment in the previous calendar year) for 435 days (i.e. 62 weeks) from after the end of maternity leave, with a ceiling of EUR 2 907.15 per month in 2017, equivalent to three times the average earnings, based on provisions from the Family Benefits Act (FBA).⁷⁵ In 2017, the minimum benefit paid to working parents is the minimum wage, EUR 470 per month. For parents who are not on leave and not working, parental benefit is paid from the birth of the child at a flat rate of EUR 430 per month until the child is 18 months old.

This right to use parental leave applies to parents, adoptive parents, step-parents, guardians and caregivers raising a child with respect to whom a written foster care contract has been entered. These persons have the right to receive parental benefits.

In case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work), the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

5.4.10 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

Parental leave is not compulsory, could be interrupted etc. Parental leave must be used in time. The days of leave not used in time cannot be taken in the future or saved for future periods. Greater flexibility has been discussed and is expected to be introduced in the near future.

5.4.11 Are there special arrangements for small firms?

No.

⁷⁵ Family Benefits Act (FBA, Perehüvitiste seadus), RT I, 08.07.2016, 1; RT I, 28.12.2017, 62, <https://www.riigiteataja.ee/en/eli/509022018001/consolide>, accessed 10 March 2018.

5.4.12 Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

Yes. There is additional paid childcare leave (3-6 days a year) for persons who take care of disabled children.

Article 63(3) of the ECA provides additional days off for childcare leave which shall be remunerated on the basis of the minimum wage established by the Government of the Republic, and a mother or father of a disabled child has the right to childcare leave of one working day per month until the child reaches the age of 18, which is remunerated on the basis of the average wages.

Article 64(1) of the ECA stipulates that a mother and father who is raising a child until the age 14 or a disabled child until the age of 18 has the right to childcare leave without pay of up to ten working days every calendar year.

There is a restriction in connection with business trips. The parent of a disabled child may be sent on a business trip only with his or her consent (Article 21(3) of the ECA).

The Social Benefits for Disabled Persons Act provides the grounds for the payment of disabled child allowance and education allowance.⁷⁶

5.4.13 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

Yes. Withdrawal of an employment contract is prohibited. Employees on maternity and parental leave cannot be fired in case of a decrease in work volume or enterprise reorganisation. In case of redundancy employees on maternity and parental leave should be kept on. But in case of bankruptcy or cessation of the activities of the employer also employees who have a child under three could be dismissed.

5.4.14 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Yes. Until the end of the parental leave period (when the child turns three) their job is protected. Article 93(1) of the ECA stipulates that an employer may not cancel an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave, or a person who is on parental leave or adoptive leave due to lay-offs, except upon cessation of the activities of the employer or declaration of the employer's bankruptcy, if the activities of the employer cease or upon termination of bankruptcy proceedings, without declaring bankruptcy, by abatement.

5.4.15 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Yes.

5.4.16 What is the status of the employment contract or employment relationship for the period of the parental leave?

Employment contracts are suspended for the term of the parental leave.

⁷⁶ Disabled child allowance shall be paid monthly to a child under the age of 16 for the additional expenses caused by the disability and, upon existence of a rehabilitation plan, for the activities prescribed therein. Children aged 16-17 can receive benefits and allowances, available for disabled, working-age people.

5.4.17 Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

Social security (e.g. health insurance) payments are made by the State during the parental leave period, during which the parent is insured.

Article 60(6) of the HIA explains that the insured person who has the right to receive maternity benefits or adoption benefits does not have the right to receive sickness benefits or care benefits in the same period. The insured person who has the right to receive sickness benefits does not have the right to receive care benefits in the same period.

5.4.18 Is parental leave remunerated by the employer? If so, how much and in which sectors?

Parental leave is paid by the State.

5.4.19 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

Parental benefits are stipulated by the FBA.⁷⁷

5.4.20 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

Parental leave in Estonia is long and rigid. Three years of job-protected leave has a positive effect on family life, but also has a negative side, which is connected with employers' human resource management and costs, also regarding women's lower career and employment prospects.

Estonia has 13 types of family benefits. There is child benefit (EUR 50 per month for the first and second child and EUR 100 per month for the third and each subsequent child). One of the benefits is the childcare allowance, and the rate of the allowance is specified every year.⁷⁸ Childcare allowance is a monthly allowance paid to one of the parents. The amount of the child allowance depends on the age of the child and the number of children.

From 1 January 2017, a novel allowance is now applicable. A maintenance allowance is paid to children whose parents neglect their maintenance obligation. The allowance is divided into a maintenance allowance for the duration of judicial and execution proceedings. The amount of maintenance allowance per child is up to EUR 100 per month.⁷⁹

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes, in Article 60 of the ECA.

A father may take up to 10 working days of paternity leave during the two-month period prior to the expected birth of the child and the two-month period following the birth of the child. A piecemeal way is possible, but not less than one day at time. Paternity leave is compensated to the employer by the State based on the father's average income. There is

⁷⁷ The PBA was repealed on 31 December 2016 and was replaced by the Family Benefits Act (FBA). <https://www.riigiteataja.ee/en/eli/509022018001/consolide>, accessed 23 April 2018.

⁷⁸ Article 18 of the Family Benefits Act, <https://www.riigiteataja.ee/en/eli/509022018001/consolide>; <https://www.eesti.ee/en/family/pregnancy-and-early-childhood/parental-leave-and-child-care-allowance/>, accessed 27 June 2018.

⁷⁹ Chapter 4 of the Family Benefits Act, <https://www.riigiteataja.ee/en/eli/509022018001/consolide>, accessed 3 March 2018.

a ceiling equivalent to three times the average gross monthly salary in Estonia on the basis of data published by Statistics Estonia concerning the quarter preceding the quarter in which the holiday was used.

There is a problem with fathers who have more than one employer. Then part of the leave will be unpaid. The state will compensate employers for no more than 10 days. If there are two employers and the father takes 10 days of leave, then only 5 days to both employers will be compensated.

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Yes. Article 93(1) of the ECA provides that an employer must not cancel an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave, or a person who is on parental leave or adoptive leave due to lay-offs, except upon cessation of the activities of the employer or declaration of the employer's bankruptcy, if the activities of the employer cease or upon termination of bankruptcy proceedings, without declaring bankruptcy, by abatement.

All employed fathers with permanent or temporary employment contracts are eligible, but fathers with contracts working under the LOA, are not entitled to paternity leave. Undertakings and organisations where project-based and temporary work is frequent, prefer work done using authorisation agreements or service contracts. A minimum in social and other security taxes are expected to be paid, but health and unemployment security is guaranteed only if the contract lasts for a minimum of one month at a time.⁸⁰ All natural and legal persons providing this type of work are required to register the persons employed by them in the employment register.

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

Yes, in Articles 42 and 12 of the ECA. Article 2(4) of the ETA requires equal treatment in labour relations on grounds of family-related duties.

Article 92(2) provides that an employer must not cancel an employment contract if the employee performs important family obligations. However, Article 91(3) points out the possibility for an employee for extraordinary cancellation of the employment contract due to a reason arising from the employee, in particular if the employee's state of health or family duties do not allow him or her to perform the agreed work and the employer does not provide him or her with suitable work.

Time off from work is possible if agreed with the employer. There is additional paid childcare leave (3-6 days per year depending on the age and the number of children) for persons who take care of child(ren) or a disabled child.⁸¹

Article 51(4) of the HIA stipulates that the care benefit is paid to an insured person in insured events (nursing a child under the age of 12, nursing a family member who is ill at

⁸⁰ This is a positive development: before 1 January 2014 the contract requirement to get health insurance was not less than three months.

⁸¹ Each calendar year a mother or father has the right to child leave which shall be remunerated on the basis of the minimum wage established by the Government of the Republic. If a mother and father do not take this leave, monetary compensation is not paid. Child leave is available for three working days if she or he has one or two children under 14, and for six working days if she or he has at least three children under 14 or at least one child under 3 (Article 63 of the ECA).

home, caring for a child under the age of 3 or for a disabled child under the age of 16 when the person caring for the child is ill or is receiving obstetrical care). In some cases it is possible to get paid by the Health Insurance Fund, but only 80 % will be covered. Article 54(1)(1.1) of the HIA provides that the Health Insurance Fund will pay the benefits for temporary incapacity for work to an insured person per calendar day amounting to 80 % of their average income per calendar day if the insurer takes care of a child under the age of 3 or of a disabled child under the age of 16; if the person providing the care is ill or being provided with childbirth assistance, is taking care of an ill family member at home or if a child under the age of 12 is treated in a hospital or at home.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

Surrogacy is prohibited. The child has a mother (the term 'mother' is connected with delivery, the woman who has given birth) or is adopted. For adoptive parents parental leave is possible.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

No. The 70 days after childbirth are maternity leave for the mother only. Article 62 of the ECA allows a mother or father to take parental leave until their child is three years old. The employee should choose whether to take the leave or not, there is no legal right to take maternity leave on a part-time basis.

All employees and civil servants have a right to take maternity leave, no negotiations needed. The size of the employer does not play any role. Employer and employee can make agreements, maternity leave could be interrupted any time, but a father of the child cannot 'take over' the maternity leave. Paternity leave could be used for emergency situations of the mother's employer. But these arrangements are voluntary and made in good faith, with no obligations to parents.

The father has the right to enjoy parental leave, this is not connected with the 10-day paternity leave (see 5.5.1), which can be taken in the two months before or the two months after the birth of a child. It can be taken in blocks, with a minimum of one day at a time.

Although the father or the mother could both enjoy parental leave, it is impossible to share it at the same time. Parental leave can be taken consecutively.

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent?

Yes. Parents can choose who takes parental leave (Article 62 of the ECA).

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

Yes, there is a legal right to reduce working time upon agreement. Article 43(1) of the Employment Contracts Act (ECA) stipulates that it is presumed that an employee works 40 hours in a period of seven days (full-time work), unless the employer and the employee have agreed on a shorter working time (part-time work).⁸²

⁸² Employment Contracts Act (ECA, Töölepingu seadus), RT I 2009, 5, 35; RT I, 28.12.2017, 43, <https://www.riigiteataja.ee/en/eli/506022018003/consolide>, accessed 23 April 2018.

If the employer is not willing to consider the employee's request, working hours cannot be reduced. The employee's care needs do not give the right to advantages for setting an exceptional working-time regime. The employer's statement about work organisation and working-time arrangement in the company is taken into account. On the other hand, research findings show that a flexible organisation of work can positively affect productivity and make employees happier.⁸³

The employer should notify a full-time employee of the possibility for part-time work and a part-time employee of the possibility for full-time work, considering the knowledge and skills of the employee (Article 28(10) of ECA).

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

Yes. Negotiating working arrangements between employer and employee is possible. Article 47(1) of ECA specifies the organisation of working time.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

Yes. Article 6 of ECA regulates working conditions in special cases. Article 6(4) of the ECA stipulates that if an employer and employee agree that the employee does work, which is usually done in the employer's enterprise, outside the place of performance of the work, including at the employee's place of residence (teleworking), the employer shall notify the employee that the duties are performed by way of teleworking and it should be stated in an employment contract. Many companies have written internal regulations, specifying work organisation.

A person who takes parental leave can also receive parental benefits. A parent, adoptive parent, stepparent, guardian or caregiver raising a child with respect to whom a written foster care contract has been concluded has the right to receive benefits.

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can "bank" hours to take time off in the future?

No, there is a legal possibility, but no legal rights.

Negotiating working arrangements between the employer and employee is possible. Article 47(1) of the ECA specifies organisation of working time. An employee shall perform duties at the employer's enterprise or facilities at the normal time (organisation of working time), unless agreed otherwise. The organisation of working time includes, in particular, the start and end of the working time and breaks during the working day.

Additional free days for care stipulated by law expire at the end of the year and cannot be collected and compensated.

⁸³ Rebane, M., Hein, H., & Hazak, A. (2017), 'Does flexible work make R&D employees happier?', *TUT Economic Research Series*, (1), TUTECON Research Brief No. RB-2017/1, <https://www.ttu.ee/projektid/teadus-arendus-too-aeg-3/uurimuste/kas-paindlik-tookorraldus-teeb-ta-tootajad-onnelikumaks/>, accessed 24 April 2018.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

Yes. Article 1(1) of the GEA prohibits discrimination in all areas of social life. The GEA is applicable in areas of social protection, provision of goods and services, healthcare and housing.

Article 5 of the GEA prohibits direct and indirect discrimination based on sex. Article 6 of the GEA prohibits sex discrimination in professional life, e.g. discriminatory conditions for remuneration or conditions for the provision and receipt of benefits related to the employment.

Article 126(1) of the IAA stipulates that differences between the insurance premiums and insurance indemnities of women and men shall not be based on the use of gender-based actuarial factors.⁸⁴ Article 126(2) specifies that neither pregnancy nor maternity shall affect the amount of insurance premiums and insurance indemnities.

6.2 Is the personal scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The personal scope specified in Article 6 of Directive 2006/54 applies to all members of the working population, including self-employed persons. In Estonia the personal scope is more restricted.

Article 1(2) of the OHSA includes a long list of working persons and explicitly mentions certain professions, but persons who work under law of obligations contracts are left out. The Labour Inspectorate has conducted awareness campaigns for people to understand the difference of employment contracts and authorisation agreements or service contracts. Work contracts under the LOA do not offer any social security if the required amounts of social contributions are not paid. However, when applying gender equality and the GEA, people who work under the LOA are also seen as 'employees'. There is some space for improvement of the legal text.

There are serious disparities between people working in the private and in the public sector. Disabled people are poorly paid, but they have (a minimum) security from the statutory security system.

6.3 Is the material scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The Constitution stipulates the duty of the State to ensure public assistance in cases of old age, incapacity for work, or loss of a provider of livelihood. At the same time, the Constitution provides a person's right to health protection. Implementation of the OHSA has required many regulations for occupational safety requirements for different occupations, including a list of occupational diseases, but occupational social security schemes are scarce. Occupational safety rules at workplaces are compulsory. The Labour Inspectorate handles state supervision regarding compliance with occupational health and safety requirements.

On 1 April 2013 the amended CSA entered into force, now making a distinction between officials (state or local government officials to perform the functions of the authority) and

⁸⁴ The new version of the IAA was motivated by the EU insurance supervision reform. Insurance Activities Act (IAA), <https://www.rigiteataja.ee/en/eli/529012018003/consolide>, accessed 10 March 2018.

support personnel. The period of employment in the civil service (from 1 April 2013 officials only) determine the right to increased old-age pensions according to their position and years of service.

Several professions in the public sector have been awarded with special occupational pensions. Reforming this system is now debated due to the high costs involved. The right to a special pension is still granted to the officials of the defence forces and police. The law enforcement system is male dominated. There are various opinions regarding whether the special pensions system of law enforcement should be changed or completely abolished. Judges were opposed to changes and won the decision that retired judges have a right to receive pensions connected with the growing wages of acting judges.⁸⁵ Article 82(1) of the Courts Act stipulates that a judge's pension is to be recalculated when there is a change in the amount of salary payable for this position according to which a judge's pension is calculated.

6.4 Has national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54?

No. Occupational security payments on voluntary social security by employees and employers are rare.

If employers pay for employees' sports activities, the fringe benefit tax should be paid. Some companies make contributions to the employees' pension fund. Granting special pension through the third pillar, however, requires an agreement between an official and the State. As such, insurance is voluntary.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

No.

6.6 Is sex used as an actuarial factor in occupational social security schemes?

No.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

Estonia did not manage to create a system for occupational accident insurance and occupational disease insurance. Only some insurance companies offer employees' insurance to corporate clients. Employers can conclude employees' insurance contracts (accident insurance, employer's health insurance, travel insurance, pension supplements to the third pillar).

Fringe benefits are taxable at the level of the employer. The employer pays income tax and social tax on fringe benefits. On 1 January 2015 an amendment to the Income Tax Act (ITA) entered into force to support employers' tax burdens when they employ persons with a partial loss of capacity for work. Article 48(5.4) of the ITA stipulates that fringe benefits do not include expenses made for granting medical devices to an employee 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) or whose degree of disability has been determined and the value of which does not exceed 50 per cent of

⁸⁵ Supreme Court of Estonia, Judgment of the Constitutional Review Chamber No. 3-4-1-1-14 of 26 June 2014, <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-14>, accessed on 6 April 2018.

the total size of payments subject to social tax made to the employee during one calendar year.

Life insurance is optional. Insurance is in many aspects highly gendered and there might be some indirect discrimination. It is suggested to people with dangerous jobs (e.g. drivers, builders, policemen, or people working with machinery and other similar mechanisms). Estonia has a gender-segregated labour market and in some fields of activities more work accidents occur. In 2015-2017, the number of work accidents increased.⁸⁶ In 2017, 5 184 work accidents (3 345 involving men and 1 839 involving women) were registered.⁸⁷

Life insurance is also suggested to persons who are the main or sole providers in their family. In 2016, there were about 44 200 single parent households. Women head the majority of single-parent families.

⁸⁶ Labour Inspectorate, <http://www.ti.ee/est/meedia-trukised-statistika/statistika/tooonnetused/>, accessed 24 March 2018.

⁸⁷ *ibid.*

7 Statutory schemes of social security (Directive 79/7)

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

Yes. Equal treatment for men and women is provided in Article 1(1) of the GEA, Article 126 of the IAA and in the OHSA.

Article 1(1) of the GEA states that the purpose of the GEA is to ensure equal treatment of men and women as provided for in the Constitution of the Republic of Estonia and to promote equality of men and women as a fundamental human right and for the public good in all areas of social life.

Article 126 of the IAA stipulates that the differences between insurance premiums and insurance indemnities of women and men shall not be caused by the use of the gender factor in the assessment of the insured risks. Neither pregnancy nor maternity shall affect the size of the insurance premiums and insurance indemnities.⁸⁸

Today the retirement age is different for women and men, but it will be the same in 2026, when the pensionable age will be 65. There is a transition period, starting in 2017 for the people born in 1954-1960; their retirement age will gradually be increasing by three months for every year of birth.

7.2 Is the personal scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

In the case of old age, incapacity for work or loss of a provider the State shall pay monthly financial social insurance benefits: a state pension. If self-employed persons have paid a minimum of social tax (the minimum payment is regulated by the State), then their income will be low in case of their illness, work inability and retirement.⁸⁹

7.3 Is the material scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The same.

There is a problem regarding the low wages of women (the gender pay gap being 25 % in 2017),⁹⁰ which leads to a gender pension gap in the future.⁹¹ Old-age, incapacity-for-work and survivor's pensions are based on former work input. Women's life expectancy is higher compared to men.

⁸⁸ The Article on the gender factor in risk assessment follows the requirements in EU Directive 2004/113/EC. Insurance Activities Act (IAA), <https://www.riigiteataja.ee/en/eli/529012018003/consolide>, accessed 10 March 2018.

⁸⁹ More information on issues arising in relation to self-employed people is available at: <http://www.praxis.ee/wp-content/uploads/2017/09/Estonian-Paper-Peer-Review-on-Reconciling-Family-Life-and-Entrepreneurship.pdf>, accessed 10 March 2018.

⁹⁰ Eurostat, http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics, accessed 10 March 2018.

⁹¹ Estonia now has one of the smallest gender pension gaps, due to the influence from the Soviet years. After the indexed pension system from 1998, women often did not 'earn' the 1.000 index, but due to their low salaries they did not get to one pension year. The current legal principles of the state pension insurance system have been effective since 1999-2000. Then the old-age pension was linked to the amount of social tax paid by or on behalf of the person over the full career. Mandatory funded pensions started from 2002. Possibilities for supplementary funded pensions were created in 1998.

7.4 Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

No.

7.5 Is sex used as an actuarial factor in statutory social security schemes?

Yes, until 2026 women's and men's retirement age is slightly different.

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

The Estonian social protection system is structured around three contributory social security schemes: pension insurance, health insurance and unemployment insurance. Pension insurance and health insurance are financed from a social tax, while unemployment insurance is funded by unemployment insurance contributions. The other schemes - family benefits, state unemployment allowances, national pension, death grants and social benefits for the disabled - are non-contributory, being financed from general state revenues.

Pensions are financed from social tax (13 % of gross pay) and payments for sick leave also depend on social taxes (20 % of gross pay). This means that income inequalities of women and men are persistent– women are paid 25 % less today and their pensions will be lower.

Estonia started implementing a work ability reform on 1 January 2016⁹² and the goal is to bring people with reduced working ability back into the labour market and to make a shift in the attitudes in connection with partial work incapacity to reduced work capacity and/or ability to work. Permanent incapacity for work could be total or partial (10-90 %) if a person is able to do some work. A work incapacity of 40-100 % gives a right to apply for work incapacity pension and it also gives health insurance. It is estimated that two thirds of these pensioners are employed. There were more than up to 100 000 people with reduced work capacity in Estonia in 2015. The employer will be compensated for workplace adjustment costs. There are more disability pensioners and early-retirement pensioners among men than among women.⁹³ The proportion of older adults (50+ years) in Estonia rating their health as fair or poor is one of the largest in Europe (71 % according to the SHARE survey).⁹⁴

There are serious problems with paid sick leave for insured persons, because the first days are unpaid, then the employer pays and in the last place the State pays. Employers and sole proprietors have a compulsory part of social tax for health insurance coverage. There are payments, but protection is poor. Also there are serious problems in connection with unemployment. Employers and sole proprietors make compulsory payments to an unemployment insurance fund, but compensation in case of unemployment and related services are limited.

⁹² Estonia, Ministry of Social Affairs (2018), Work ability reform, <http://sm.ee/en/work-ability-reform>, accessed 10 March 2018. The Ministry of Social Affairs is planning a reform by which every fifth incapacitated person would start working. According to the planned reform, partially incapacitated persons who work and earn Estonian average wages should be able to manage without any supplementary allowance starting from 2020 at the latest. The Unemployment Insurance Fund started assessing work ability and paying work ability allowances on 1 July 2016.

⁹³ http://www.share-europe.eu/fileadmin/share_6_laine_uus/Gerti_KarilaidVidder_2015_Varajast_toeoturul_lahkumist_mojutavad_tegurid.pdf, 10 March 2018.

⁹⁴ <http://bmjopen.bmj.com/content/7/6/e013257>, accessed 10 March 2018.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

Yes. In Estonia, the largest group of self-employed persons are sole proprietors. The definition of self-employed persons includes people working under non-standard contracts who offer goods or services for a fee in their own name, and members of companies' management boards.⁹⁵

On 14 June 2012, Parliament adopted the Act on Amendments to the Social Tax Act and Other Acts, which entered into force on 1 August 2012.⁹⁶ This Act ensures equal treatment of female and male sole proprietors and offers an opportunity for equal social protection of spouses participating in the activities of sole proprietors' businesses. Amendments were made to the Social Tax Act (STA), the Taxation Act (TA), the Health Insurance Act (HIA), the State Pension Insurance Act (SPIA), and the Labour Market Services and Benefits Act (LMSBA). There was no need for substantial amendments to the Gender Equality Act (GEA) and the Equal Treatment Act (ETA).

Estonia has explicitly amended the law to comply with Article 7. From 1 August 2012, sole proprietors can register their husband/wife as assisting spouse with the Tax and Customs Board office. Sole proprietors should pay a monthly minimum in social taxes for the spouse (Article 5(3)(3.1) of the HIA). From 1 January 2016, two additional groups of self-employed persons obtained social protection:

- members of the management or controlling bodies of legal persons for whom the legal person(s) have paid social tax;
- persons receiving remuneration or service fees on the basis of a contract for services, a mandate or another contract for the provision of services under the law of obligations, who are not registered as self-employed persons in the commercial register, and for whom the other party to the contract pays social tax.⁹⁷

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

The Commercial Code (CC) defines 'an entrepreneur' as a natural person and/or a company.⁹⁸ According to the CC, this is a natural person who offers goods or services in his or her own name and for whom the sale of goods or provision of services is their permanent activity.

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

⁹⁵ Commercial Code (Äriseadustik), RT I, 17.11.2017, 22, <https://www.riigiteataja.ee/en/eli/519122017001/consolide>, accessed 20 March 2018.

⁹⁶ Sotsiaalmaksuseaduse ja teiste seaduste muutmise seadus (Amendments to the Social Tax Act and related legal texts), 14 June 2012 (passed in Parliament on 14 June 2012), <http://www.riigikogu.ee/tegevus/eelnoud/eelnou/be4d767a-e504-4521-9b58-0080007ea808/Sotsiaalmaksuseaduse%20ja%20teiste%20seaduste%20muutmise%20seadus/#>, accessed 10 March 2018.

⁹⁷ Article 5(2)(4) and 5(2)(5) of the Health insurance Act (HIA), <https://www.riigiteataja.ee/en/eli/511012018002/consolide>, 11 March 2018.

⁹⁸ Article 1 of the Commercial Code mentions 'ettevõtja', which can be translated into English as an 'undertaking'.

All categories are covered. More flexibility has been achieved in connection with sole proprietors' taxation. Agricultural workers and other persons are allowed to interrupt their social tax payments due to seasonal activities. On 20 January 2014 amendments to the Creative Persons and Artistic Associations Act (CPAAA) took effect to increase social protection for people engaged in a creative or liberal profession, whose income is often irregular. In cooperation with representing creative societies and associations and the Ministry of Culture and Sports social security was arranged for members of creative organisations.⁹⁹ A creative person may be a member of one or several artistic associations.

Estonian legislation only recognises married spouses. However, the Registered Partnership Act (RPA) was adopted in 2014 and it entered into force on 1 January 2016. Amendments which were necessary regarding the implementation of the RPA were not adopted by Parliament in 2016-2017 due to political disagreements.

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted, or broader than specified in Article 4 Directive 2010/41/EU?

The material scope is the same. The principle of equal treatment already was a legal requirement before the transposition of Directive 2010/41. Article 3(2) of the GEA stipulates that 'equal treatment of men and women' means that there is no discrimination whatsoever based on sex, either directly or indirectly. Article 5(1) of the GEA prohibits direct and indirect discrimination including giving orders. This article entered into force in October 2009.

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

Every year there are some projects to promote female entrepreneurship and encourage young women to start their own business. The State has been quite passive, but non-governmental organisations have taken initiative. One of success stories has been the ETNA Estonia Microcredit Project in 2012-2014, funded by the Open Estonia Foundation. Group mentoring, entrepreneurship trainings and microcredit was offered for rural women business start-ups.¹⁰⁰ There are no government initiatives to support female entrepreneurship.

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

Yes. Self-employed persons have the same rights as employees selling their work if they have applied for social security and have paid social taxes. Social protection of self-employed persons covers pension and health insurance.

Payment of social taxes is a precondition for obtaining revenues required for pension insurance and state health insurance. Estonian health insurance relies on the principle of solidarity. If a self-employed person has paid social taxes (advanced payment), her or his sick leave compensation depends on the amount paid. If payment was at the minimum level, the compensation for sick leave is also very low. When a self-employed person needs

⁹⁹ According to the Creative Persons and Artistic Associations Act (CPAAA) 'a creative person is an author or a performer within the meaning of the Copyright Act who acts in the field of architecture, the audio-visual arts, design, performing and stage arts, music and sound engineering, literature, visual arts or scenography'. A more convenient term to use is 'a freelancer', who is a person who works as a writer, designer, performer etc.

¹⁰⁰ The idea of microcredit works on principles of group loans, which gives extra value to entrepreneurial cooperation, i.e. entrepreneurs acting together in the community, helping and supporting each other. More: www.fem.ee/meetmed/, accessed 10 March 2018.

a doctor and treatment, there is no need for additional payment, in spite of the fact that only a symbolic amount of money was paid to the social fund. Significant differences will appear in the future, when tax policies and public pensions will be contrasted.

To apply for social protection is voluntary for adults in Estonia. Self-employed persons should make mandatory contributions to a funded pension scheme depending on her/his social tax payments. This is mandatory for employers, and self-employed persons are obliged to pay a mandatory minimum amount.

The Social Tax Act (STA) includes an exception that applies to sole proprietors who are incapable of working. They are not required to meet the minimum obligation of payment of social tax if they do not receive any income. The minimum obligation means that if no income is earned, social tax must be paid during the year in an amount equal to 12 times the monthly rate.

To get social protection for spouses registration in the Tax and Customs Board is necessary and social contribution payments are mandatory.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

Yes. The Directive requires that women should be granted a maternity allowance and a leave of at least 14 weeks. In Estonia, a woman has the right to 140 calendar days (20 weeks) of pregnancy and maternity leave. However, self-employed female workers and assisting spouses of FIEs can receive maternity benefits, even without pregnancy and maternity leave. The precondition for these benefits is payment of social security contributions in the past year(s). A minimum payment is mandatory. Self-employed persons have health insurance and free-of-charge medical aid (universal right for insured persons), but sick leave benefits depend on previous social tax payments (more in information in section 8.1). Parental benefits are universal benefits and not related to employment status. If social taxes have not been paid before childbirth, the national minimum parental benefits will be paid.

There is a serious problem with non-existing services supplying temporary replacements for sole proprietors (FIEs) who are on pregnancy or maternity leave. Some business associations (farmers' associations) have created some project-based social services. For micro-enterprises such as those of FIEs, there are also many subjective obstacles for creating national social services supplying temporary replacements.

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

No.

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

Statutory social security schemes are applicable.

8.10 Is Article 14(1)(a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

Yes. Article 6 of the GEA prohibits discrimination in professional life. Article 2 of the ETA explores the material scope. Gender is not explicitly mentioned as a ground of discrimination in the ETA. Article 3 of the CC allows any natural person to be a sole

proprietor (self-employed).¹⁰¹ A sole proprietor shall submit a petition for his or her entry into the commercial register before commencing the activity.

¹⁰¹ <https://www.riigiteataja.ee/en/eli/519122017001/consolide>, accessed 6 April 2018.

9 Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

Yes. Article 7.1 of the GEA entered into force on 1 August 2012 (a supplier of goods or services is required to provide a written explanation concerning the activities of the supplier to a person who believes that he or she has been discriminated against in relation to the access to or supply of goods or services on the grounds of sex). Article 126 banning the use of gender-based factors in the assessment of insured risks was added to the IAA, and the amendments entered into force on 1 January 2016.

Articles 2(1)(5) and 2(1)(7) of the ETA prohibit discrimination of persons on grounds of nationality (ethnic origin), race or colour in the access to the services of social welfare, social security and healthcare, including social benefits and in the access to and supply of goods and services which are available to the public, including housing.

However, gender reassignment as a specific ground of discrimination is not protected under Estonian legislation.

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

In Estonia the scope is more restricted. Article 2(1)(7) of the ETA stipulates that discrimination of persons on grounds of nationality (ethnic origin), race or colour is prohibited in the access to and supply of goods and services which are available to the public, including housing. Article 5(1)(4.1) of the GEA includes some exceptions and differences available in the treatment of persons due to their sex in the supply of goods and services. In Estonia non-discrimination principles relating to the access to goods and services are followed, but a proactive approach is missing. For example, no attention is paid to the adoption of specific measures to prevent or compensate for disadvantages linked to sex.

9.3 Has national law applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education?

No. However, job advertisements should not discriminate against anyone.¹⁰²

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

Services specifically aimed at supporting women represent a justifiable exception to the prohibition of gender discrimination in the consumption and supply of goods and services (e.g. shelters). Estonia has a regulated women's support service and most shelters for victims of domestic violence are prepared to meet victims' needs, e.g. women can be accompanied by children, but men as victims are exceptional.¹⁰³

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial

¹⁰² In order to support the observation of the principles of gender equality in the media, recommendations are planned in the action plan of the Welfare Development Plan 2016-2023 which will be developed together with the self-regulation bodies of the media in 2019.

¹⁰³ Naiste tugikeskuse teenusekirjeldus 2017 (Specification of the women's support service), available in Estonian: <http://www.sotsiaalkindlustusamet.ee/et/naiste-tugikeskused>, accessed 19 April 2017.

services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

Yes, in Article 126 of the IAA.

The differences between the insurance premiums and insurance indemnities of females and males must not be caused by the use of the gender factor in the assessment of the insured risks. There are currently no complaints concerning a violation of the unisex principle by insurance companies.

However, there is a problem with women on maternity leave and women and men who have a right to parental leave, but would like to work, since the interruption of parental leave could cause loss of rights to unemployment assistance. The UIA needs to be amended to avoid discrimination of clients who have paid unemployment insurance tax.¹⁰⁴

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 Test-Achats ruling in national legislation.

On 10 June 2015, a new version of the IAA was adopted and the Chapter about protection of clients' rights was added. Taking sex into account in risk assessment is regulated by Article 216, which is the same as Article 14.1 of the IAA (old version), and 14.1(2) was deleted.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

No. However, Article 5(2) of the GEA has provided the basis for positive action measures in relation to the access to and supply of goods and services.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

Padu has analysed problems with the implementation of the equality principle in the Estonian Unemployment Insurance Act (UIA).¹⁰⁵ One problem that Padu pointed out was connected with statutory childcare leaves: an insured person who has used a pregnancy leave, maternity leave, adoptive leave or parental leave in the relevant 36 months and has worked at the same time is treated differently from persons who did not. The 36-month period must be extended by the time spent on leave if there is no information in the unemployment insurance database concerning the person's unemployment insurance period. Currently, if a parent chooses to work, it will not be extended. With such regulation the Government discourages parents from working while home with a baby.

Only some insurance companies in Estonia provide standard travel and health insurance covering risks related to pregnancy, but health documentation stating the current length of the pregnancy must be provided. As a rule, insurance cover is provided if the term of pregnancy is up to 36 weeks, although some companies only provide cover for 28 or 18 weeks. Medical insurance has unlimited compensation and the insured person receives compensation for all medical expenses incurred as a result of premature childbirth and hospitalisation as well as the costs of transportation back home. The price of such an insurance policy is two to three times higher compared to ordinary travel insurance without

¹⁰⁴ For more information, see section 9.8 of this report.

¹⁰⁵ Padu, K. (2015), Võrdse kohtlemise põhimõtte probleemid Eestis töötuskindlustusõiguses (Problems of Implementing Equality Principle in Estonian Unemployment Insurance Law), Magistritöö, Tartu Ülikool, http://dSPACE.utlib.ee/dSPACE/bitstream/handle/10062/47561/padu_kristiina.pdf?sequence=1&isAllowed=y accessed 24 April 2018.

additional protection. However, the pregnant traveller should be careful when selecting an insurance company and should carefully read the travel policy terms and conditions, because sometimes there are extra clauses concerning pregnancy complications and their consequences (except for complications resulting from accidents), and also childbirth, premature birth, abortion, fertility and related treatment are sometimes not covered.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 Has your country ratified the Istanbul Convention?

Yes, the IC was ratified in September 2017. Tackling domestic violence is one of the priority issues for the Estonian government. The ratification of the IC was planned in the 'National Development Strategy for Preventing Violence 2015-2020'.¹⁰⁶ The strategy aims to reduce violence against children, domestic violence, gender-based violence and the trafficking of human beings.

There is a lack of specialists and shelters, and sustainable funding is a serious obstacle. In 2017, State funding was EUR 641 051 for women's support and shelter services but a lot of the work is project-based and voluntary. The transposition of the requirements laid down by Directive 2012/29/EU into national law remains a challenge.¹⁰⁷ Seven laws were amended in order to improve victims' rights in the course of criminal procedures and these amendments entered into force in 2016-2017.

Amendments to the Victim Support Act (VSA) entered into force on 1 January 2017.¹⁰⁸ Article 5(5) of the VSA stipulates that the Estonian National Social Insurance Board shall exercise administrative supervision over the provider of victim support services. The amendments concerned the addition of the definition of psychotherapist services and violence against women, changing the definition of a victim of violence against women, and providing specifications on the women's support centre service.¹⁰⁹ Article 6.5(2) of the VSA defines a victim of violence against women as 'a woman against whom physical, sexual, mental or economic harm or suffering has taken place either in her public or private life by gender violence committed against her or a threat thereof'.

An affordable victim support service system is currently under development. In 2017, the Steering Committee for the development of a women's support service was formed out of national and civil society representatives. This work was coordinated by the Victim Support Unit at the Social Insurance Board. Numerous meetings were held and a description of the women's support service was drafted for 2018.¹¹⁰

A victim support service is defined in Article 3(1) of the VSA. The victim support service is a public service aiming at maintaining or enhancing the coping abilities of persons who have fallen victim to criminal offence, negligence, mistreatment or physical, mental or sexual abuse. Victims reach the victim support specialist in various ways and often due to a good network of police, doctors, social workers and other specialists. The amendment of the VSA provides for the first time in a legal act a description of the activities of women's shelters as a service, thus providing more sustainability and more secure financing for organisations providing such services in the future.

¹⁰⁶ Vägivalla ennetamise strateegia 2015-2020, https://valitsus.ee/sites/default/files/content-editors/arenukavad/vagivalla_ennetamise_strateegia_2015-2020_kodulehele.pdf, accessed 29 March 2018; Plan of implementation of the 2015-2020 Development Strategy for Preventing Violence, http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/strategy_for_preventing_violence_for_2015-2020.pdf, accessed 19 April 2018.

¹⁰⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹⁰⁸ Victim Support Act, RT I, 28.12.2017, 52, <https://www.riigiteataja.ee/en/eli/509012018004/consolide>.

¹⁰⁹ Naiste tugikeskuse teenusekirjeldus 2017 (Specification of the women's support service), available in Estonian: <http://www.sotsiaalkindlustusamet.ee/et/naiste-tugikeskused>, accessed 19 April 2017.

¹¹⁰ The conclusion on the activities of the SC is available in Estonian at: https://www.sotsiaalkindlustusamet.ee/sites/default/files/content-editors/Ohvriabi/kokkuvote_ntk_teenuse_arendustegevusest_2017.pdf; The description of the women's support service for 2018 is available in Estonian at: <https://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/naiste-tugikeskused#Naiste%20tugikeskuse%20teenusekirjeldus%202018>, accessed 28 March 2018.

Article 3(2)(3) of the VSA states that safe accommodation should be part of the victim support service. In December 2017, shelter services are provided in every county, providing support to female victims of violence and their children. Women's shelters have existed mostly based on projects, thanks to committed individuals and to capacity building made possible through the Norway Grants programme. Since 1 January 2017, the system has been slightly reformed. Women's support centres are subjected to public procurement processes and are entitled to basic funding from the state budget.

The legal amendments to the Penal Code have criminalised stalking, forced marriages and female genital mutilation. The amendments include the criminalisation of buying sex from the victims of human trafficking.

The Estonian scholar Kahu (2017) has studied the legal framework around stalking before the Penal Code was amended in Estonia.¹¹¹ Kahu concluded her analysis of the restraining order regulations, their content and their rules of implementation showing that none of the restraining orders can offer efficient protection to victims, neither temporary restraining orders based on criminal law, nor restraining orders issued by the courts, nor restraining orders based on civil law. Kahu concludes that the narrowness of the regulations, their limited implementation, the unreasonably heavy burden of proof (e.g. proving the intent of the perpetrator or the consequences of the crime) all pose major enforcement problems. Another major shortcoming is also the lack of training and knowledge on the part of the police, which impedes the effective protection of victims of stalking, even in situations where the regulations are in place.

¹¹¹ Kahu, K. (2017), *Ahistava jälitamise kriminaliseerimine Eestis – kuriteokoosseisu erakordsusest ja sellega seotud probleemistikast* (Criminalisation of stalking in Estonia - the uniqueness of the offence and the related problems), Master's Thesis, University of Tartu, http://dspace.ut.ee/bitstream/handle/10062/56769/kahu_kaidi.pdf?sequence=1&isAllowed=y, accessed 21 April 2018.

11 Enforcement and compliance aspects (horizontal provisions of all directives)

Article 4(3) of GEA stipulates that the shared burden of proof does not apply in administrative or criminal proceedings. There is a principle in administrative court procedures that the party to the proceedings has to prove the facts on which it based her or his allegations.¹¹²

Prejudices and stereotyping might affect fair trial and should be avoided. In 2015, media debates were also connected to prejudices and gender stereotypes, which might lead to unfair judgments. Judges have access to training, but gender issues are not taught. Judges have a high workload. The term 'gender' is missing in the Code of Civil Procedure (CCP).¹¹³ However, Article 7 stipulates that administration of justice must take place on the basis of equality ('the parties and other persons are equal before the law and the court').

Article 231(1) of the CCP stipulates that a fact, which the court deems to be a matter of common knowledge, need not be proved. A fact concerning which reliable information is available from sources outside the proceedings may be declared a matter of common knowledge by the court. Article 232(2) defines the procedure of evaluation of evidence and states that this decision is made according to the conscience of the court.

An employee has the right to claim compensation for unlawful termination and/or to continue the employment relationship. If the court or the labour dispute resolution body finds that the dismissal was unlawful, the employment contract is deemed not to have been terminated.

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Yes. Article 3(6) of the ETA stipulates that discrimination also includes a situation where one person is treated less favourably than others, suffers negative consequences because he or she has filed a complaint regarding discrimination or has supported a person who has filed such complaint.

The GEA provides general protection against victimization. Article 5(1.1) of the GEA stipulates that adverse treatment of a person, as well as causing negative consequences for that person due to the fact that that person has relied on the rights and obligations provided for in this Act or has supported another person in the protection of his or her rights provided for in this Act shall also be deemed to be discrimination.

The GEA does not stipulate any specific regulations concerning victimisation. Article 1(1) and Article 2(3) define persons who should be protected against discrimination and also explicitly specify representatives of the interests of employees or members of employees' organisation.

Article 89(5) of the ETA gives preferential rights of keeping a job to the employees' representative and an employee who is raising a child under the age of three upon cancellation of an employment contract due to lay-offs.

The protection against victimisation complies with Article 24 of Recast Directive 2006/54/EC.

¹¹² Article 59 of the Code of Administrative Court Procedure, <https://www.riigiteataja.ee/en/eli/506022018001/consolide>, accessed 10 March 2018.

¹¹³ Ibid.

On 18 April 2018, the Chief Justice of the Supreme Court of Estonia, Priit Pikamäe, presented some data and statistics on cases of domestic violence. Pikamäe reported that 95 % of domestic violence cases are settled through alternative proceedings. Article 233 of the Code of Criminal Procedure states that a court may, at the request of an accused and a prosecutor's office, adjudicate a criminal matter by way of alternative proceedings on the basis of the materials in the criminal file without summoning the witnesses or qualified persons.¹¹⁴ This means that an appeal is precluded and cases never reach the Supreme Court so that the development of legal texts and interpretation remains poor regarding intimate partner violence, domestic violence and violence against women and girls.

Furthermore, survivors of domestic violence report that mediation procedures are often imposed on them and are humiliating. They feel victimised. It is therefore questionable whether Estonia fulfils the requirement of Article 48 of the Istanbul Convention, which stipulates that the parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of the Convention.

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

Yes. In case of labour disputes concerning discrimination, the shared burden of proof prescribed in the ETA or in the GEA applies. In Estonia, the employer should keep data of the pool of candidates in the recruitment process to be able to provide explanations in the case of a claim.

Article 4 of the GEA specifies that an application of a person addressing a court, a labour dispute committee or the Gender Equality and Equal Treatment Commissioner shall set out the facts on the basis of which it can be presumed that discrimination based on sex has occurred. In the course of proceedings, it shall be for the defendant 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 acknowledgment of discrimination by that person.

11.3 Remedies and Sanctions

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

It is possible to demand termination of the harmful activity, to obtain the opinion of the equality body (Gender Equality and Equal Treatment Commissioner, Chancellor of Justice), to receive compensation as 'a reasonable amount of money' according to court decision, and to be reinstated.

According to the CSA, an pregnant official or official who has the right to pregnancy and maternity leave (also who is raising a child under the age of seven) is entitled to demand that the administrative act on his or her release from service be declared unlawful upon unlawful release from service, to demand amendment of the basis for the release from service and compensation in the amount of six average monthly salaries. The court may amend the amount of compensation, taking account of the circumstances for the termination of the service relationship and considering mutual interests. The dismissed official is also entitled to demand, upon the unlawful release from service, the cancellation

¹¹⁴ <https://www.riigiteataja.ee/en/eli/512122017005/consolide>, accessed 24 April 2018.

of the administrative act on his or her release from service, reinstatement of himself or herself into service and remuneration for the period of forced absence from the service.

Grounds for compensation for damage in relation to unequal treatment or discrimination have not been defined in the State Liability Act (SLA), which is a general Act regulating compensation for damage caused by a public authority, or in any other Act.

Claims for compensation related to discrimination have been rare and rather unsuccessful in the courts.¹¹⁵

Article 13 of the GEA regulates the issues of compensation for damage. Article 13(1) stipulates that if the rights of a person are violated due to discrimination, he or she may demand from the person who violates the rights the termination of the harmful activity and compensation for the damage on the basis of and pursuant to the procedure provided by law. Article 13(2) provides that an injured party may demand that a reasonable amount of money be paid to him or her as compensation for non-patrimonial damage caused by the violation. According to Article 13(3), upon determination of the amount of compensation, a court or a labour dispute committee shall take into account, inter alia, the scope, duration and nature of the discrimination. Chapter 7 of the Law of Obligations Act (LOA) defines the right to claim a reasonable amount of money as compensation for non-patrimonial damage, taking into account the financial situation of the person who caused the damage.¹¹⁶

In employment relationships, the general principles of responsibility of the employer and employees are stipulated in the ECA; additionally the remedies of the general law of obligations can be applied if the employee is guilty of violation (Article 72 of the ECA). Liabilities of the employee and specifications for compensation for damage to the employer are more clearly provided in the ECA compared with compensation for damage to the employee.

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

There are few cases to compare and evaluate effectiveness and dissuasiveness. There is one recent case on age discrimination, which could be highlighted.¹¹⁷ According to Decision No. 3-14-164/38 of 10 October 2014, the Tartu administrative court found age discrimination, because the redundant employee had higher qualifications compared to other employees in the same position. The employer claimed that this employee had poor social skills. According to Article 24(1) and 24(2) of ETA in this case of redundancy also a compensation for damage should be paid and it was found that the annual wage was 'a reasonable amount of money' to be paid to the person as compensation for non-patrimonial damage caused by the violation.

To conclude, material and moral damages are poorly or not at all compensated for victims of discrimination. In addition, general knowledge of non-discrimination law, rights and legal procedures remains insufficient. Access to the courts is still problematic and the rules pertaining to the burden of proof establish high evidentiary thresholds that represent obstacles to victims of discrimination seeking redress.

11.4 Access to courts

¹¹⁵ More information about Case No. 3-16-1191 in section 10.5.2.

¹¹⁶ Law of Obligations Act, <https://www.riigiteataja.ee/en/eli/510012018003/consolide>, accessed 10 March 2018.

¹¹⁷ Available at (in Estonian): <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=146828142>, accessed 6 September 2016.

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

There are several obstacles:

- Poor knowledge of discrimination issues;
- Only few cases of sex discrimination have reached the courts;
- Judges have little experience in sex discrimination cases and sparse gender knowledge;
- People do not have the experience or habit to defend their own rights;
- Estonia is a small country and employers do not like claimants; it is complicated to find a job after a court case;
- Defending one's own rights is expensive;
- Court procedures are time consuming (many years of court disputes do not help the victim to cope with injustice);
- Faith in courts could be low due to media debates.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

Before starting court proceedings, good advice should be asked from the Gender Equality and Equal Treatment Commissioner. The Commissioner gives an opinion about the case and prospects in court proceedings. Unfortunately, the Commissioner receives a higher number of complaints every year. A victim could apply for advice and support from civil activists. In spite of existing supportive networks there are few court cases.

In 2014-2016, the mandate of the Gender Equality and Equal Treatment Commissioner was debated several times in the drafting process and communications between the Commissioner and the Ministry of Justice. The Commissioner's opinion was that the Commissioner's mandate should be broader. The Commissioner should have the right to take discrimination cases to court.¹¹⁸ The Ministry of Justice opposed this proposal. The Ministry of Justice referred to the possibility in Article 3(2) of the CCP:

'In the cases prescribed by law, the court also conducts proceedings in a civil matter if a person files a claim with the court for the protection of a presumed right or interest protected by law of another person or the public.'

Article 44(1) of the Code of Administrative Court Procedure (CACP) stipulates that a person may have recourse to an administrative court only for the protection of his or her rights. However, Article 44(4) provides that the Government, a local authority or a legal person in public law may bring an action against another public authority for the purpose of protection of its rights.

In Estonia same-sex marriages are not recognized. The Registered Partnership Act entered into force on 1 January 2016, but no implementation acts were adopted. In a case dating from 13 June 2016, the Tallinn Administrative Court was asked whether the state, by not implementing the RPA, had breached a complainant's rights and resulted in him experiencing non-pecuniary damage. Alternatively, the applicant asked the Court to declare that same-sex relationships which lack legal recognition and protection are due to the failure of legal regulation. The complainant argued that the legislator had not adopted

¹¹⁸ The Ministry of Justice believes that the Commissioner could take a case to court in the name of the claimant. The Ministry opposes the possibility that the Equality Commissioner takes a case to the civil or administrative court in the name of the Gender Equality and Equal Treatment Commissioner, but with the claim of the claimant.

adequate regulations on the legal situation and ownership relations of same-sex couples. Therefore, the failure to enforce the Registered Partnership Act amounted to a violation by the State of the applicant's fundamental right to privacy and family (Article 26 of the Constitution) as well as the right not to be discriminated against (Article 12 of the Constitution). The Administrative Court found that the conditions under Article 14(1) of the State Liability Act (SLA) as prerequisites for damage caused by legislation were already in place.¹¹⁹

On 7 February 2017, the Tallinn Administrative Court ordered the respondent (the Ministry of Justice) to pay EUR 1 500 in compensation for non-pecuniary damage. On 10 February 2017, the complainant publicly declared that this case had been brought to the court in order to improve the protection of the rights of LGBTI persons.¹²⁰ He did not provide any details about the facts of the case due to ongoing court proceedings. On 14 February 2017, the Tallinn Administrative Court declared the proceedings closed.¹²¹ The Ministry of Justice appealed to the Tallinn Circuit Court, which appealed to the Constitutional Chamber of the Supreme Court.¹²²

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

Victims of gender discrimination could consult the Gender Equality and Equal Treatment Commissioner. The Office of the Commissioner can assist if persons have been treated less favourably due to their being a parent or having family obligations, or because they belong to a trade union. The Commissioner also provides assistance in compiling a submission or a claim to a court or a labour dispute committee at the Labour Inspectorate. In the case of suspected discrimination, the Commissioner gives an Opinion, giving a legal assessment of the case.

Gender Equality Monitoring survey data for 2016 show that 49 % of respondents have heard of the institution of the Gender Equality and Equal Treatment Commissioner. Some 28 % of the respondents – 32 % of which were women and 25 % were men - would contact the Commissioner if they have experienced unequal treatment.¹²³

Victims can consult with people from the Estonian Human Rights Centre (EHRC). The EHRC is an independent non-governmental human rights advocacy organisation.

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

Yes.

- Gender Equality and Equal Treatment Commissioner

¹¹⁹ <https://www.riigiteataja.ee/en/eli/507062016001/consolide>, accessed 16 April 2018.

¹²⁰ ETV Ringvaade, 10 veebruar 2017, Reimo Mets: justiitsministeerium ei peaks tegelema tagakiusamisega, <https://www.err.ee/582282/reimo-mets-justiitsministeerium-ei-peak-tegelema-tagakiusamisega>, accessed 24 April 2018.

¹²¹ Order of the Tallinn Administrative Court of 14 February 2017 on No. 3-16-1191, <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=201383874>; Articles 38 and 452(5) of the Code of Civil Procedure, <https://www.riigiteataja.ee/en/eli/506022018001/consolide>, accessed 24 April 2018.

¹²² On 10 April 2018, the Supreme Court ruled that the fact that the implementing regulations of the Registered Partnership Act have not been adopted is not enough to identify an unconstitutional gap, the Registered Partnership Act has taken effect and is valid, and the basis for the protection of the subjective rights of same-sex people already exists. Order of the Constitutional Review Chamber of the Supreme Court of 10 April 2018 No. 5-17-42. Available in Estonian at: <https://www.riigikohus.ee/et/lahendid?asjaNr=5-17-42/9>, accessed 27 June 2018.

¹²³ Gender equality monitoring is carried out every three years. Soolise võrdõiguslikkuse monitooring 2016 (Gender Equality Monitoring 2016), Turu-uuringute AS, Sotsiaalministeerium, https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/soolise_vordoiguslikkuse_monitooringu_raport_2016.pdf, accessed 10 March 2018.

<http://www.volinik.ee>

- Chancellor of Justice
<http://oiguskantsler.ee>

1. The Commissioner covers discrimination on grounds of sex, nationality (ethnic origin), race or skin colour, religion, views, age, disability or sexual orientation. The Commissioner also assists people who suspect that they have been discriminated against due to their family obligations, or belonging to a trade union.

2. The Chancellor of Justice conducts a conciliation procedure if the complainant states having been discriminated against on the grounds of sex, race, nationality (ethnic origin), colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation, or other discrimination grounds specified by law.

The Gender Equality and Equal Treatment Commissioner is an independent and impartial expert who acts independently, monitors compliance with the requirements of the ETA and the GEA and performs other functions imposed by law. The Commissioner works with the assistance of the Office of the Commissioner. The activities of the Commissioner and the Office are financed from the state budget. Human and financial resources are too modest to adequately cover the Commissioner's duties.

Article 16 of the ETA stipulates that the Gender Equality and Equal Treatment Commissioner:

- gives advice and assists persons in the filing of complaints regarding discrimination;
- provides opinions concerning alleged cases of discrimination on the basis of the applications filed by persons or on his or her own initiative on the basis of the information obtained;
- analyses the effect of laws on the situation of persons classifiable on grounds specified in the ETA and on the situation of men and women in society;
- makes proposals to the Government of the Republic, government authorities, local governments and their authorities for alteration of and amendments to legislation;
- gives advice and informs the Government of the Republic, government authorities and local government authorities on issues relating to the implementation of the ETA and the GEA;
- publishes reports on the implementation of the principle of gender equality and equal treatment;
- cooperates with other persons and entities to promote gender equality and equal treatment;
- takes measures to promote equal treatment and gender equality.

2. The Chancellor of Justice has several duties, one of which is to resolve discrimination disputes, which arise between persons under private law. There have been no conciliation proceedings due to the procedure being rejected. The Chancellor of Justice can initiate conciliation proceedings only on the basis of an application. The consent of both parties is needed for a conciliation procedure. There should be serious reasons (low legal literacy skills, the fear of victimisation, one's reputation in a small society etc.) for employees to reject this procedure.

11.6 Social partners

11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

Article 24 of the GEA provides that an official advisory body within the Ministry of Social Affairs is the Gender Equality Council. This Article was implemented in 2013, when the Gender Equality Council was established. In 2004-2013 there was no such council.¹²⁴ The council has 22 members from different organisations. The Government of the Republic should approve membership. The Gender Equality Council is invisible to the wider public. The Gender Equality Council has found some weaknesses in the GEA,¹²⁵ its implementation by employers and their awareness thereof. The Gender Equality Council provided some recommendations for the Government and Members of Parliament for promoting gender equality in 2015-2018.

Interest groups and the public are involved in the preparation of a legislative initiative, regarding a draft Act, also in the ex-post impact assessment of an Act. Explanatory memoranda should contain annexes with the position of interest groups and social partners.

Problems arise concerning capacity and resources to take an active role in the law-making process. Interest groups are more active in making inquiries. NGOs are more active when there is some project making resources available and enabling active partnership and lobbying. Interpellations are submitted to ministers responding in Parliament sessions.

The advocacy work of the Women's Support and Information Centre aiming to protect survivors' rights has been visible and effective in recent years.¹²⁶ The Estonian Women's Associations Roundtable (EWAR) was established in 2003, a member of the European Women's Lobby, should coordinate the women's movement in Estonia. EWAR tries to react promptly to problems affecting equality between women and men.¹²⁷ The Women's Studies and Resource Centre (ENUT) was established in 1997. ENUT promotes gender equality, provides services for policy makers, researchers and students, media, other NGOs, and the general public in the field of gender equality.¹²⁸ Civil society members often complain of suffering from a 'burnout' due to wasted energy in this voluntary unpaid work and sometimes they feel that their involvement does not lead to any positive results. In Estonia, advocacy is mainly based on the enthusiasm of civil society leaders.

The Estonian LGBT Association represents Estonian LGBT communities and is engaging in awareness-raising activities regarding LGBT issues in society through educational and advocacy work.

Ad-hoc pressure groups are social networks and Internet communities, e.g. FB groups 'Virginia Woolf sind ei karda' and 'Feministeerium'.¹²⁹

Trade unions' contributions have been modest regarding the promotion of gender equality.

There are legal requirements for the involvement of interest groups in the law-drafting process:

- Regulation of the Government 'Rules for Good Legislative Practice and Legislative Drafting', entered into force on 1 January 2012;¹³⁰

¹²⁴ Members of the Gender Equality Council represent many institutions and organisations. The Founding Regulations are available at (in Estonian): <https://www.riigiteataja.ee/akt/329102013003>, accessed 10 May 2017.

¹²⁵ Analysis of the implementation of the GEA in 2014-2015.

¹²⁶ <https://naistetugi.ee>, 10 March 2018.

¹²⁷ <http://www.enu.ee/enu.php>, accessed 10 March 2018.

¹²⁸ www.enut.ee, accessed 10 March 2018.

¹²⁹ <https://www.facebook.com/groups/WoolfEiKarda/?fref=ts>,
<https://www.facebook.com/feministeerium?fref=ts>, accessed 10 March 2018.

¹³⁰ RT I, 29.12.2011, 228, acronym in Estonian HÖNTE,
<https://www.riigiteataja.ee/en/eli/508012015003/consolide>, accessed 10 March 2018.

- Rules of the Government of the Republic;¹³¹
- Good Practice of Involvement.¹³²

11.7 Collective agreements

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

There have been no legal developments in collective agreements law in 2017. Any applicable collective agreement must be referred to in the employment contract. Collective agreements are compulsory in a limited number of sectors and organisations. Collective agreements do not generally have a significant impact on employment relations. In Estonia, less than 10 % of employees are covered by collective agreements.

Collective agreements are not widespread instruments in Estonia. About one third of enterprises with more than five employees are estimated to have a collective agreement. Pärnits has studied collective agreements and found that collective agreements are traditional and mainly determine wage and working conditions. Contemporary and novel issues like reconciling work and family, equal treatment, in-service training and re-training, and involvement of employees in decision making are very rare topics in collective agreements.¹³³ Pärnits has found that:

Estonian collective agreements rarely or never cover areas that have become topical in recent years, such as equal treatment, supporting the coherence of work and family life (free time for family-related activities or measures that support raising children), involvement of employees in the decision-making process, or terms impacting on the company or sector economy (including innovation, sustainability, productivity of work, quality or work-related investments) or employment.¹³⁴

Pärnits has stated that more flexibility for exceptions in agreements and increasing security of the employment relationship through the application of the principle of equal treatment should be reflected in collective agreements.

The Labour Inspectorate monitors compliance with the requirements of the Collective Agreements Act (CAA).¹³⁵ In order to exercise the state and administrative supervision foreseen by this Act, the Labour Inspectorate may apply the special measures and procedures provided for by the Law Enforcement Act.¹³⁶ These measures and procedures are related to the investigation, access to documents and personal data, access to enterprises' premises and the examination of these premises.

¹³¹ Available at (in Estonian): <https://www.riigiteataja.ee/akt/129122011233>, accessed 10 March 2018.

¹³² Adopted in 2011. Available at (in Estonian): <https://riigikantselei.ee/et/kaasamise-hea-tava>, accessed 10 March 2018.

¹³³ Pärnits, K. (2015), Kollektiivlepingu roll ja regulatsioon nüüdisaegsetes töösuhetes (Role and regulation of collective agreements in modern employment relationships), Dissertatsioon, Tartu Ülikool, http://dspace.utlib.ee/dspace/bitstream/handle/10062/45479/kadi_parnits_rmtk.pdf?sequence=1, accessed 10 March 2018.

¹³⁴ Pärnits, K. (2015), p. 103.

¹³⁵ <https://www.riigiteataja.ee/en/eli/505052017005/consolide>, accessed 24 April 2018.

¹³⁶ Articles 30-32 and 49-51 of the Law Enforcement Act, <https://www.riigiteataja.ee/en/eli/507122016001/consolide>, accessed 27 June 2018.

12 Overall assessment

The transposition of the EU gender equality directives into Estonian legislation is satisfactory. In September 2017, the Istanbul Convention was ratified. The Penal Code was amended in June 2017, the amendments entering into force on 6 July 2017. Female genital mutilation, forced marriage and stalking have been criminalised. These amendments also included a new article on sexual harassment, which was classified as a misdemeanour.¹³⁷

Estonian legislation still contains some gaps regarding the legal concepts of gender identity and gender reassignment. Different discrimination grounds and areas of social life could be recast in the ETA. The ETA has several sets of grounds of discrimination in various areas of life and protection against discrimination depends on belonging to a discriminated minority group.¹³⁸

The principle of equality and prohibition of discrimination are stipulated in the Constitution. The Constitution has a broad approach to the equality principle and non-discrimination. Gender equality legislation has a short history; the GEA was adopted in 2004. The Equal Treatment Act (ETA) entered into force on 1 January 2009. There are no articles about law-enforcement supervision in the GEA and in the ETA.

Law enforcement is a challenge. The GEA and the ETA have a small number of articles about implementation and define duties of respective bodies, but no state supervision is foreseen. In 2015, the Ministry of Justice expressed the opinion that there is no need for amendments to the GEA and the ETA in this respect because state supervision takes place regarding the implementation of other legal acts (Employment Contracts Act, Civil Service Act, Health Insurance Act etc.) in which equality requirements are stipulated.

There have been only few court cases on sex discrimination. There are several reasons for this such as low awareness, low willingness, a low political commitment to equality issues, and little experience regarding the protection of rights. Obstacles could be the high cost of legal advice and the time-consuming procedures.

There has not been any case law providing an interpretation of indirect discrimination. There is a need for monitoring activities to ensure the uniform application of indirect discrimination. There is a challenge in connection with poor training of judges in gender issues and different wording of employment protection in the ECA and in the CSA. Judges have participated in some EU and ERA legal seminars and training.¹³⁹ Regarding employment relationships there are still problems with persons who work under law of obligations contracts.¹⁴⁰ However, awareness-raising activities have been organised by the Labour Inspectorate and law offices explaining different types of contracts.

In order to increase awareness and improve the implementation of the GEA and the ETA, it is necessary for gender equality and equal treatment to be clearly highlighted in policies at the national level. The gender equality strategy and action plan could offer a solution in this respect. Opposing statements argue that for the public good it would be better to work with a smaller number of strategies and to incorporate gender equality in every strategy as a horizontal measure. Unfortunately, gender mainstreaming has not been a successful approach to move towards a more gender-balanced society in Estonia. New developments should follow the adoption of the Welfare Development Plan 2016-2023, which sets out

¹³⁷ Penal Code, <https://www.riigiteataja.ee/en/eli/509012018005/consolide>, accessed 27 June 2018.

¹³⁸ Article 2(1) and 2(2) of the ETA, <https://www.riigiteataja.ee/en/eli/503052017002/consolide>, accessed 24 March 2018.

¹³⁹ Correspondence with the Head of the Judicial Training Department of 30 August 2016; <https://www.riigikohus.ee/en/training-judges>, accessed 24 April 2018;

¹⁴⁰ In Estonia, an employment relationship may be covered by the ECA, the LOA and the CSA. The weakest link concerning social security is working under the law of obligations.

the main strategy for the promotion of gender equality in central spheres of life (employment, health and social protection).

The workforce of the Office of the Gender Equality and Equal Treatment Commissioner and that of the Equality Policies Department funded by the State need to be increased to ensure their effectiveness. The Commissioner should be a competent, independent and impartial expert, appointed by the Minister of Social Affairs for five years.¹⁴¹ However, this appointment procedure, as laid down in Article 15(2) of the ETA, is not the best way to ensure the independence and impartiality of the nominated expert. In addition, the mandate of the Gender Equality and Equal Treatment Commissioner needs to be reviewed to ensure a more effective enforcement of the equal treatment rules. According to the GEA 9(1) the state and local government authorities are required to promote gender equality systematically and purposefully. Their duty is to change the conditions and circumstances that hinder the achievement of gender equality. In 2017, Estonia undertook an administrative reform that reduced the number of local governments, structure and personnel of the local authorities by around two thirds and this has changed and negatively impacted the development work conducted to improve gender equality. New people have little knowledge about the promotion of gender equality and they need additional training in this field.

Women's over-representation in unpaid caring and domestic activities remains prevalent, as does men's over-representation in all areas of decision-making.¹⁴² The GEI for Estonia highlights the enduring unequal division of unpaid work between women and men in the private sphere, which remains the greatest barrier to gender equality. Estonia is lagging behind in the domain of political and economic power despite Parliament having elected its first female President on 3 October 2016.

¹⁴¹ <https://www.riigiteataja.ee/en/eli/503052017002/consolide>, accessed 24 April 2018.

¹⁴² EIGE (2017), Gender Equality Index 2017, <http://eige.europa.eu/sites/default/files/documents/MH0215178ENN.pdf>, 28-31; <http://eige.europa.eu/gender-statistics/gender-equality-index/2012/country/EE>, accessed 21 March 2018.

Annexes

Bibliography

Kass, V. (2017), Paarisuhtevägivalla kuritegude tõlgendused Eestis kohtutoimikute analüüsi põhjal (Interpretations of intimate partner violence based on an analysis of Estonian court files). Master's thesis, University of Tartu, http://dspace.ut.ee/bitstream/handle/10062/55386/kass_virve_ma_2017.pdf?sequence=1&isAllowed=y, accessed 21 March 2018.

Kahu, K. (2017), Ahistava jälitamise kriminaliseerimine Eestis – kuriteokoosseisu erakordsusest ja sellega seotud probleemistikast (*Criminalisation of stalking in Estonia - the uniqueness of the offence and the related problems*), Master's Thesis, University of Tartu, http://dspace.ut.ee/bitstream/handle/10062/56769/kahu_kaidi.pdf?sequence=1&isAllowed=y, accessed 21 March 2018.

Kuritegevus Eestis 2017 (Crime in Estonia 2017), http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevu_seestis_2017_veebi01.pdf, accessed 21 March 2018.

Lamesoo, K. (2017), *Social construction of sexual harassment in the post-soviet context on the example of Estonian nurses*. Dissertation, University of Tartu, http://dspace.ut.ee/bitstream/handle/10062/58187/lamesoo_katri.pdf?sequence=3&isAllowed=y, accessed 21 March 2018.

Ortenblad, A., Marling, R., Vasiljevic, S. (2017), *Gender Equality in a Global Perspective*, Taylor & Francis.

Pachocka, M., Szczerba-Zawada, A., Eerma, D. (2018), 'Women on corporate boards in Poland and Estonia in the context of the EU gender equality policy', in: Aluchna, M., Aras, G. (eds.), *Women on corporate boards. An international perspective*, London: Routledge.

Soolise võrdõiguslikkuse monitooring 2016 (Gender Equality Monitoring 2016), Turu-uuringute AS, Sotsiaalministeerium, https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/soolise_vordoigu_slikkuse_monitooringu_raport_2016.pdf, accessed 10 March 2018. (Summary in English, 117-124).

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