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including summary



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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Estonia

Vadim Poleshchuk

Reporting period 1 January 2018 – 31 December 2018

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EXECUTIVE SUMMARY

1. Introduction

Estonia is a heterogeneous society. According to the 2011 national census, there were representatives of more than 150 ethnic groups residing in Estonia, including the two biggest groups: Estonians (70 %) and Russians (25 %). According to data from the Population Registry, in early 2016, 15 % of the population were non-citizens: 6 % were de facto stateless former Soviet citizens ('persons with undefined citizenship') and 9 % were foreign nationals.

In Estonia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the anti-discrimination directives. However, there are also no specific action plans or initiatives to protect migrants and/or asylum seekers from discrimination.

2. Main legislation

According to the Estonian Constitution,¹ the norms stipulated by international treaties that have been ratified have priority over domestic legislation. Estonia has signed and ratified the vast majority of international instruments aimed at combatting discrimination.

Article 12 of the Estonian Constitution includes an open-ended list of grounds of prohibited discrimination and therefore establishes the explicit prohibition of discrimination on any ground. This article is directly applicable against both natural persons and public and private legal persons.

In addition to generally worded anti-discrimination provisions in the Constitution and some other laws, the structure of Estonian anti-discrimination law is now shaped by two laws: the Chancellor of Justice Act² and the Equal Treatment Act.³ These laws were specifically amended/adopted to transpose the requirements of the EU anti-discrimination Directives 2000/43 and 2000/78.

The Equal Treatment Act is designed to ensure the protection of persons against discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation (the scope of its application is identical with that in Directives 2000/43 and 2000/78 for the respective grounds). The act introduced a new equality body: the Commissioner for Gender Equality and Equal Treatment.

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

Under the criminal provisions of the Penal Code,⁴ the most severe violation of the principle of equal treatment constitutes a crime, e.g. Article 152 (violation of equality), Article 153 (discrimination based on genetic characteristics of the person) and Article 151

¹ Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), Riigi Teataja 1992, 26, 349. Riigi Teataja (hereinafter RT) – Official State Gazette.

² Estonia, Chancellor of Justice Act (*Õiguskantsleri seadus*), RT I 1999, 29, 406; the Chancellor of Justice became an equality body from 1 May 2004.

³ Estonia, Equal Treatment Act (*Võrdse kohtlemise seadus*), RT I 2008, 56, 315.

⁴ Estonia, Penal Code (*Karistusseadustik*), RT I 2001, 61, 364, RT I 2002, 86, 504.

(public incitement to hatred, violence or discrimination on the basis of ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status).

Furthermore, the Gender Equality Act⁵ prohibits discrimination on the basis of sex. It covers all spheres of public life. This act might be useful in the context of multiple discrimination.

3. Main principles and definitions

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

In the Equal Treatment Act, provisions regarding victimisation, instructions to discriminate, genuine occupational requirements, reasonable accommodation of disabled persons, burden of proof, positive action measures, and exceptions for associations and other public or private organisations the ethos of which is based on religion or belief are almost identical with those in the directives.

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

According to the Employment Contracts Act, an employer can terminate an employment contract, inter alia, for reasons of an employee's long-term incapacity for work. Similar provisions are applicable to public officials. However, in 2014 the Tartu Administrative Court confirmed⁶ that release from service of an ordinary public official on the ground of redundancy cannot be based on age criteria as that would be a breach of the principle of equal treatment (discriminatory redundancy).

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

4. Material scope

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

The material scope of the Equal Treatment Act is identical with that of the directives for the following grounds: ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation in employment related areas; and ethnic origin, race and colour in social welfare, social security, healthcare, education, and access to and supply of goods and services including housing.

In the private sector, the Chancellor of Justice in the context of conciliation procedures does not recognise discrimination-related complaints that concern the following: the professing and practising of faith or working as a person conducting religious services in religious organisations, relations in family or private life and the exercise of the right of

⁵ Estonia, Gender Equality Act (*Soolise võrdõiguslikkuse seadus*), RT I 2004, 27, 181.

⁶ Estonia, Tartu Administrative Court, Judgment of 10 October 2014 in administrative case no. 3-14-164, *XXX v Social Insurance Board*.

succession.⁷ In the public sector, the Chancellor, acting as an ombudsman may deal with any questions if it is appropriate to do so.

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

5. Enforcing the law

In Estonia, the following procedures exist for enforcing the principle of equal treatment:

– Judicial procedures

A victim of discrimination can use *criminal* procedures (if s/he suffered from crimes/misdemeanours), *administrative court* procedures (e.g. complaints against the action of an official or state/municipal institution, including conflicts between a public officials and his or her employer) or *civil court* procedures (e.g. labour disputes in the private sector and the award of non-pecuniary damage).

Discrimination-related cases are solved on the basis of general rules and standards. The only exception is the application of provisions regarding a shift in the burden of proof as defined by the Equal Treatment Act, which is almost identical to that in the directives. These provisions are very rarely used in practice.

The Equal Treatment Act also entitles a victim of discrimination to demand an end to the discrimination and to compensation for the damage caused to him or her by the violation. Importantly, a victim may also demand that 'a reasonable amount of money' be paid as compensation for non-proprietary damage. Claims for compensation for damage expire within one year of the date when the victim becomes aware or should have become aware of the damage caused. There are no specific provisions, however, to guarantee that sanctions applicable to infringements of the national anti-discrimination provisions are effective, proportionate and dissuasive.

– Non-judicial procedures

• Quasi-judicial procedures at labour disputes committees

The labour dispute committees are established within the local labour branches of the Labour Inspectorate. Their decisions must be based on law and must be substantiated.

• Conciliation at the Chancellor of Justice

Conciliation procedures may be conducted by the Chancellor of Justice (in relation to discrimination in the private sector). If the conciliation procedure fails, a victim may seek the protection of his or her rights in court.

• Ombudsman-like procedures

The Chancellor of Justice (in relation to the public sector) and the Commissioner for Gender Equality and Equal Treatment (in relation to both the public and private sectors, in respect of issues within the Commissioner's competence) are entitled to conduct ombudsman-like procedures, the results of which are not legally binding.

⁷ Participation in the conciliation procedure requires the consent of both parties. It is used very rarely in practice.

- Challenge proceedings at administrative authorities

A person may file a challenge if his/her rights are violated or his/her freedoms are restricted by an administrative act or measure.

In conciliation procedures, a person who has a legitimate interest in monitoring compliance with the requirements for equal treatment is guaranteed the legal right to act as a representative of a victim of discrimination. Following some recent changes in legislation, no similar rules are now applicable to discrimination-related labour disputes. No special rules were introduced in Estonia in any other judicial or quasi-judicial procedures.

The Equal Treatment Act permits positive action measures to prevent or compensate for disadvantages linked to ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. In Estonia, among the most important of such measures are tax benefits and special labour market services for unemployed disabled people.

The Commissioner for Gender Equality and Equal Treatment and the Office of the Chancellor of Justice promote dialogue with the third sector and social partners.

6. Equality bodies

The body responsible for the promotion of equal treatment is the Commissioner for Gender Equality and Equal Treatment, who, from January 2009 has had a mandate to deal with grounds other than sex. Historically, this role was played by the Chancellor of Justice and this institution still has some obligations relating to the promotion of the principles of equality and non-discrimination in Estonia (the relevant mandate dates from January 2004).

The Commissioner for Gender Equality and Equal Treatment is an independent expert appointed for a five-year period by the Minister of Social Affairs. His or her activities, supported by the office, are funded by the state budget. The office of the Commissioner is governed under statute enacted by the Government of the Republic. The Commissioner deals with discrimination on the grounds of sex and the grounds applicable in the context of the Equal Treatment Act, i.e. ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation.

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

The Chancellor of Justice and the Commissioner are entitled to analyse the effect of the implementation of legislation on the condition of members of society and to make proposals to governmental bodies for amendments to legislation. Both institutions are obliged to promote equal treatment, to inform the official bodies about relevant principles and to enhance cooperation in the field. However, only the Commissioner has an explicit duty to advise and provide assistance to people pursuing their complaints about discrimination. The Commissioner was made also responsible for drafting specific reports dedicated to discrimination issues.

7. Key issues

In general, Estonian law and practice are in line with the directives.

There are only a few issues that should be addressed in the context of future revision of relevant laws.

First, in addition to circumstances that relate to genuine and determining occupational requirements or positive action measures, the Equal Treatment Act permits direct discrimination on the grounds of race and ethnicity in order to ensure public order and security, to prevent criminal offences, and to protect the health and the rights and freedoms of others. Those provisions are not in line with the Racial Equality Directive.

Secondly, there are no specific provisions regarding the right to act as a representative of a victim of discrimination outside the conciliation procedure at the Chancellor of Justice. Relevant regulation could be enhanced to meet better the requirements of the directives.

Thirdly, there are no detailed provisions to guarantee that sanctions applicable to infringements of the national anti-discrimination provisions are effective, proportionate and dissuasive.

INTRODUCTION

The national legal system

The Estonian national legal system is typical for continental Europe. Historically it has been influenced by German (and to a lesser degree Russian and Scandinavian) legal traditions. The main sources of normative legal rules are provisions of the Constitution, laws and by-laws (secondary legislation). Case law (court decisions) cannot be regarded as a source of normative legal rules⁸ in the way that legislation of general application can. However, the decisions of the Supreme (National) Court⁹ do influence local legal practice to a considerable extent (they can be used as guidelines by the local legal community).

At the top of the Estonian legal system is the Constitution,¹⁰ which includes the most important legal provisions (including provisions regarding fundamental human rights and freedoms and general principles of non-discrimination). The next level consists of the laws adopted by the *Riigikogu* – the Parliament. According to Article 102 of the Constitution, all laws must be adopted in accordance with the Constitution. The third level comprises other legal acts adopted by competent authorities on the basis of laws (e.g. decrees of the Government of the Republic). Additionally, there are normative acts of local self-government, which are valid in the respective territories: '[a]ll local issues shall be resolved and managed by local self-governments, which shall operate independently pursuant to law' (Article 154(1) of the Constitution).

According to Article 123 of the Constitution, Estonia cannot enter into international treaties that are in conflict with its Constitution. Furthermore, '[i]f laws or other legislation of Estonia are in conflict with international treaties ratified by the Parliament, the provisions of the international treaty shall apply'. Additionally, at a referendum held on 14 September 2003, the people of Estonia amended the Constitution with the following provision:¹¹ 'As of Estonia's accession to the European Union, the Constitution of the Republic of Estonia applies taking account of the rights and obligations arising from the Accession Treaty'. Furthermore, 'generally recognised principles and rules of international law are an inseparable part of the Estonian legal system' (Article 3(1)). Estonia has signed and ratified the vast majority of international instruments aimed at combating discrimination (see annex 2 to this report).

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

A request to review the constitutionality of legislation of general application or international treaties may be filed with the Supreme Court by the President of the Republic, the Chancellor of Justice,¹² the Parliament or a local council. Additionally, a

⁸ The exception to this is decisions of the Supreme Court in issues that are not regulated by other sources of criminal procedural law but which arise in the application of law - Article 2(4) of the Code of Criminal Procedure (Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Riigi Teataja I 2003, 27, 166, RT I 2004, 65, 456). Riigi Teataja (hereinafter RT) – Official State Gazette. For texts of Estonian legal acts and English translations of most of them: <http://www.riigiteataja.ee>.

⁹ *Riigikohus*, the court of highest instance in Estonia.

¹⁰ Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), 28 June 1992, RT 1992, 26, 349.

¹¹ RT I 2003, 64, 429. Valid since 14 December 2003.

¹² *Õiguskantsler*.

court may initiate proceedings by delivering its judgment or ruling to the Supreme Court (Article 4 of the Constitutional Review Court Procedure Act).¹³

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

List of main legislation transposing and implementing the directives

In addition to generally worded anti-discrimination provisions in the Constitution and other laws, the structure of Estonian anti-discrimination law is shaped by:

- Chancellor of Justice Act¹⁴ (adopted 25 February 1999; entered into force on 1 June 1999; first relevant amendments adopted on 11 February 2003). Grounds covered (conciliation procedure): sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law; material scope (conciliation procedure): private sector except for 1) the professing and practising of faith or working as a minister of religion in religious associations with registered articles of association; 2) relations in family or private life; 3) the exercising of the right of succession.
- Equal Treatment Act¹⁵ (adopted on 11 December 2008; entered into force on 1 January 2009). Grounds covered: ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation; material scope: identical with Directives 2000/43 and 2000/78 for the relevant grounds. The Equal Treatment Act introduced a new equality body: the Commissioner for Gender Equality and Equal Treatment.

These two acts were specifically amended/adopted to transpose the requirements of the anti-discrimination Directives 2000/43 and 2000/78.

Furthermore, the Penal Code¹⁶ bans activities that publicly incite people to hatred, violence or discrimination on the basis of ethnic origin, race, colour, sex, language, origin, religion,¹⁷ sexual orientation, political opinion or financial or social status (Article 151). Article 152 of the code penalises 'violation of equality', which is referred to as 'unlawful restriction of the rights of a human being or granting of unlawful preferences to a human being (*inimene*) on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion or financial or social status.' Additionally, Article 153 of the code bans discrimination based on the genetic characteristics of the person, and Articles 154-155 provide for the protection of freedom of religion. Emphasis should be placed on the fact that the grounds of age and disability are not referred to in Articles 151 and 152 of the Penal Code.

The Gender Equality Act¹⁸ (adopted 7 April 2004) prohibits sex discrimination in all spheres of public life (excluding professing and practising faith or working as a minister of religion in a registered religious association and relations in family or private life).

¹³ Estonia, Constitutional Review Court Procedure Act (*Põhiseaduslikkuse järelevalve kohtumenetluse seadus*), 13 March 2002, RT I 2002, 29, 174.

¹⁴ Estonia, Chancellor of Justice Act (*Õiguskantsleri seadus*), 25 February 1999, RT I 1999, 29, 406.

¹⁵ Estonia, Equal Treatment Act (*Võrdse kohtlemise seadus*), 11 December 2008, RT I 2008, 56, 315.

¹⁶ Estonia, Penal Code (*Karistusseadustik*), 6 June 2001, RT I 2001, 61, 364, RT I 2002, 86, 504.

¹⁷ In the Estonian context the term 'religion' (*usutunnistus*) would refer to any religious belief.

¹⁸ Estonia, Gender Equality Act (*Soolise võrdõiguslikkuse seadus*), 7 April 2004, RT I 2004, 27, 181.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Estonian Constitution includes the following article dealing with non-discrimination:

'Article 12.

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

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

These provisions apply to all areas covered by the directives. The Constitution provides an open-ended list of grounds of discrimination. Therefore, Estonian courts have repeatedly addressed the issue of discrimination on the grounds of age, disability, sexual orientation, etc. in the context of Article 12 of the Constitution.

The material scope of the constitutional provisions is broader than those of the directives. In one of its judgments, the Constitutional Review Chamber of the Supreme Court claimed that the general principle of equality is applicable to 'all spheres of life'.¹⁹ An Estonian academic who studied the application of this provision by the Supreme Court made the following summary:

'Article 12 of the Constitution does ban unequal treatment in all spheres of activities which are regulated and protected by the State. Legislative, executive and judicial powers should observe the principle of equal treatment. (...) The principle of equal treatment is valid for all laws regardless of their scope of application.'²⁰

The constitutional anti-discrimination provisions are directly applicable.

The constitutional equality clauses can be enforced against private actors (as well as against the state).

¹⁹ Constitutional Review Chamber of the Supreme Court, decision of 6 March 2002, case no. 3-4-1-1-02, point 13; published in RT III 2002, 8, 74.

²⁰ Lõhmus, K. (2003) 'Võrdsusõiguse kontroll Riigikohtus ja Euroopa Inimõiguste Kohtus' (Control over Equality in the Supreme Court and in the European Court of Human Rights), *Juridica*, No.2, vol. 11, p. 109.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives:

Equal Treatment Act (Articles 1(1) and 2(3))	Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation; 'the act does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified above, in particular due to family-related duties, social status, representation of the interests of employees or membership of an organisation of employees, level of language proficiency or duty to serve in defence forces'. ²¹
Public Service Act (Article 13)	Not specified. However, both the Equal Treatment Act and the Gender Equality Act apply to the protection of public officials.
Employment Contracts Act (Article 3)	References to the Equal Treatment Act and the Gender Equality Act.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

The explanatory note that was attached to the draft Equal Treatment Act included the following clarifications regarding the protected grounds:²²

- race (*rass*) – a group of people with certain hereditary features;
- ethnicity (*rahvus*) – ethnic origin (*etniline kuuluvus*); not to be confused with nationality/citizenship (*kodakondsus*).

In practice, 'race' is normally associated with a particular skin colour (nevertheless, 'colour' was added to the Equal Treatment Act as a separate ground of prohibited discrimination).

There is no case law to highlight differences between 'race' and 'ethnicity'.

b) Religion and belief

The explanatory note that was attached to the draft Equal Treatment Act included the following clarifications regarding religious, political and other beliefs (*usutunnistus, poliitilised või muud veendumused*): 'religious beliefs refer to a religious "world view"; political and other beliefs are all non-religious beliefs'.²³

In law and practice, religion and belief are understood as covering both the forum internum and the forum externum. According to Article 40(3) of the Constitution:

'Everyone is free to practise his or her religion, alone or in community with others, in public or in private, unless this is detrimental to public order, public health or public morality'.

²¹ This means that the Equal Treatment Act is without prejudice to the protection against discrimination in labour relations on any ground. In some rare cases, Estonian courts even applied rules and principles of the Equal Treatment Act dealing with complaints related to discrimination on grounds other than those covered by the Directives 2000/43 and 2000/78. See also section 12.2 of this report.

²² See explanatory note attached to the draft No. 384 SE (11th Riigikogu); available at: <http://www.riigikogu.ee>.

²³ See explanatory note attached to draft No. 384 SE (11th Riigikogu); available at: <http://www.riigikogu.ee>.

c) Disability

The Equal Treatment Act (Article 5) provides a definition of disability:

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

This definition might be compared with that provided in Article 2(1) of the Social Benefits for Disabled Persons Act:²⁴

'Disability is the loss of or an abnormality in an anatomical, physiological or mental structure or function of a person which in conjunction with different relational and environmental restrictions prevents participation in social life on equal bases with the others'.

The term 'everyday activities' has an important social dimension. The first version of the draft Equal Treatment Act (then Bill No. 67) included protection against disability discrimination in all areas of social life. Later the Parliament decided to limit the protection to professional life only. However, the wording of the definition of 'a disability' remained unaltered and it was used in the draft No. 384, which was finally adopted. As a result, Estonian legislation defines disability in quite inclusive terms.

Therefore, the Estonian definition of disability is quite broad, but it is compatible with the concept of disability as worded in Joined Cases C-335/11 and C-337/11.²⁵

d) Age

The explanatory note to the draft Equal Treatment Act does not define the term 'age'.

No specific definition of this ground of unlawful discrimination can be found in case law.

e) Sexual orientation

The explanatory note to the draft Equal Treatment Act does not define the term 'sexual orientation'.

No specific definition of this ground is provided in case law.

2.1.2 Multiple discrimination

In Estonia, multiple discrimination is not prohibited in national law.

There are no plans to adopt or modify legal rules to this end.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Estonia, discrimination based on a perception or assumption of a person's characteristics is not prohibited in national law.

No case law addresses this issue. However, it is quite probable that the courts could decide that discrimination by assumption is covered by the definition of direct

²⁴ Estonia, Social Benefits for Disabled Persons Act (*Puuetega inimeste sotsiaaltoetuste seadus*), 27 January 1999, RT I 1999, 16, 273.

²⁵ EU, OJ C 156, 1.6.2013, p. 6.

discrimination as provided in Article 1(1) of the Equal Treatment Act (see section 2.2 below).

b) Discrimination by association

In Estonia, discrimination based on association with persons with particular characteristics, is not prohibited in national law.

No case law addresses this issue. However, it is quite probable that the courts could decide that discrimination by association is covered by the definition of direct discrimination as provided in Article 1(1) of the Equal Treatment Act (see section 2.2 below).

There are no plans to adopt or modify legal rules related to assumed or associated discrimination.

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

a) Prohibition and definition of direct discrimination

In Estonia, direct discrimination is prohibited in national law. It is defined identically with the definition of the directives.

According to the Equal Treatment Act direct discrimination will be taken to occur where, on the basis of an attribute specified in Article 1(1) of the act (i.e. ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation), one person is treated less favourably than another is, has been or would be treated in a comparable situation (Article 3(2)).

There is no case law clarifying whether the term 'one person' limits the scope of protection to individuals or not.

b) Justification for direct discrimination

The Equal Treatment Act has established a general exception in Article 9(1), which is examined in detail in section 4.8 below.

2.2.1 Situation testing

a) Legal framework

In Estonia, situation testing is not clearly permitted in national law.

National law does not specifically address the use of situation testing and there is no case law on the issue.

The Code of Civil Procedure²⁶ provides for the following concept of evidence (Article 229):

'(1) Evidence in a civil matter is any information which is in a procedural form provided by law and on the basis of which the court, pursuant to the procedure provided by law, ascertains the existence or lack of facts on which the claims and objections of the parties and other participants in the proceedings are based and other facts relevant to the just adjudication of the matter.

²⁶ Estonia, Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*), 20 April 2005, RT I 2005, 26, 197; 2005, 49, 395.

(2) Evidence may be the testimony of a witness, statements of participants in a proceeding given under oath, documentary evidence, physical evidence, inspection or an expert opinion (...).'

The formal interpretation of these provisions leads us to believe that situation testing could be recognised by Estonian courts. However, there is no information that situation testing has actually been used in practice.

b) Practice

In Estonia, situation testing is not used in practice.

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

a) Prohibition and definition of indirect discrimination

In Estonia, indirect discrimination is prohibited in national law. It is defined in Article 3(4) of the Equal Treatment Act; the definition is identical to the definition of indirect discrimination in the directives. Indirect discrimination is taken to occur where an apparently neutral provision, criterion or practice would put persons, on grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation, at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

b) Justification test for indirect discrimination

As mentioned above, Article 3(4) of the Equal Treatment Act stipulates that indirect discrimination is taken to occur where an apparently neutral provision, criterion or practice would put persons, on grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation, at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. According to Article 9(1) of the Equal Treatment Act, the act does not prejudice measures laid down by law that are necessary for the maintenance of public order, for public security, for the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others. Such measures must be proportionate to achieving their aims.

The relevant provisions of the Equal Treatment Act are in line with the directives.

Some concerns have been raised in the context of official Estonian language proficiency requirements, which are officially established in both public and private sectors of employment (Article 23 of the Language Act).²⁷ In general, they are interpreted in Estonia as officially established occupational requirements. However, there is almost no case law that analyses language proficiency requirements in the context of anti-discrimination provisions²⁸

2.3.1 Statistical evidence

a) Legal framework

²⁷ Estonia, Language Act (*Keeleseadus*), 23 February 2011, RT I, 18.03.2011, 1.

²⁸ See further analysis of Estonian law and practice in: Kochenov, D., Poleshchuk, V., Dimitrovs, A. (2013) 'Do Professional Linguistic Requirements Discriminate? – A Legal Analysis: Estonia and Latvia in the Spotlight', *European Yearbook of Minority Issues*, vol. 10; Poleshchuk, V. (2018) 'Professional Linguistic Requirements, Proportionality and Challenges for Estonia', *European Equality Law Review*, No. 1, 2018.

In Estonia, there is legislation regulating the collection of personal data.

In Estonia, there are national rules permitting data collection. These are set out in the Personal Data Protection Act.²⁹ Data on ethnic or racial origin, state of health and disability, religion or belief or sexual orientation are regarded as sensitive personal data by the Personal Data Protection Act (Article 4(2)), and quite rigid rules are stipulated for their processing.

The Employment Contracts Act³⁰ (2009) provides that in pre-contractual negotiations or upon preparation of an employment contract in another manner, including in a job advertisement or job interview, an employer may not ask the person applying for employment for any data with regard to which the employer does not have any legitimate interest. The absence of the employer's legitimate interest is presumed first of all in the case of questions which disproportionately concern the private life of the person applying for employment or which are not related to their suitability for the job offered (Article 11 (1)-(2)).

In Estonia, it is not clear whether statistical evidence is permitted in order to establish indirect discrimination. Estonian law does not explicitly ban the use of statistical evidence in courts (Article 229 of the Code of Civil Procedure). The explanatory note to the draft Equal Treatment Act refers to statistical and sociological data in the context of indirect discrimination (although without providing any details or explanations).³¹

b) Practice

In Estonia, statistical evidence in order to establish indirect discrimination is not used in practice.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Estonia, harassment is prohibited in national law. It is defined by the Equal Treatment Act.

In Estonia, harassment does explicitly constitute a form of discrimination.

According to the Equal Treatment Act harassment is a form of direct discrimination when unwanted conduct related to ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 3(3)). The material scope of the act is identical to that of Directives 2000/43 and 2000/78 for the grounds covered therein. As regards the personal scope of the act, only natural persons are protected.

There is no case law clarifying whether the term 'one person' limits the scope of protection to individuals or not.

²⁹ Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), 15 February 2007, RT I 2007, 24, 127. Valid until 14 January 2019.

³⁰ Estonia, Employment Contracts Act (*Töölepingu seadus*), 17 December 2008, RT I 2009, 5, 35; available at: <https://www.riigiteataja.ee/akt/112072014146> (Estonian); <https://www.riigiteataja.ee/en/eli/509012015006/consolide> (English).

³¹ See explanatory note attached to the draft No. 384 SE (11th *Riigikogu*); available at: <http://www.riigikogu.ee>.

Most probably the courts would not use the definition of direct discrimination (Article 3(2) of the Equal Treatment Act) in the context of harassment, as the definition provided in Article 3(3) would be interpreted as *lex specialis*.

b) Scope of liability for harassment

In Estonia, where harassment is perpetrated by an employee, the employer may be liable.

The Estonian Equal Treatment Act is silent about such issues. However, according to the Obligations Act (Article 1054):

'[i]f one person engages another person in the person's economic or professional activities on a regular basis, the person shall be liable for any damage unlawfully caused by the other person on the same basis as for damage caused by the person, if the causing of damage is related to the person's economic or professional activities.'

Additionally, if one person 'engages another person in the performance of the person's duties', the person shall be liable for any relevant damage unlawfully caused by the other person on the same basis as for damage caused by him or her. Similar rules are applicable if 'a person performs an act at the request of another person', if the latter has control over the behaviour of the person who causes the damage due to the relationship between him or her and the person who causes the damage (Article 1054). Furthermore, special provisions are introduced to deal with liability for damage caused by children and persons placed under curatorship (Article 1053).

Trade unions or other professional associations cannot be normally held liable for the actions of their members.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Estonia, instructions to discriminate are prohibited in national law. Instructions as such are not defined.

In Estonia, instructions do explicitly constitute a form of discrimination.

According to the Equal Treatment Act, an instruction to discriminate against persons on grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is deemed to be discrimination (Article 3(5)). There is no case law to clarify this provision. However, it is likely that an instruction to discriminate would be interpreted as implying a hierarchical relationship of some kind between the instructor and the person who has been instructed.

Incitement to discrimination on the basis of ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status is also penalised by Article 151 of the Penal Code if 'this results in danger to the life, health or property of a person'.

b) Scope of liability for instructions to discriminate

In Estonia, the instructor is liable, according to formal interpretation of Article 3(5) of the Equal Treatment Act. The law provides no further details.

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

- a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Estonia, the duty to provide reasonable accommodation is included in national law. It is defined.

Article 11 of the Equal Treatment Act defines reasonable accommodation as follows:

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

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

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

No other details or explanations are available in the text of the law. There is also no case law to clarify what a 'disproportionate burden on the employer' would be.

- b) Practice and case law

There are good reasons to believe that reasonable accommodation is rarely applied in practice. In addition, no case law can be cited.

Certain legal provisions might be especially valuable in supporting the making of reasonable accommodations. Thus, the Labour Market Services and Benefits Act³² provides unemployed disabled people with special services, including adaptation of premises and equipment. This service might be granted on the basis of an administrative contract between the Unemployment Insurance Fund³³ and an employer, in which the state will compensate the employer for 50-100 % of the reasonable expenses that are necessary for that adaptation (Article 20). Another service, namely 'providing free use of a technical appliance necessary for work', might be offered on the basis of an administrative contract between the Unemployment Insurance Fund and an employer or a disabled person (Article 21). Two other services are communication support at the interview with a potential employer and work with the assistance of a support person (Articles 22-23). According to Article 9(5) of the act, all of these services will only be granted to disabled persons³⁴ if they are necessary to overcome the disability-related obstacle to his or her employment, and if other employment services (e.g. information on the situation in the labour market, employment mediation, vocational training, etc.) have been ineffective.

The provisions of the Labour Market Services and Benefits Act might be of added value for a worker who has become partially incapacitated for work in the employer's enterprise as a result of an occupational accident or occupational disease. According to

³² Estonia, Labour Market Services and Benefits Act (*Tööturuteenuste ja -toetuste seadus*), 28 September 2005, RT I 2005, 54, 430.

³³ *Eesti Töötukassa*.

³⁴ In this context a disabled person is an unemployed person who has a disability or incapacity for work recognised on the basis of valid legislation (Article 2(4) of the Labour Market Services and Benefits Act).

the Occupational Health and Safety Act³⁵ (Article 10¹(3)), an employer is required to enable such a worker to continue work suitable for him or her in the enterprise, pursuant to the procedure provided in employment law.

c) Definition of disability and non-discrimination protection

The definition of a disability for the purposes of claiming a reasonable accommodation is the same as for the protection from discrimination in general (Article 5 of the Equal Treatment Act). For further details see section 2.1.1 of this report.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Estonia, failure to meet the duty of reasonable accommodation does not count as discrimination.

e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Estonia, there is no duty to provide reasonable accommodation for people with disabilities outside the employment field.

f) Duties to provide reasonable accommodation in respect of other grounds

In Estonia, there is no duty to provide reasonable accommodation in respect of other grounds in the public and/or the private sector.

³⁵ Estonia, Occupational Health and Safety Act (*Töötervishoiu ja tööohutuse seadus*), 16 June 1999, RT I 1999, 60, 616.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

In Estonia, there are no residence, citizenship/nationality or legal status requirements for protection under the relevant national laws transposing the directives.

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

a) Protection against discrimination

In Estonia, the personal scope of anti-discrimination law covers only natural persons for the purpose of protection against discrimination. Judicial interpretation is required to clarify whether legal persons could potentially be protected by anti-discrimination law.

The general anti-discrimination clause of the Constitution (Article 12) seems to cover both natural and legal persons for the purpose of protection against discrimination. The Supreme Court recognised equality before the law (the first sentence of Article 12 of the Constitution) as a right belonging to both natural and legal persons.³⁶ There have been no similar cases as regards prohibition of discrimination (the second sentence of Article 12 of the Constitution).

The Equal Treatment Act (which was adopted to transpose Directives 2000/43 and 2000/78) uses the term 'persons' (*isikud*). Article 2, which deals with the scope of application of the law, seems to refer to natural persons (unless proven otherwise by Estonian judiciary in future case law). The same law provides for definitions of 'an employee' (using the term 'a person') and 'an employer' (using the phrase 'a natural or legal person'). Article 24(1) (right to compensation for damage) refers to the rights of a person (*isik*).

b) Liability for discrimination

In Estonia, the personal scope of anti-discrimination law covers all natural and legal persons for the purpose of liability for discrimination (Articles 2 and 24(1) of the Equal Treatment Act).

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

The Equal Treatment Act (Articles 2 and 24(1)) and other relevant provisions are applicable to both private and public sectors without any limitations (including those relating to public bodies).

b) Liability for discrimination

In Estonia, the personal scope of anti-discrimination law covers private and public sector including public bodies for the purpose of liability for discrimination.

3.2 Material scope

³⁶ Constitutional Review Chamber of the Supreme Court, Decision of 6 March 2002 in case 3-4-1-1-02 (*Petition of the Tallinn Circuit Court to declare the second sentence of Article 18(8) of Value Added Tax Act invalid*); published in RT III 2002, 8, 74, para 13.

3.2.1 Employment, self-employment and occupation

In Estonia, national legislation prohibits discrimination in the following areas: private and public employment, self-employment and occupation, including contract work, self-employment, military service and holding statutory office, for the five grounds.

The scope of the Equal Treatment Act (Article 2) as regards employment, self-employment and occupation is identical with that in the directives.

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

In Estonia, national legislation prohibits discrimination in the following areas: conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives (Articles 2(1)1 and 2(2)1 of the Equal Treatment Act).

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

In Estonia, national legislation prohibits discrimination in working conditions including pay and dismissals, for all five grounds and for both private and public employment (Articles 2(1)2 and 2(2)2 of the Equal Treatment Act).

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

In Estonia, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities (Articles 2(1)3 and 2(2)3 of the Equal Treatment Act).

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

In Estonia, national legislation prohibits discrimination in the following areas: membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment (Articles 2(1)4 and 2(2)4 of the Equal Treatment Act).

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

In Estonia, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive (Article 2(1)5 of the Equal Treatment Act). Although the provisions are contained in the Equal Treatment Act, which covers further grounds, only discrimination based on race, ethnic origin and colour is prohibited in respect of social security and healthcare.

a) Article 3.3 exception (Directive 2000/78)

The Equal Treatment Act does not rely on the exception in Article 3.3 of the Employment Equality Directive in relation to religion or belief, age, disability and sexual orientation.

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

In Estonia, national legislation prohibits discrimination in the following area: social advantages (translated as social benefits - *sotsiaaltoetused*) (Article 2(1)5 of Equal Treatment Act). Although the provisions are contained in the Equal Treatment Act, which covers further grounds, only discrimination based on race, ethnic origin and colour are prohibited in respect of social advantages. In Estonia, the term 'benefits' will cover most of the likely social advantages available.

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

In Estonia, national legislation prohibits discrimination in the following area: education as formulated in the Racial Equality Directive (Article 2(1)6 of the Equal Treatment Act). Although the provisions are contained in the Equal Treatment Act, which covers further grounds, only discrimination based on race, ethnic origin and colour is prohibited in respect of education.

No other legislation addresses the issue of discrimination in education. There are no practices of ethnic or religious segregation, including in private schools.

In practice, criticism has been expressed regarding the reform of minority schools, i.e. the transition of upper secondary and professional Russian-language schools to studies being conducted predominantly in Estonian (the minimum is 60 % of educational work). For instance, in its most recent concluding observations on Estonia the UN Committee on Economic, Social and Cultural Rights stated that it 'remains concerned' at:

'[t]he lack of flexibility in implementation of the 60 percent quota of teaching in Estonian in the Russian-speaking secondary schools and vocational schools. This often creates difficulties for Russian-speaking students in the Russian-speaking schools to acquire mastery in core subjects that are taught only in Estonian and, in the case of vocational schools, leads to the insufficient number of qualified teachers capable of teaching the specialized subjects, as to adequately reflect this percentage and the school specificity.'³⁷

Although the Russian-language upper secondary schools completed the transition to teaching mainly in Estonian in 2011, exceptions still could be granted by the national authorities. The Estonian Government did provide an exception to the 60 percent rule to the Tallinn German Upper Secondary School but refused to make a similar exception for several Russian-language schools that had earlier applied for it with the assistance of municipal authorities. Alleged unequal treatment became one of the main arguments in the complaint submitted by Russian-speaking parents. The Tallinn Administrative Court did not find violation of the principle of equal treatment in this regard as the granting of an exception was related to the valid Estonian-German agreement and Estonian-language children from the Tallinn German Upper Secondary School 'have no problem of integration into the society' (non-comparable situation).³⁸

³⁷ UN, Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Estonia*, E/C.12/EST/CO/3, 8 March 2019, para. 48(g). The document was published after the cut-off date of the report. The UN Committee did not qualify the situation of Russian-language schools in legal terms.

³⁸ Tallinn Administrative Court, Decision of 25 January 2016 in administrative case 3-15-2725 (*J.M. and M.S. v. Government of the Republic*), para. 11.

a) Pupils with disabilities

In Estonia, the general approach to education for pupils with disabilities does not raise major public concerns.

According to Article 4(1) of the Education Act,³⁹ the state and local self-government must ensure every person the opportunity to receive compulsory education (this requirement is essentially based on Article 37 of the Constitution). In conjunction with Article 12 of the Constitution this provision might be interpreted to the effect that compulsory education should be provided without any discrimination on any grounds. Several other provisions might be used by state and local government authorities to this end. For instance, it is possible to establish schools for students in need of enhanced support or special support (Article 2 (4) of the Basic Schools and Upper Secondary Schools Act).⁴⁰ The Minister of Education and Research establishes special rules concerning the study of pupils with special educational needs at school (Article 32(7) of the Vocational Educational Institutions Act).⁴¹

The main approach in Estonia is inclusive education of pupils with disabilities in the mainstream educational system. Some disabled pupils may be given the status of students with special education needs (SEN). In 2014, in basic education, 75.8 % of all SENs studied in ordinary classes of ordinary schools, 12.3 % in special schools, and 9.1 % in special classes of ordinary schools.⁴²

b) Trends and patterns regarding Roma pupils

In Estonia, there are no specific patterns existing in education regarding Roma pupils such as segregation. In the academic year 2017/2018 there were only 55 pupils in Estonian general education schools who spoke Roma language at home and 50 of them studied in ordinary classes of ordinary schools.⁴³

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

In Estonia, national legislation prohibits discrimination in the following area: access to and supply of goods and services as formulated in the Racial Equality Directive (Article 2(1)7 of the Equal Treatment Act). Ethnic origin, race and colour are the only grounds that are covered.

It is not clear whether failure to adapt goods or a service to meet the needs of a person with a disability constitutes a form of discrimination considering general constitutional anti-discrimination provisions.

a) Distinction between goods and services available publicly or privately

In Estonia, national law distinguishes between goods and services available to the public and those only available privately, but provides no further details (Article 2(1)7 of the

³⁹ Estonia, Republic of Estonia Education Act (*Eesti Vabariigi haridusseadus*), 23 March 1992, RT I 1992, 12, 192.

⁴⁰ Estonia, Basic Schools and Upper Secondary Schools Act (*Põhikooli- ja gümnaasiumiseadus*), 9 June 2010, RT I 2010, 41, 240.

⁴¹ Estonia, Vocational Educational Institutions Act (*Kutseõppeasutuse seadus*), 12 June 2013, RT I 22.12.2013, 2.

⁴² Kallaste, E. (2016), *Haridusliku erivajadusega õpilaste kaasava hariduskorralduse ja sellega seotud meetmete tõhusus. Teemaatiline raport: Statistiline ülevaade HEV levikust, kaasamisest ja tugimeetmete kasutamisest Eestis 2010-2014*, Eesti Rakendusuuringute Keskus CentAR, p. 28.

⁴³ Estonia, Ministry of Foreign Affairs (2019), *Eesti kaheteistkümnes ja kolmeteistkümnes perioodiline aruanne rassilise diskrimineerimise kõigi vormide likvideerimise konventsiooni täitmise kohta*, May 2019, para. 76. (on file with the author)

Equal Treatment Act). Although the provisions are contained in the Equal Treatment Act, which covers further grounds, only discrimination based on race, ethnic origin and colour is prohibited in respect of access to and supply of goods and services.

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

In Estonia, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive (Article 2(1)7 of the Equal Treatment Act).

Although the provisions are contained in the Equal Treatment Act, which covers more grounds, only discrimination based on race, ethnic origin and colour is prohibited in respect of housing.

Some groups may be vulnerable in the context of access to municipal housing, e.g. disabled people (accessibility of housing), same-sex partners (re-registration/transfer of tenancy), etc. However, there is no anti-discrimination case law in the field of housing. There are also no special programmes or policies to address these issues.

a) Trends and patterns regarding housing segregation for Roma

In Estonia, there are no patterns of housing segregation and discrimination against the Roma.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Estonia, national legislation provides for an exception for genuine and determining occupational requirements.

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

In Estonia, there is no case law to clarify this legal concept so far.

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

In Estonia, national law provides for an exception for employers with an ethos based on religion or belief. The Equal Treatment Act stipulates in Articles 10(2) and 10(3) the relevant provisions regarding employers with an ethos based on religion or belief, which are worded almost identically to that in the directives:

'(2) In the case of occupational activities within religious associations⁴⁴ and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

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

There are no other provisions in Estonian law that ban or permit discrimination/unequal treatment by organisations, the ethos of which is based on religion or belief. By default, Articles 10(2) and 10(3) of the Equal Treatment Act provide the only exception to the general ban on discrimination by such organisations. The act makes it clear that only a difference of treatment based on a person's religion or belief will not constitute discrimination and that other grounds of discrimination are not exempted.

In practice in the Estonian context, the requirement 'to act in good faith and with loyalty to the organisation's ethos' would mean that access to some key positions (especially clergy) might be limited by internal rules or traditions of a church, but that would not apply to all positions or jobs. There is no case law to clarify this issue. However, the

⁴⁴ According to Article 2(1) of the Churches and Congregations Act, 'religious associations' are churches, congregations, associations of congregations and monasteries as well as institutions of a church operating on the basis of an international agreement. Estonia, Churches and Congregations Act (*Kirikute ja koguduste seadus*), 12 February 2002, RT I 2002, 24, 135; available at: <https://www.riigiteataja.ee/akt/121062014030?leiaKehtiv> (Estonian); <https://www.riigiteataja.ee/en/eli/523012015005/consolide> (English). In other words, the term 'a religious association' in Estonian law is essentially equivalent to the term 'a church' in Directive 2000/78.

Constitutional Review Chamber of the Supreme Court has confirmed that the general constitutional principle of equality is applicable to 'all spheres of life'.⁴⁵

It is worth mentioning that the Chancellor of Justice, in his capacity as an equality body, will not consider in conciliation procedure (private sector) discrimination-related complaints that concern the professing and practising of faith or working as a minister of religion in religious associations with registered articles of association (Article 35-5(2) of the Chancellor of Justice Act). In other words, complaints may concern working in any other position in a religious organisation.

The number of public or private organisations the ethos of which is based on religion or belief (other than parishes/churches) is very small and they do not play any significant social role. It should be noted that Estonian society is not religious as such: only 29.3 % of all people aged 15 and older reported themselves to be followers of a particular faith (2011 national census).⁴⁶

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

In Estonia, national legislation does not address the issue of an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78). However, Article 9(2) of the Equal Treatment Act stipulates that

'Differences of treatment on grounds of age shall not constitute discrimination, if, within the context of law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary.'

For certain groups of public officials, maximum age limits have previously been established, for example: 55-65 years of age for military servicemen (Article 90 of the Military Defence Service Act);⁴⁷ 55-60 years of age for policemen (on the basis of Article 96 of the Police and Border Guard Act);⁴⁸ and 58-60 years of age for some categories of prison officials (Article 152 of the Imprisonment Act).⁴⁹ In exceptional circumstances, service may be prolonged.⁵⁰ Military servicemen are entitled to special pensions under the Military Defence Service Act. In Estonia, some categories of workers (policemen, pilots, sailors, miners etc.) may receive pensions on the grounds of the Superannuated Pension Act⁵¹ before reaching ordinary pensionable age.⁵²

The Minister of Defence (for military servicemen) and the Government (for policemen) establish the requirements concerning the state of health necessary for the performance of duties (Article 32(2) of the Military Defence Service Act and Article 71(4) of the Police and Border Guard Act).

On the basis of Article 93(1) of the Public Service Act,⁵³ a public official may be released from the service due to a decrease in capacity for work if he or she is not capable of performing the functions, based on the certificate of incapacity for work, for over four

⁴⁵ Constitutional Review Chamber of the Supreme Court, Decision of 6 March 2002, in case No. 3-4-1-1-02, point 13.

⁴⁶ Statistics Estonia, information provided at: <http://pub.stat.ee>.

⁴⁷ Estonia, Military Defence Service Act (*Kaitseväeteenistuse seadus*), 13 June 2012, RT I, 10.07.2012, 1.

⁴⁸ Estonia, Police and Border Guard Act (*Politsei ja piirivalve seadus*), 6 May 2009, RT I 2009, 26, 159.

⁴⁹ Estonia, Imprisonment Act (*Vangistusseadus*), 14 June 2000, RT I 2000, 58, 376.

⁵⁰ There will be no age limits for police officers and military servicemen as of 1 January 2020.

⁵¹ Estonia, Superannuated Pension Act (*Väljateenitud aastate pensionide seadus*), 14 May 1992, RT 1992, 21, 294.

⁵² This regulation has not been challenged in a court of law so far.

⁵³ Estonia, Public Service Act (*Avaliku teenistuse seadus*), 13 June 2012, RT I, 06.07.2012, 1.

consecutive months or over five months within a year. This provision is valid for policemen, prison officers and most other groups of public officials.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Estonia, national law does not include exceptions relating to difference of treatment based on nationality.

As regards protection against discrimination on all five grounds, Estonian law does not differentiate between the status of a foreign citizen, a stateless person or a person with 'undefined citizenship' (mostly former Soviet citizens).

In Estonia, nationality (citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law. Lack of citizenship and language as a protected ground has previously been criticised by Council of Europe bodies. For example, the European Commission against Racism and Intolerance (ECRI) strongly recommended that the Estonian authorities 'further strengthen the Equal Treatment Act by, inter alia, prohibiting discrimination based on language and citizenship.'⁵⁴

According to the data of the Population Registry,⁵⁵ in 1992 only 68 % of the whole population were citizens of Estonia. In April 2016, persons who are not citizens of Estonia (non-citizens) made up 15.8 % of the total population: 6.1 % were de facto stateless former Soviet citizens ('persons with undefined citizenship') and 9.7 % were citizens of foreign states.⁵⁶ The largest group of foreign citizens in Estonia are citizens of the Russian Federation, who are mostly former Soviet citizens who have adopted Russian citizenship since 1991, while remaining resident in Estonia.

b) Relationship between nationality and 'racial or ethnic origin'

In Estonia, the terms 'ethnic origin' (*etniline päritolu*) and 'nationality' (*rahvus*) are normally used as synonyms, while ethnic affiliation is understood by many policymakers and ordinary people in primordial terms. Conversely, the term 'citizenship' (*kodakondsus*) is ethnically neutral.

According to the 2016 national study, ethnic minorities were much more likely than ethnic Estonians to believe that during the past two years they had been discriminated against at work or in their search for work: due to ethnicity (14.4 % versus 1.1 % for Estonians), due to their native language (16.0 % versus 1.3 %), because of age (13.6 % versus 4.0 %), and because of a health condition (7.0 % versus 2.8 %).⁵⁷

According to the 2011 national census results, ethnic Estonians made up 1.6 % and ethnic Russians 78.4 % of all residents without Estonian citizenship.⁵⁸ In the specific national context, discrimination based on nationality may be a form of indirect ethnic discrimination.

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

⁵⁴ Council of Europe, European Commission against Racism and Intolerance (2010), *Report on Estonia (4th monitoring cycle)*, adopted 15 December 2009, published 2 March 2010, ECRI (2010), Section 51; CoE, European Commission against Racism and Intolerance (2015), *Report on Estonia (5th monitoring cycle)*, adopted 16 June 2015, published 13 October 2015, ECRI (2015), Section 13.

⁵⁵ *Rahvastikuregister*.

⁵⁶ Population Registry.

⁵⁷ Volkov, V.V., Poleshchuk, V.V. 'Current State of Interethnic Communication in Latvia and Estonia', *Sotsiologicheskie issledovaniya [Sociological Studies]*, 2019, no 2, pp. 59-67, at 64.

⁵⁸ Statistics Estonia; public database available at: <http://www.stat.ee>.

a) Benefits for married employees

In Estonia, it is not clear whether it constitutes unlawful discrimination in national law when an employer provides benefits only to those employees who are married.

The Equal Treatment Act does not include any detailed provisions regarding family benefits. Discrimination on the ground of sexual orientation is prohibited in relation to the establishment of working conditions and remuneration (Article 2(2)2). It is not obvious whether (all) benefits provided by employers are covered by these provisions.

It is worth mentioning that Estonian tax legislation does not promote the payment of benefits by employers and they are not as widespread as in Western European countries.

In 2014, the Estonian Parliament adopted the Registered Partnership Act.⁵⁹ This law entered into force on 1 January 2016 (Article 26). As no implementing legislation has been adopted so far, the practical effect of the new legislation in the area of work-related benefits is still not clear.⁶⁰ The adoption of the implementing legislation in the near future is unlikely for reasons related to internal politics.⁶¹

b) Benefits for employees with opposite-sex partners

In Estonia, it is not clear whether it constitutes unlawful discrimination in national law when an employer provides benefits only to those employees with opposite-sex partners.

As explained above, the Equal Treatment Act does not include any detailed provisions regarding family benefits. Discrimination on the ground of sexual orientation is prohibited in relation to the establishment of working conditions and remuneration (Article 2(2)2). It is not obvious whether (all) benefits provided by employers are covered by these provisions.

However, as previously mentioned, in practice such benefits are rarely paid in Estonia.

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

In Estonia, exceptions in relation to health and safety are formulated only in the context of Article 2(5), Directive 2000/78 (please see section 4.8 of this report). There are no legal provisions that seek to rely on health and safety provisions provided in Article 7(2) of the directive.

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

4.7.1 Direct discrimination

In Estonia, national law provides for specific exceptions for direct discrimination on the ground of age (Article 9 of the Equal Treatment Act).

a) Justification of direct discrimination on the ground of age

In Estonia, national law provides for justifications for direct discrimination on the ground of age. The Equal Treatment Act (Article 9(2)) introduced a provision almost identical with that of Article 6(1) of Directive 2000/78:

⁵⁹ Registered Partnership Act (*Kooseluseadus*), 09 October 2014, RT I, 16.10.2014, 1.

⁶⁰ Partnership contracts can be signed but partnerships cannot be even registered in the Population registry.

⁶¹ For additional details, see section 7.b of this report.

'Differences of treatment on grounds of age shall not constitute discrimination, if, within the context of law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary.'

- Supreme Court en banc, Judgment of 7 June 2011 in case 3-4-1-12-10 (verification of the constitutionality)

In this court case, a working 67 year-old, old-age pensioner was not provided with sickness benefits on an equal footing with younger persons (by virtue of Article 57(6) of the Health Insurance Act⁶² - insured persons are those who work on the basis of a contract of employment and for whom the employer is required to pay social tax). A constitutionality control procedure was initiated by the Tartu Circuit Court (court of second instance).

In this case the Supreme Court used a proportionality test (which has been largely borrowed from Germany by the Estonian courts), as it considers itself permitted to do under the general provisions of Article 11 of the Constitution relating to the restriction of rights. Similar to the approach to proportionality assessments taken when considering whether the limitation of rights can be justified that is widely recognised in other jurisdictions' interpretations of their own non-discrimination provisions, the Court reviewed the conformity of the restriction to the proportionality principle through the three characteristics thereof: suitability, necessity and proportionality in the narrowest sense.⁶³

The Court delivered the judgment that neither the worse-than-average state of health of the elderly nor the receipt of an old-age pension nor the health insurance fund's need to save money could justify the unequal treatment on the ground of age in relation to the receipt of sickness benefit. Finally, the Supreme Court en banc declared that the relevant provision of the Health Insurance Act was unconstitutional and invalid.

b) Permitted differences of treatment based on age

In Estonia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78 (Articles 2(2) and 9(2) of the Equal Treatment Act). Nevertheless, this unequal treatment is subject to the strict proportionality test.

By way of exception, Estonian law has provided maximum age requirements (e.g. for military servicemen, policemen and prison officers; see section 4.3 above for details). For safety reasons, upper age limits have also been established for pilots of commercial airlines (65 years).⁶⁴

c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Estonia, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for in Article 6(2) of Directive 2000/78.

⁶² Estonia, Health Insurance Act (*Ravikindlustuse seadus*), 19 June 2002, RT I 2002, 62, 377.

⁶³ On the test of proportionality in other jurisdictions, see: Grimm, D. (2007) 'Proportionality in Canadian and German Constitutional Jurisprudence', *University of Toronto Law Journal*, vol. 57.

⁶⁴ Estonia, The requirements for the age and qualifications, training and examination of aviation specialists, and the rules for the issue of aviation personnel licences and recognition of aviation licences issued by foreign states (*Lennundusspetsialistide vanusele ja kvalifikatsioonile, nende koolitusele ja eksamineerimisele esitatavad nõuded ning lennundusspetsialistidele lennunduslubade väljaandmise ja välisriikides väljaantud lennunduslubade tunnustamise eeskiri*), 21 December 2001, RTL 2002, 5, 52, Article 5.

According to Article 66(1) of the Funded Pensions Act,⁶⁵ persons born before 1 January 1983 are not required to make contributions to a mandatory funded pension. However, persons born between 1942 and 1982 are entitled to make contributions to a mandatory funded pension only if they submitted a choice application⁶⁶ in 2002-2010 (the deadline was different for various age groups (Article 66(2)), presumably to ensure the smooth introduction of these changes in pension policies.

The same law provides for the conditions and procedure in relation to funded pensions for a person to receive additional income, besides state pension insurance, after reaching 'pensionable age' (Article 1).

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

In Estonia, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

The Equal Treatment Act (Article 9(2)) introduced provisions that are almost identical to those of Article 6(1) of Directive 2000/78 (the first sentence). The Equal Treatment Act (Article 9(3)2) does not treat as discrimination privileges related to pregnancy and birth and taking care of minor children, disabled adult children and parents.

According to the Employment Contracts Act (Articles 56-57), an extended annual holiday (35 calendar days) must be granted to minors and persons who are granted a pension for incapacity to work or the national pension on the basis of incapacity to work pursuant to the State Pension Insurance Act.⁶⁷ The mother or father of a disabled child is entitled to childcare leave of one working day per month until the child reaches the age of 18 years, which is paid for on the basis of the average wage (Article 63(2)). Furthermore, mothers or fathers who are raising a child of up to 14 years of age or a disabled child of up to 18 years of age are entitled to childcare leave without pay of up to 10 working days per calendar year (Article 64). Compensation of (extended) paid holiday is paid from the state budget (Article 66).

Women have the right to paid pregnancy and maternity leave (Article 59), while fathers have the right to receive up to 10 working days of paid paternity leave (Article 60). A mother or father is entitled to paid parental leave until their child reaches the age of three years (Article 62). Each calendar year a mother or father⁶⁸ also has the right to receive child leave which is remunerated on the basis of the official minimum wage for three working days if s/he has one or two children under 14 years of age and for six working days if s/he has at least three children under 14 years of age or at least one child under three years of age (Article 63). Upon cancellation of an employment contract due to a lay-off, except in cases of bankruptcy, employees raising children under three years of age have the preferential right of keeping their job (Article 89(5)).

The Employment Contracts Act imposes certain limitations on the employment of minors in the interests of protecting their health and moral integrity (Article 7). The act also bans overtime for minors (Article 44(2)) and bans or imposes limits on work in the evening or at night (Article 49). The same act introduces a general reduction in working time for minors (Article 43(4)).

⁶⁵ Estonia, Funded Pensions Act (*Kogumispensionide seadus*), 14 April 2004, RT I 2004, 37, 252.

⁶⁶ An application must be submitted in order to acquire units of a pension fund. Most importantly, it must include the name of the pension fund chosen by the person (Articles 14(1) and 15(1) of the Funded Pensions Act). This application is necessary to join the system of funded pensions.

⁶⁷ Estonia, State Pension Insurance Act (*Riikliku pensionikindlustuse seadus*), 5 December 2001, RT I 2001, 100, 648.

⁶⁸ Biological mothers or fathers and people equated to them by law.

According to Articles 10(1)) and 10¹(1) of the Occupational Health and Safety Act, an employer must create suitable working and rest conditions for disabled workers, pregnant women, women who are breastfeeding, and minors.

4.7.3 Minimum and maximum age requirements

In Estonia, there are rare exceptions permitting minimum and maximum age requirements in relation to access to employment (mostly in the public sector).

According to the Employment Contracts Act, a minor can be an employee only under certain circumstances, which may vary for different age groups (Article 7). Public officials must have active legal capacity (Article 14 of the Public Service Act), i.e. they must be at least 18 years old.

By way of exception, Estonian law has provided other minimum age requirements for several important public positions (such as the President of the Republic under Article 79(3) of the Constitution).

Some laws may require both minimum age and a minimum number of years of work in a particular area for certain positions as a precondition of employment (e.g. Article 15 of the Prosecutor's Office Act).⁶⁹

4.7.4 Retirement

a) State pension age

In Estonia, there is no state pension age at which individuals must begin to collect their state pensions and cease to work. An individual can collect a pension and still work.

The State Pension Insurance Act (Article 7) stipulates (for both men and women) that persons who have attained 65 years of age⁷⁰ and whose pension-qualifying period earned in Estonia is 15 years have the right to receive an old-age pension. Old-age pensions with favourable conditions can be received by people with a certain type of disability, people who have raised disabled children or three or four children (Article 10).

If an individual wish to work longer, the pension cannot be deferred (with rare exceptions). Thus, a person who receives a state old-age pension may work and collect his or her pension. However, the survivor's pension and national pension⁷¹ will not normally be paid to people who are employed (Article 43(1) of the State Pension Insurance Act). Additionally, an early-retirement pension⁷² will not be paid to a working pensioner before s/he has attained pensionable age (Article 43(1¹)).

b) Occupational pension schemes

In Estonia, there is normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. This is a 'pensionable age' (Article 1 of the Funded Pensions Act). See details in the previous section.

⁶⁹ Estonia, Prosecutor's Office Act (*Prokuratuuriseadus*), 22 April 1998, RT I 1998, 41/42, 625; RT I 2004, 66, 457.

⁷⁰ A transition period (a lower age requirement) was established for those born in 1953-1960. RT I 2010, 18, 97.

⁷¹ A national pension is paid to a person of pensionable age, a disabled person etc. with an insufficient pension qualifying period (State Pension Insurance Act, Article 22(1)).

⁷² 'A person who has worked for the pension qualifying period ... for grant of an old-age pension has the right to receive an early-retirement pension up to three years before attaining the pensionable age' (State Pension Insurance Act, Article 9 (1)).

If an individual wish to work longer, payments from such occupational pension schemes cannot be deferred. An individual can collect a pension and still work. There are no relevant limits in the Funded Pensions Act.

c) State imposed mandatory retirement ages

In Estonia, there are no state-imposed mandatory retirement ages. There are a few exceptions, however, stipulated for some categories of military and law-enforcement officials (see section 4.3 for details) as well as for some specific professions, e.g. judges (Article 48 of the Courts Act).⁷³

- Constitutional Review Chamber of the Supreme Court, Judgment of 1 October 2007 in case 3-4-1-14-07

In October 2007, the Supreme Court held that Article 120 of the *old* Public Service Act (redundancy of public officials on the ground of age) and related provisions violated Article 12 of the Constitution, which provides for equality before the law and bans discrimination on any ground. The case in the Constitutional Review Chamber of the Supreme Court was initiated by the Tallinn Administrative Court, which refused to recognise as constitutional Article 120 of the Public Service Act (the case related to two officials released from service due to age on the basis of this provision). The Tallinn Administrative Court and the Chancellor of Justice (ombudsman and equality body) in their opinion to the Supreme Court argued that Article 120 violates, inter alia, Directive 2000/78/EC.

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

d) Retirement ages imposed by employers

In Estonia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally. No such provision can be found in Estonian laws.⁷⁴

e) Employment rights applicable to all workers irrespective of age

In Estonia, the legal provisions on protection against dismissal apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

Neither the Employment Contract Act nor the Public Service Act permits redundancy of workers or public officials on the ground of age alone.

f) Compliance of national law with CJEU case law

⁷³ Estonia, Courts Act (*Kohtute seadus*), 19 June 2002, RT I 2002, 64, 390.

⁷⁴ In Estonia, it is likely that such behaviour would be regarded as discriminatory. See for detailed analysis: Poleshchuk, V. (2014) 'Older Age, Employment and Equality in Legislation: A "Progressive" Estonian Approach?', *The Equal Rights Review*, vol. 12, available at: <http://www.equalrightstrust.org/ertdocumentbank/vadim.pdf>.

In Estonia, national legislation is in line with the CJEU case law on age regarding mandatory retirement. There are no provisions or regulations similar to those at stake in the relevant cases of the European Court of Justice.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Estonia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy (Article 89 of the Employment Contracts Act and Article 90 of the Public Service Act).

b) Age taken into account for redundancy compensation

In Estonia, national law provides compensation for redundancy, but it is not affected by the age of the worker (Article 89 of the Employment Contracts Act and Article 90 of the Public Service Act).

- Tartu Administrative Court, Judgment of 10 October 2014 in administrative case no. 3-14-164, *XXX v. Social Insurance Board*

XXX was an official who was released from service (dismissed) on the ground of redundancy. She appealed against the decision claiming it to be unsubstantiated and discriminatory. XXX provided an e-mail message from her immediate superior who stated, inter alia, that her redundancy was decided 'basically on the age criteria'. The employer failed to prove that there was no breach of the principle of equal treatment. XXX was awarded compensation for non-pecuniary damage caused by the violation of her rights (discriminatory redundancy).

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

In Estonia, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Article 9(1) of the Equal Treatment Act stipulates that it

'does not prejudice the maintaining or adopting of specific measures which are in accordance with law and are necessary to ensure public order and security, prevent criminal offences, and protect health and the rights and freedoms of others. Such action shall be in proportion to the objective being sought.'

This wording is seemingly based on two provisions:

- Article 2(5) of Directive 2000/78 (however, there are no references to 'a democratic society' but to the principle of proportionality).⁷⁵
- Article 11 of the Estonian Constitution ('Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted').

⁷⁵ The initial version of the draft law (Bill. 67) did not permit these measures in the context of ethnic and racial discrimination. As stated in the explanatory note, this approach was based on understanding of the directives. This initial version, however, was amended by the Parliament without any public debates. This amended version was used for the drafts Nos. 262 and 384 (the latter was adopted in December 2008).

In general, the exception provided in Article 9(1) of the Equal Treatment Act is not in line with Directive 2000/43. The directive provides more advanced protection against ethnic or racial discrimination. Difference in treatment on the basis of ethnic or racial origin in the form of *direct* discrimination is justified in case of genuine and determining occupational requirement (Article 4(1) of Directive 2000/43 and Article 10 of the Equal Treatment Act). Differential treatment in the framework of positive action measures is another possibility (Article 5 of the directive). No other exceptions are possible. It is not clear how this provision will be treated by Estonian courts given that there is no relevant case law so far.

Article 9(1) of the Equal Treatment Act does not contradict Directive 2000/78 in the context of discrimination on the grounds of religion or belief, disability, age or sexual orientation. In this context, Article 9(1) is based on the exception provided in Article 2(5) of the Directive.

4.9 Any other exceptions

In Estonia, other exceptions to the prohibition of discrimination on the ground of employment status provided in national law are the following: the Equal Treatment Act bans the unequal treatment of full-time and part-time employees and people working on the basis of permanent and temporary employment contracts. However, differential treatment is possible if it justified by objective reasons under laws and collective agreements. The act also provides for some guarantees for employees who perform duties by way of temporary agency work (conditions of occupational health and safety, working and rest time and remuneration for work, use of the benefits of the client business)⁷⁶ (Articles 11¹).

⁷⁶ For instance, food coupons, etc.

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

a) Scope for positive action measures

In Estonia, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

The Equal Treatment Act (Article 6) does not prejudice the maintaining or adopting of specific measures to prevent or compensate for disadvantages linked to ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. Such action must be in proportion to the objective being sought. No other clarifications can be found in the text of the law.

b) Quotas in employment for people with disabilities

In Estonia, national law does not provide for a quota for people with disabilities in employment.

6 REMEDIES AND ENFORCEMENT

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

a) Available procedures for enforcing the principle of equal treatment

In Estonia, the following procedures exist for enforcing the principle of equal treatment:

– Judicial procedures

A victim of discrimination can use *criminal* procedures (if s/he suffered from crimes/misdemeanours), *administrative court* procedures (e.g. complaints against the action of an official or state/municipal institution, including conflicts between a public officials and his or her employer) or *civil court* procedures (e.g. labour disputes in the private sector, the issue of non-pecuniary damage and protection of consumer rights).

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

– Non-judicial procedures

- Quasi-judicial procedures at labour disputes committees

Article 23 of the Equal Treatment Act stipulates that discrimination disputes will be resolved by court and labour dispute committees.⁷⁷ A labour dispute committee is an extrajudicial authority within the Labour Inspectorate that adjudicates labour disputes (Article 4(1) of the Resolution of Labour Disputes Act). Their decisions are based on laws and other legislation, international agreements collective agreements and employment contracts and must be substantiated (Article 4(2)). If the parties do not agree with a decision of a labour dispute committee, they have recourse to the courts, which may hear the same labour dispute (Article 58(1)). Participation in this procedure is not compulsory before bringing the lawsuit to court.

- Conciliation

Conciliation procedures may be conducted by the Chancellor of Justice (in relation to discrimination in private sector). If the conciliation procedure fails, a victim may seek the protection of his or her rights in court. Participation in a conciliation procedure is *not* compulsory before lodging the lawsuit to the court. Conciliation can be also provided by labour dispute committees.

- Ombudsman-like procedures

The Chancellor of Justice (in the public sector) and the Commissioner for Gender Equality and Equal Treatment (in the public and private sectors as falls within the Commissioner's competence) are entitled to conduct ombudsman-like procedures, the results of which are not legally binding (see below).

A decision of a court, a labour dispute committee decision or an agreement between parties in a conciliation procedure is legally binding (see below).

⁷⁷ *Töövaidluste komisjonid*. Estonia, Resolution of Labour Disputes Act (*Töövaidluse lahendamise seadus*), 14 June 2017, RT I, 28.12.2017, 18.

- Challenge proceedings

A person who finds that his/her rights are violated or his/her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge with an administrative authority that exercises supervisory control over the administrative authority that issued the challenged act or took the challenged measure (Chapter 5 of the Administrative Procedure Act).⁷⁸ The annulment of a decision on a challenge may be requested in an appeal filed with an administrative court (Article 87).

b) Barriers and other deterrents faced by litigants seeking redress

– Equality bodies

There are very few obstacles as regards access to both equality bodies.

The Chancellor of Justice is almost free to decide whether s/he wants to deal with any discrimination-related complaint. There is no guaranteed access to his or her procedures for a bona fide complainant. In practice, victims of discrimination may be advised to address the Commissioner for Gender Equality and Equal Treatment or other institutions.

Although there are no major problems with access to the Commissioner for Gender Equality and Equal Treatment, this body suffers from insufficient funding.

– Judicial and quasi-judicial procedures

As for judicial and quasi-judicial procedure, in Estonia, state legal aid is granted on the basis of the State Legal Aid Act⁷⁹ to insolvent natural or legal persons in connection with proceedings in an Estonian court or administrative authority.

In Estonia, about a fifth of the population does not speak Estonian (most of those people speak Russian),⁸⁰ although Estonian is the only official language of court procedure. Nevertheless, exceptions to this rule are possible (Article 5 of the Courts Act). According to Article 10(2) of the Code of Criminal Procedure, the assistance of a translator or interpreter must be ensured for the participants in court proceedings and for those parties who are not proficient in Estonian.

Article 34(1) of the Code of Civil Procedure stipulates that if a participant in a proceeding is not proficient in Estonian and s/he does not have a representative,

'the court shall involve, if possible, an interpreter or translator in the proceeding at the request of such a participant in the proceeding or at the court's own initiative. An interpreter or translator need not be involved if the statements of the participant in the proceeding can be understood by the court and the other participants in the proceeding.'

If the court is not able to immediately involve an interpreter or translator, it can make a ruling to require the participant in the proceeding needing the assistance of an interpreter or translator to find an interpreter, translator or a representative proficient in Estonian for himself or herself.

Failure to comply with the demand of the court does not prevent the court from adjudicating the matter. If the claimant fails to comply with the demand of the court, the court may refuse to hear the action (Article 34(2)). Similar rules are valid for

⁷⁸ Estonia, Administrative Procedure Act (*Haldusmenetluse seadus*), 6 June 2001, RT I 2001, 58, 354.

⁷⁹ Estonia, State Legal Aid Act (*Riigi õigusabi seadus*), 28 June 2004, RT I 2004, 56, 403.

⁸⁰ 2011 Population and Housing Census, database of Statistics Estonia, available at: <http://pub.stat.ee>.

administrative court procedures on the basis of Article 82(1)-(2) of the Code of Administrative Court Procedure.⁸¹

In civil court procedure, representatives and advisors of a participant in a procedure (including persons who have a legitimate interest in checking compliance with the requirements for equal treatment—see section 6.2) are not entitled to use translators/interpreters (Article 34(5) of the Code of Civil Procedure). The civil and administrative court may remove from proceedings or prohibit from making statements a representative (and/or adviser in a civil procedure) due to his or her insufficient knowledge of Estonian (Article 45(2) of the Code of Civil Procedure and Article 32(4)) of the Code of Administrative Court Procedure).

To a certain extent, language-related problems may be alleviated through the State Legal Aid Act. Applications for state legal aid should be submitted in Estonian (EU citizens and residents of EU countries can also submit them in English) (Article 12(5)). According to the recent amendments (Article 12(7)),⁸² applications may also be submitted in 'another language widely used in Estonia' (i.e. in Russian). The request for state legal aid does not limit the right of a participant in the proceeding to use the services of an interpreter or translator.

As for people with disabilities, the use of sign language in courts is quite widespread in Estonia. According to the Code of Administrative Court Procedure (Article 82(4)) and the Code of Civil Procedure (Article 35), if a participant in the proceedings is deaf, or s/he is unable to speak or s/he is deaf and unable to speak, the course of the proceeding must be communicated to him or her in writing, or an interpreter or translator will be involved in the proceeding. The author of this report is not aware of any instances of the use of Braille.

Public buildings (including courts) are normally wheelchair accessible.

c) Number of discrimination cases brought to justice

In Estonia, there are no available statistics on the number of cases related to discrimination brought to justice. Some bodies provide statistics upon request or in publicly available activity reports.

– Labour dispute committees

In recent years, the number of complaints with demands related to the issue of discrimination has increased considerably: in 2006, 7 complaints were received by labour dispute committees whereas 26 complaints were received in 2014 and 25 complaints were received in both 2015 and 2016, 26 complaints in 2017 and 19 in 2018. Of the 19 complaints received in 2018, 3 related to sexual harassment, 2 to reduced capacity for work, 3 to family related obligations, 1 to sexual orientation and 10 to other/unspecified.⁸³

– Equality bodies

In 2016, the Chancellor of Justice conducted one conciliation procedure (age discrimination by a payment service provider);⁸⁴ there were no conciliation procedures

⁸¹ Estonia, Code of Administrative Court Procedure (*Halduskohtumenetluse seadustik*), 27 January 2011, RT I, 23.02.2011, 3.

⁸² Estonia, RT I 28.12.2016, 14.

⁸³ Labour Inspectorate; Written communications of 9 January 2007, no. 1-05/17675-1 of 26 September 2006, no. 1.4-1/272-2 of 13 March 2015, of 21 March 2016, of 1 February 2017, of 8 January 2018 and 27 February 2019.

⁸⁴ Chancellor of Justice; Written communications no. 5-3/1701772 of 22 May 2017.

between 2012 and 2015.⁸⁵ In 2017, the Chancellor received one application to start a conciliation procedure (discrimination on the ground of belief), which was refused for procedural reasons.⁸⁶

In 2018, there were no conciliation procedures. Between September 2017 and August 2018, the Chancellor received 38 petitions related to the fundamental right to equality and 20 complaints related to discrimination on specific grounds:

- language – 2;
- sexual orientation – 3;
- age – 6;
- ethnic origin- 3;
- sex – 3;
- disability – 1;
- religion or belief – 2.⁸⁷

As an example, we can provide the following case from the Chancellor's *Annual Report 2017-2018*:⁸⁸

'The Chancellor was asked to verify the claim that a school⁸⁹ was assigning pupils to classes based on their ethnicity and required that parents should communicate in Estonian with children at home.

Pupils may not be distributed to classes according to ethnicity. It is also not admissible to make demands concerning the language to be used at home – communication in Estonian with children at home may not be set as a prerequisite for admission or transfer of a pupil to a class where tuition takes place in Estonian.

The local authority's representative explained that children from non-Estonian speaking families can be admitted to an Estonian-speaking class if the child's proficiency in Estonian is sufficient. Pupils are assigned based on their language proficiency and not ethnicity. A language immersion class is recommended if this is in the interests of the child. Teachers monitor the development of children and also transfer them to another class based on the children's language proficiency and ability to cope (i.e. transfer from a language immersion class to an Estonian-speaking class and the other way round), if the parents' consent to this.

The owner of the school affirmed that the school may not make any demands as to the language of communication at home. Nevertheless, parents had been given recommendations as to how a child could better learn the language (e.g. attending extended-day groups and Estonian-speaking hobby groups).'

The number of applications filed with the Commissioner for Gender Equality and Equal Treatment has rapidly increased. In 2015, the Commissioner received 209 applications. In 2016, there were 332 applications, of which the largest proportions were related to gender discrimination issues and to employment.⁹⁰ In 2017, there were 471 applications related to discrimination on the following grounds: sex - 213, disability - 87, age - 22,

⁸⁵ Chancellor of Justice; Written communications no. 5-3/1300180 of 4 February 2013, no. 5-3/1400234 of 7 February 2014, no. 5-3/1500612 of 13 March 2015, and of 5 January 2016.

⁸⁶ Chancellor of Justice; Written communication no. 5-3/1800936 of 12 March 2018.

⁸⁷ Chancellor of Justice (2018) *Annual report 2017/2018*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2018/equal-treatment>.

⁸⁸ Chancellor of Justice (2018) *Annual report 2017/2018*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2018/equal-treatment>.

⁸⁹ This was a municipal school.

⁹⁰ Commissioner for Gender Equality and Equal Treatment (2017), *Riigikogu põhiseaduskomisjonile voliniku tööst 2016*, 4 April 2017, pp. 20, 22-23.

ethnic origin - 18, religion or belief - 10, unknown/no mandate - 92, other - 29.⁹¹ In 2018, there were 304 applications related to discrimination on the following grounds: sex - 137, disability - 28, age - 30, ethnic origin - 25, language skills - 4, sexual orientation - 9, religion or belief - 4, type of an employment contract - 3, representation of employees or membership in an association - 3, other (no mandate) - 61.⁹²

d) Registration of discrimination cases by national courts

In Estonia, discrimination cases are not registered as such by national courts.

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

a) Engaging on behalf of victims of discrimination (representing them)

In Estonia, associations/organisations/trade unions are not entitled to act on behalf of victims of discrimination with only one exception: in conciliation proceedings for the resolution of discrimination disputes (in the private sector) at the Chancellor of Justice, a person (meaning both a legal and a natural person) who has a legitimate interest in checking compliance with the requirements for equal treatment may also act as a representative (Article 23(2)).⁹³

There are no other specific provisions. Therefore, it is not clear who is considered to have a legitimate interest in checking compliance with the requirements for equal treatment. Estonian laws provide no criteria or other guidance.

The new law that regulates the work of labour dispute committees - Resolution of Labour Disputes Act of 2017 - does not address the issue of legal standing of NGOs in individual labour discrimination disputes.

In civil and administrative court procedures, an association's staff member or representative may make use of Article 228 of the Code of Civil Court Procedure: a participant in a proceeding may use an advisor who may appear in court together with the participant in the proceeding and provide explanations (but an advisor cannot perform procedural acts or file petitions). However, considering the peculiarities of Estonian procedural law, the right to be an advisor can be realised by staff members of relevant associations rather than by the associations themselves.

b) Engaging in support of victims of discrimination (joining existing procedures)

In Estonia, associations/organisations/trade unions are not specifically entitled to act in support of victims of discrimination.

Engagement in support of the victim (even at later stage, i.e. joining existing proceedings) is regulated by general procedural rules. Thus, there are rules on involvement of a third party who does not have an independent claim concerning the object of the proceeding but has legal interest in having the dispute resolved in favour of one of the parties in civil court procedure (Article 213 of the Code of Civil Procedure). It is not completely clear whether associations/organisations/trade unions will be recognised as such third parties in the context of discrimination-related civil cases. It seems that the courts might interpret the term 'legal interest' restrictively.

⁹¹ Commissioner for Gender Equality and Equal Treatment (2018), *Riigikogu põhiseaduskomisjonile voliniku tööst 2017*, 11 June 2018, p. [17].

⁹² Commissioner for Gender Equality and Equal Treatment (2019), *Riigikogu põhiseaduskomisjonile voliniku tööst 2018*, 10 June 2019, p. 27.

⁹³ In general, a petitioner must file a petition with the Chancellor of Justice in person or through an authorised representative (Article 23(1) of the Chancellor of Justice Act).

Furthermore, it also seems to be impossible for associations/organisations/trade unions to join the procedure as a third party in support of victims of discrimination *at the request of* victims, due to formal requirements (Article 216). The law says as follows:

'A party who, upon adjudication of a court action against such party, has the right to file a claim against a third party arising from the circumstances which the party considers to be a breach of contract, or a claim for compensation of damage or for release from the obligation to pay damages, or who has reason to presume that such claim may be filed against the party by a third party, may file, until the end of pre-trial proceedings or during the term prescribed for submission of documents in written proceedings, a petition with the court conducting proceedings in the matter in order to involve the third party in the proceeding.'

As for administrative court procedure, the relevant code seems to apply a fairly restrictive approach to third parties.⁹⁴

Given Estonian law and practice, in court proceedings, NGOs and other relevant associations prefer to support victims through their staff members, who as individuals may act as legal representatives or advisers of victims.

c) Actio popularis

In Estonia, national law does not allow associations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

d) Class action

In Estonia, national law does not allow associations or trade unions to act in the interest of more than one individual victim (*class action*) for claims arising from the same event.

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

In Estonia, national law requires a shift of the burden of proof from the complainant to the respondent (the national term is 'shared burden of proof' – *jagatud tõendamiskohustus*).

The Equal Treatment Act (Article 8) states the following:

(1) An application of a person addressing a court, a labour dispute committee or the Commissioner for Gender Equality and Equal Treatment shall set out the facts on the basis of which it can be presumed that discrimination has occurred.

(2) In the course of proceedings, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, such refusal shall be deemed to be equal to acknowledgement of discrimination by the person.

(3) The shared burden of proof does not apply in administrative court⁹⁵ or criminal proceedings.'

⁹⁴ 'In the case that the administrative court's decision *may affect the rights or obligations of a person* who is not a party to the matter, the court must join such a person to the proceedings as a third party'. Article 20 (1) of the Code of Administrative Court Procedure.

⁹⁵ The jurisdiction of administrative courts is the adjudication of disputes in public law and other matters which are placed within the competence of administrative courts by law (Code of Administrative Court Procedure, Article 4).

The Equal Treatment Act bans discrimination on all five grounds plus colour (Article 1(1)). This principle is not applicable to conciliation procedures at the Chancellor of Justice (one of the possible reasons for this decision is that a conciliation procedure is voluntary).

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

In Estonia, there are legal measures of protection against victimisation. According to Article 3(6) of the Equal Treatment Act,

'Discrimination includes also a situation where one person is treated less favourably than others or negative consequences follow because he or she has filed a complaint regarding discrimination or has supported a person who has filed such complaint.'

There is no case law clarifying whether the term 'one person' limits the scope of protection to individuals or not.

Protection against victimisation provided in the Equal Treatment Act will be limited only by the material scope of this law. Thus, protection against victimisation in case of discrimination on the ground of race, ethnic origin or colour will extend to areas outside employment.

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

a) Applicable sanctions in cases of discrimination – in law and in practice

The Equal Treatment Act provided for the right of an injured party to demand compensation for damage and for the discrimination to end. Furthermore, a victim may demand that a 'reasonable amount of money' be paid as compensation for non-pecuniary damage caused by the violation (Article 24(1)-(2)). 'Upon determination of the amount of compensation, a court shall take into account, inter alia, the scope, duration and nature of the discrimination' (Article 24(3)). The limitation period of such claims is one year from the date when the injured party became aware or should have become aware of the damage caused (Article 25).

The above-mentioned provisions are applied within the material scope of the Equal Treatment Act (as the latter is *lex specialis*).

b) Ceiling and amount of compensation

No upper limits were explicitly established in the Equal Treatment Act.

The Public Service Act (Article 105(3)) provides that the upper limit of the compensation provided for the illegal termination of an employment or service does not apply when there has been a violation of the principle of equal treatment.

As for ordinary employment, the court or labour dispute committee may change the standard amount of the compensation (three months' wages), taking into consideration the circumstances of the cancellation of employment and the interests of both parties (Article 109(1) of the Employment Contract Act).

There are no comprehensive official statistics. In practice, compensation might vary from EUR 500 to EUR 8 200 depending on the case.

There are no rules on the amount of compensation or any ceiling on the maximum amount of compensation in discrimination cases outside the area of employment.

c) Assessment of the sanctions

The relevant provisions in the Equal Treatment Act, Public Service Act and Employment Contract Act are quite general and do not include many details. Given the national context, the provisions are not helpful in enabling the judiciary to make decisions on effective, proportionate and dissuasive sanctions.

First, the limitation period of discrimination claims is very short, being only one year. Secondly, the Estonian judiciary is traditionally very restrained as regards awarding compensation for non-pecuniary damage. In labour law, judges make use of rather detailed provisions regarding compensation. Lack of clarity and detailed guidance results in judges taking a very cautious approach in disputes about discrimination. Thirdly, the level of awareness of discrimination issues in Estonian society is very low and there have been only a small number of discrimination court cases. As a result, there is almost no case law that could clarify the implementation of anti-discrimination laws.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The body for the promotion of equal treatment in Estonia is the Commissioner for Gender Equality and Equal Treatment.

The Chancellor of Justice has historically played this role and this institution still has some obligations relating to the promotion of the principles of equality and non-discrimination in Estonia. Furthermore, this body conducts conciliation procedures (in respect of discrimination in the private sphere).

- b) Political, economic and social context for the designated body

There is no evidence of recent positive political support for the designated bodies or of recent political hostility to or interference in the governance of the designated bodies.

As a positive trend it should be mentioned that the Estonian Government approved the *Social Welfare Development Plan for 2016–2023*. The available budget of the plan is EUR 12.18 billion for 2016-2020.⁹⁶ The activities envisaged by the development plan create a more favourable general background for the work of the equality bodies aimed at promoting the principles of equality and equal treatment.

Some concerns might be raised regarding the LGBT and ethnic minorities.

LGBT:

The Registered Partnership Act⁹⁷ entered into force on 1 January 2016. No implementing legislation has been adopted so far due to opposition from several political parties. In practical terms, this means that protection and promotion of the rights and interests of LGBT people cannot rely on clear and detailed legislation and many principles and provisions of the act remain declarative or dormant.

Ethnic minorities:

There is permanent public debate regarding certain ethnic and linguistic groups (the so-called Russian-speaking population) against the background of tense international relations.

- c) Institutional architecture

In Estonia, designated bodies form part of a body with multiple mandates.

First, for all practical purposes, the leading equality body is the Commissioner for Gender Equality and Equal Treatment - a body that deals with equality and non-discrimination. However, this body is also acting as a 'contact point for cooperation between the Member States of the European Union to facilitate the exercise of the right of free movement of the workers who are citizens of a Member State of the European Union and of the European Economic Area, and of their family members' (Article 16(8), Equal Treatment Act).

Secondly, the Chancellor of Justice was initially solely the guardian for constitutionality and ombudsman, but later also became an equality body (the first relevant amendments

⁹⁶ Estonia, Approval of the Social Welfare Development Plan for 2016–2023 and Action Plan thereto for 2016-2020 („*Heaolu arengukava 2016–2023*” ja selle rakendusplaani aastateks 2016–2020 heakskiitmine), 30 June 2016, Riigi Teataja III, 05.07.2016, 18.

⁹⁷ Estonia, Registered Partnership Act (*Kooseluseadus*), 9 October 2014, RT I, 16.10.2014, 1.

to the Chancellor of Justice Act⁹⁸ were adopted on 11 February 2003). The Chancellor also deals with protection of the rights of children and young people (ombudsman for children), prevention of ill-treatment etc.⁹⁹

The Chancellor's tasks as an equality body are provided for in Articles 19 and 35¹⁶ of the Chancellor of Justice Act. Importantly, the Chancellor as an ombudsman can deal with cases of discrimination by public bodies and institutions on any grounds. In January 2004, the Chancellor of Justice's Office became a *quasi*-judicial institution for disputes regarding discrimination by natural persons and legal persons in private law on the grounds of sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other grounds of discrimination provided for in the law (known as the conciliation procedure).

In practice, the Chancellor's Office does not prioritise issues related to equality/anti-discrimination in its work. No special staff or budget resources are allocated to this field of activity. The office's work in this area is not particularly visible to the general public.

d) Status of the designated body/bodies – general independence

i) Status of the body

According to the Equal Treatment Act, the Commissioner for Gender Equality and Equal Treatment is an *independent* and impartial expert appointed for a five-year period by the Minister of Social Affairs. His or her activities, supported by the office, are funded by the state budget. The office of the Commissioner is governed under statute enacted by the Government of the Republic. In practice, the Commissioner's Office does not have a completely independent budget (it is funded from the budget of the Ministry of Social Affairs). The Commissioner is free to decide on office structure and recruitment (Article 15). No special rules exist regarding the financial accountability of the Commissioner.¹⁰⁰

The Chancellor of Justice is appointed by the Parliament, on the proposal of the President of the Republic, for a term of seven years (Article 140(1) of the Constitution). In directing his or her office, the Chancellor of Justice has the same rights that are granted by law to a minister in directing a ministry (Article 141(1)). The Chancellor is independent in his or her decision-making, and the office has a budget of its own (fixed in the annual state budget). This body comes under the control of the State Audit Office, which is an independent state body exercising economic control (on the basis of Article 7(1) of the State Audit Office Act). Criminal charges may be brought against the Chancellor only on the proposal of the President of the Republic, and with the consent of the majority of the membership of the Parliament (Article 145 of the Constitution).

ii) Independence of the body

According to the Equal Treatment Act, the Commissioner for Gender Equality and Equal Treatment is 'an independent expert' (Article 15).

⁹⁸ Estonia, Chancellor of Justice Act (*Õiguskantsleri seadus*), 25 February 1999, RT I 1999, 29, 406.

⁹⁹ As an 'independent national preventive mechanism for the prevention of torture at the domestic level' in the meaning of Article 17 of the UN Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁰⁰ However, the Commissioner must publish on the website an annual overview of his or her activities and the activities of his or her office (Estonia, Statute of the Gender Equality and Equal Treatment Commissioner (*Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku ning kantselei põhimäärus*), Article 12(1), Riigi Teataja I 2010, 33, 170).

Independence of the Chancellor of Justice is guaranteed by its exceptional autonomous status provided in the Constitution (see d (i) above).

In terms of independence it is important to note that during their term of office, both the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment cannot: hold any other state or local government office or an office of a legal person in public law; belong to the management board, supervisory board or supervisory body of a commercial undertaking; engage in enterprise, except his or her personal investments and the interest and dividends received therefrom and income received from the disposal of his or her property. They are permitted to engage in research or teaching unless this hinders the performance of their functions. In addition, the Chancellor of Justice cannot participate in the activities of political parties (Article 12 of the Chancellor of Justice Act and Article 22 of the Equal Treatment Act). The Chancellor of Justice Act established the same restrictions for Deputy Chancellor of Justice-Advisers and (with some exceptions) for advisers to the Chancellor of Justice (Article 39).

Both the Commissioner and the Chancellor are independent in law and in practice. However, the abilities of the Commissioner are limited due to lack of resources.

e) Grounds covered by the designated body/bodies

The Commissioner for Gender Equality and Equal Treatment deals with discrimination on the grounds of sex, ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation (within the material scope similar to Directives 2000/43 and 2000/78 for the respective grounds). In practice, more attention is paid to gender discrimination issues (partially due to the fact that these activities were and are supported by external sources on a project basis). In practice, the largest proportion of applications are related to gender discrimination.

The Chancellor of Justice deals with unspecified—in fact, any—ground of discrimination in the public sector, through ombudsman-like procedures. Furthermore, he or she deals with conciliation in the private sector in cases of discrimination on the grounds of sex, ethnic and racial origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

In Estonia, only the Commissioner for Gender Equality and Equal Treatment has an explicit duty to advise and assist people pursuing their complaints about discrimination. However, there is no obligation to provide legal representation to victims of discrimination (Article 16 of the Equal Treatment Act). In practical terms, the Commissioner or her advisers deal with legal counselling in situ.

As for the Chancellor of Justice, he normally informs applicants (victims) about their rights (being an ombudsman).

ii) Independent surveys and reports

In Estonia, only the Commissioner for Gender Equality and Equal Treatment has the competence to conduct independent surveys and publish independent reports (Article 16 of the Equal Treatment Act).

iii) Independent recommendations

In Estonia, both designated bodies - the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment - have the competence to issue independent recommendations on discrimination issues.¹⁰¹

The Commissioner for Gender Equality and Equal Treatment drafts legally non-binding opinions concerning possible cases of discrimination on the basis of the applications submitted by persons or on the Commissioner's own initiative (Article 17 of the Equal Treatment Act).

The Chancellor of Justice and the Commissioner are also entitled to make proposals to governmental bodies for amendments to legislation. This option is almost never used in practice.

iv) Other competences

The Commissioner for Gender Equality and Equal Treatment and the Chancellor of Justice are obliged to inform official bodies about the principles of equality and equal treatment.¹⁰² The activities of the Commissioner are mostly limited to the scope of application of the Equal Treatment Act and the Gender Equality Act. The relevant competence of the Chancellor is based on Article 12 of the Constitution and the Chancellor has almost no limits as regards material scope and grounds of discrimination (Article 12 includes an open-ended list of discrimination grounds, and as such it covers even those grounds that are not specifically mentioned, e.g. age and sexual orientation). In practice, relevant activities are organised independently and on *ad hoc* basis.

g) Legal standing of the designated body/bodies

In Estonia, the designated bodies do not have legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- bring discrimination complaints ex officio to court;
- intervene in legal cases concerning discrimination, such as *amicus curiae*.

h) Quasi-judicial competences

In Estonia, the Chancellor of Justice is a quasi-judicial institution (in conciliation procedures). He or she may deal with cases of alleged discrimination by a natural person or a legal person in private law (on the basis of sex, race, ethnic origin, colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation or other grounds specified by law).

According to Article 23 of the Chancellor of Justice Act, a petitioner must file a complaint in person or through an authorised representative. The Chancellor cannot initiate the conciliation procedure without an application from a victim (Article 35⁵). However, an

¹⁰¹ Estonia, Chancellor of Justice Act 1999, Article 35¹⁶ and Estonia, Equal Treatment Act 2008, Article 16.

¹⁰² Estonia, Chancellor of Justice Act 1999, Article 35¹⁶ and Estonia, Equal Treatment Act 2008, Article 16.

alleged discriminator is not obliged to participate in the procedure (Article 35¹¹ (1)). The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff (Article 35¹⁴). It may also include an obligation to pay compensation (Article 35¹²). If a conciliation procedure fails, a victim may address the court for the protection of his or her rights (Article 35¹⁵).

The conciliation procedure is *very* rarely used in practice; therefore, any comprehensive analysis of its implementation is impossible. In 2016, the Chancellor of Justice conducted one conciliation procedure (age discrimination by a payment service provider);¹⁰³ there were *no* conciliation procedures between 2012 and 2015, or in 2017 and 2018.¹⁰⁴ The procedure can hardly be considered to be an efficient legal instrument.

The Commissioner for Gender Equality and Equal Treatment is not a *quasi*-judicial institution as the Commissioner does not deal with the 'resolution of disputes concerning discrimination' (Article 23 of the Equal Treatment Act). Nevertheless, the Commissioner drafts legally non-binding opinions concerning possible cases of discrimination on the basis of the applications submitted by persons or on their own initiative (Article 17).

i) Registration by the body/bodies of complaints and decisions

In Estonia, the bodies normally register the number of inquiries received, complaints of discrimination made, and decisions. These data are available to the public (often on request). However, these data are not always complete and entirely comparable from year to year.

The number of applications filed with the Commissioner for Gender Equality and Equal Treatment is relatively large. In 2016, there were 332 applications,¹⁰⁵ in 2017 - 471 applications,¹⁰⁶ and in 2018 - 304 applications.¹⁰⁷

In 2016, the Chancellor of Justice conducted one conciliation procedure (age discrimination by a payment service provider);¹⁰⁸ there were no conciliation procedures between 2012 and 2015 or in 2017 and 2018.¹⁰⁹

j) Stakeholder engagement

In Estonia, the designated bodies do engage with stakeholders as part of implementing their mandate.

In Estonia, the Commissioner for Gender Equality and Equal Treatment actively cooperates with civil society associations in the context of various events, project activities etc. However, public information about such engagement is limited (as well as information about engagement with other stakeholders).

The question is irrelevant for the Chancellor of Justice considering this institution's low level of interest in the issues at stake in this report.

¹⁰³ Chancellor of Justice; Written communications no. 5-3/1701772 of 22 May 2017.

¹⁰⁴ Chancellor of Justice; Written communications no. 5-3/1300180 of 4 February 2013, no. 5-3/1400234 of 7 February 2014, no. 5-3/1500612 of 13 March 2015, of 5 January 2016, no. 5-3/1800936 of 12 March 2018, and no. 5-3/1901052 of 7 March 2019.

¹⁰⁵ Commissioner for Gender Equality and Equal Treatment (2017), *Riigikogu põhiseaduskomisjonile voliniku tööst 2016*, 4 April 2017, pp. 20, 22-23.

¹⁰⁶ Commissioner for Gender Equality and Equal Treatment (2018), *Riigikogu põhiseaduskomisjonile voliniku tööst 2017*, 11 June 2018, p. [17].

¹⁰⁷ Commissioner for Gender Equality and Equal Treatment (2019), *Riigikogu põhiseaduskomisjonile voliniku tööst 2018*, 10 June 2019, p. 27.

¹⁰⁸ Chancellor of Justice; Written communications no. 5-3/1701772 of 22 May 2017.

¹⁰⁹ Chancellor of Justice; Written communications no. 5-3/1300180 of 4 February 2013, no. 5-3/1400234 of 7 February 2014, no. 5-3/1500612 of 13 March 2015, of 5 January 2016, no. 5-3/1800936 of 12 March 2018, and no. 5-3/1901052 of 7 March 2019.

k) Roma and Travellers

The equality bodies do not treat Roma and Travellers as a priority issue.

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

In 2018, Estonian authorities continued to support various activities to promote equality and non-discrimination in Estonia on the grounds provided in the directives. For instance, in 2017-2018, the Commissioner for Gender Equality and Equal Treatment posted on her website a range of comprehensive information materials that answer specific questions regarding anti-discrimination legislation and procedures.

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

The Commissioner for Gender Equality and Equal Treatment mostly concentrates on issues related to gender equality. However, her office, like the Office of the Chancellor of Justice, deemed it necessary to promote dialogue with the third sector. This dialogue has also been promoted by state and municipal institutions, especially in the context of social integration activities. In practice, the Commissioner's activities cover all relevant grounds of discrimination, not only gender.

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

The Commissioner for Gender Equality and Equal Treatment maintains working contacts with social partners to promote the principle of equal treatment in workplace.

- d) Addressing the situation of Roma and Travellers

No specific body is appointed to address Roma issues on the national level.

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

- a) Mechanisms

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

The provisions of the Estonian Constitution are directly applicable, and the basic principle of equality and non-discrimination is provided for in Article 12.

According to the common rule in relation to undertaking transactions (including treaties of any kind) as stipulated in Articles 86 and 87 of the General Principles of the Civil Code Act,¹¹⁰ a transaction that is contrary to the public order, good morals or the law is void. A breach of the constitutional provision will obviously be recognised as being contrary to good morals or as a significant violation of the law.

As for cases of unlawful discriminatory practice against employees, the Employment Contracts Act stipulates that cancellation of an employment contract without legal basis or in conflict with legal norms is void (Article 104(1)).

¹¹⁰ Estonia, General Principles of the Civil Code Act (*Tsiviilseadustiku üldosa seadus*), 27 March 2002, RT I 2002, 35, 216.

In general, employers must ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality (Article 3 of the Employment Contracts Act and Article 13 of the Public Service Act).

According to Article 4(2) of the Collective Agreements Act,¹¹¹ the terms and conditions of a collective agreement that are 'less favourable to employees than those prescribed by an Act or other legislation' are invalid unless exceptions are permitted by an act.

a) Rules contrary to the principle of equality

The author of this report is not aware of any regulations or rules that are manifestly contrary to the principle of equality that remain in force in Estonia.

¹¹¹ Estonia, Collective Agreements Act (*Kollektiivlepingu seadus*), 14 April 1993, RT I 1993, 20, 353.

9 COORDINATION AT NATIONAL LEVEL

The main bodies that deal with anti-discrimination issues are the Commissioner for Gender Equality and Equal Treatment and, to a much lesser extent, the Chancellor of Justice. The functions and tasks of these institutions were described in section 7 above.

According to the Government of the Republic Act,¹¹² it is the responsibility of the Ministry of Social Affairs¹¹³ to promote equal treatment as well as equality of men and women, including coordination of activities in this field, and the preparation of the corresponding draft legislation (Article 67(1)).

However, each ministry, within its area of responsibility, should monitor compliance with the requirements of the Equal Treatment Act and cooperate with other persons and agencies in the promotion of the principle of equal treatment (Article 14 of the Equal Treatment Act). In practical terms that means that the Ministry of Culture deals with issues related to discrimination on the grounds of racial and ethnic origin (within social integration policies), the Ministry for the Interior¹¹⁴ deals with discrimination on the ground of religion or belief, and the Ministry of Social Affairs, in addition to general coordination of all relevant anti-discrimination work, concentrates on issues related to the grounds of age, disability, sexual orientation and sex.¹¹⁵

¹¹² Estonia, Government of the Republic Act (*Vabariigi Valitsuse seadus*), 13 December 1995, RT I 1995, 94, 1628.

¹¹³ *Sotsiaalministeerium*

¹¹⁴ *Siseministeerium*. The area of government of the Ministry for the Interior includes the management of issues relating to churches and congregations.

¹¹⁵ Ministry of Social Affairs; Written communication no. 1.2-3/1884 of 9 April 2012.

10 CURRENT BEST PRACTICES

In 2018, the NGO Human Rights Centre organised a number of events dedicated to Diversity Day, which included seminars, training and workshops on the topic of diversity, a photo competition for employees, students and partners, a thematic quiz and film screenings, and a festival of ethnic cuisine.¹¹⁶ Celebrating Diversity Day has become a well-established tradition.

In recent years, tens of public institutions, companies and organisations signed the Estonian Diversity Charter, meaning that they agreed to follow the principles of diversity and equal treatment in the context of their human resources policy. The campaign continued in 2018. By 1 February 2018, the number of signatories had reached 76.¹¹⁷

¹¹⁶ Estonia, Human Rights Centre, <https://humanrights.ee/en/topics-main/mitmekesisus-ja-kaasatus/diversity-day/>.

¹¹⁷ Diversity Enriches; <http://www.erinevusrikastab.ee/mitmekesisuse-kokkulepe/liitunud-ettevoted>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

There are issues of concern in the context of the transposition of Directives 2000/43 and 2000/78:

- Article 9(1) of the Equal Treatment Act permits direct discrimination on the grounds of race and ethnicity in circumstances other than genuine and determining occupational requirements or positive action measures. This provision is hardly in line with the requirements of Directive 2000/43. See section 2.2.b of this report for analysis.
- There are no specific provisions regarding the legal standing of ‘a person who has a legitimate interest in checking compliance with the requirements for equal treatment’ (the right to act as a representative of a victim of discrimination) in areas outside the conciliation procedure at the Chancellor of Justice (regarding discrimination by natural persons and legal persons in private law). Furthermore, the notion of ‘a person who has a legitimate interest’ is not defined by law. As a result, Estonian NGOs face difficulties if they want to support discrimination victims in formal (especially court) procedures. For more details see section 6.2 of this report.
- There are no provisions to guarantee that sanctions applicable to infringements of the national anti-discrimination provisions are effective, proportionate and dissuasive. See more details in section 6.5. of the report.

11.2 Other issues of concern

- The awareness level of policy makers and the general public about principles of equality and non-discrimination remains low.
- In 2018, the number of discrimination cases was very small. Courts often prefer to dismiss the discrimination-related arguments of the parties involved and to solve cases with references to other provisions.
- There is no or very limited political will to deal with discrimination against certain ethnic and linguistic groups (the Russian-speaking population) and LGBT people in spite of some efforts by the equality bodies. As a result, many practical problems of these vulnerable groups are not solved and are not even openly recognised by State authorities; the inaction by authorities leads to frustration of minority representatives and does not promote tolerance in society.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

There have been no new pieces of legislation directly related to the topic of this report.

The new law that regulates the work of labour dispute committees¹¹⁸ - Resolution of Labour Disputes Act¹¹⁹ - does not address the issue of legal standing of NGOs in individual labour discrimination disputes. According to the Individual Labour Disputes Act (not valid anymore) a person who had a legitimate interest in checking compliance with the requirements for equal treatment might act as a representative in such disputes (Individual Labour Disputes Act¹²⁰ (Article 14(2¹)).

12.2 Case law

Name of the court: Tallinn Administrative Court

Date of decision: 23 October 2018

Name of the parties: *K.M. vs. Minister of Health and Labour*

Reference number: 3-17-2233

Brief summary: By the decision of the compliance assessment committee K.M. was recognised as not suitable for the position of the head of a labour dispute committee. K.M. filed a complaint claiming age discrimination. In Tallinn as a result of the decision of the assessment committee two heads of labour dispute committees - K.M. (66 years old) and L.O. (64 years old) – were recognised as not suitable for their position while both younger heads - H.T.-K. (42 years old) and L.V. (37 years old) – received a positive assessment.

The Court did not agree with the complainant's assertion that the assessment committee was not objective due to its composition. Furthermore, there was a blind assessment of the results of the written part of the exam that was taken by heads of labour dispute committees. K.M. failed both oral and written parts of the exam. No age discrimination was found in this case.

¹¹⁸ *Töövaidluste komisjonid*. An extrajudicial authority within the Labour Inspectorate that adjudicates labour disputes.

¹¹⁹ Estonia, Resolution of Labour Disputes Act (*Töövaidluse lahendamise seadus*), 14 June 2017, RT I, 28.12.2017, 18.

¹²⁰ Estonia, Resolution of Individual Labour Disputes Act (*Individaalse töövaidluse lahendamise seadus*), 20 December 1995, RT I 1996, 3, 57. Not valid.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Estonia

Date: 31 December 2018

<p>Title of the law: Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>) Abbreviation: CRE Date of adoption: 28 June 1992 Latest relevant amendments: 6 May 2015 Entry into force: 3 July 1992 Web link: https://www.riigiteataja.ee/en/eli/530102013003/consolide Grounds covered: unlimited (ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or other grounds)¹²¹ Civil/administrative/criminal law: administrative Material scope: Not specified Principal content: Equality before the law; prohibition of discrimination</p>
<p>Title of the law: Equal Treatment Act (<i>Võrdse kohtlemise seadus</i>) Abbreviation: --- Date of adoption: 11 December 2008 Latest relevant amendments: 13 April 2017 Entry into force: 1 January 2009 Web link: https://www.riigiteataja.ee/en/eli/530102013066/consolide Grounds covered: ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation Civil/administrative/criminal law: Civil/administrative Material scope: identical with Directives 2000/43 and 2000/78 for respective grounds Principal content: definitions of direct and indirect discrimination, harassment, provisions regarding victimisation, instruction to discriminate, genuine occupational requirements, reasonable accommodation, burden of proof, positive action measures, exceptions for associations and other public or private organisations the ethos of which is based on religion or belief. Detailed provisions regarding one of the specialised bodies (Commissioner for Gender Equality and Equal Treatment)</p>
<p>Title of the law: Chancellor of Justice Act (<i>Õiguskantsleri seadus</i>) Abbreviation: --- Date of adoption: 25 February 1999 Latest relevant amendments: 13 June 2018 Entry into force: 1 June 1999 Web link: https://www.riigiteataja.ee/en/eli/505012015001/consolide Grounds covered: not specified (public sector); sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law (conciliation procedure, private sector) Civil/administrative/criminal law: Administrative (with elements of civil) Material scope: Not specified (public sector); the Chancellor will ignore discrimination-related complaints that concern 1) the professing and practising of faith or working as a minister of religion in religious associations with registered articles of association; 2) relations in family or private life; 3) the exercising of the right of succession (private sector)</p>

¹²¹ Article 12 of the Constitution includes an open-ended list of grounds of prohibited discrimination: Sexual orientation and age are not specifically mentioned but both are covered.

Principal content: Procedure in cases of discrimination by 1) state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties; 2) a natural person or a legal person in private law; responsibilities of the Chancellor as a body for the promotion of equality

Title of the law: Penal Code (*Karistusseadustik*)

Abbreviation: PC

Date of adoption: 6 June 2001

Latest relevant amendments: 21 November 2018

Entry into force: 1 September 2002

Web link: <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

Grounds covered: Ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status (incitement and discrimination), genetic risks (discrimination)

Civil/administrative/criminal law: criminal

Material scope: Not specified; acts of incitement should be public

Principal content: Prohibition of incitement and discrimination (incitement to hatred, violence or discrimination and unlawful restriction of rights or granting of unlawful preferences)

Title of the law: Gender Equality Act (*Soolise võrdõiguslikkuse seadus*)

Abbreviation: ---

Date of adoption: 7 April 2004

Latest relevant amendments: 10 June 2015

Entry into force: 1 May 2004

2004

Web link: <https://www.riigiteataja.ee/en/eli/530102013038/consolide>

Grounds covered: sex

Civil/administrative/criminal law: Administrative/ civil

Material scope: All spheres of public life (excluding professing and practising faith or working as a minister of religion in a registered religious association and relations in family or private life)

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, changes regarding burden of proof, victimisation etc.; responsibilities of public and private actors regarding the implementation of gender mainstreaming strategy

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Estonia

Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14 May 1993	16 April 1996	No	Yes	Yes
Protocol 12, ECHR	4 November 2000	No	N/A	N/A	N/A
Revised European Social Charter	4 May 1998	11 September 2000	No	collective complaints - No	Yes
International Covenant on Civil and Political Rights	(accession)	21 October 1991 (accession)	No	Yes	Yes
Framework Convention for the Protection of National Minorities	2 February 1995	6 January 1997	No; however, according to the Estonian declaration only Estonian citizens may be recognised as national minority members	N/A	Yes (in the case of self-executing norms)
International Covenant on Economic, Social and Cultural Rights	(accession)	21 October 1991 (accession)	No	N/A	Yes
Convention on the Elimination of All Forms of Racial Discrimination	(accession)	21 October 1991 (accession)	No	Yes	Yes
Convention on the Elimination of	(accession)	21 October 1991 (accession)	No	No	Yes

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Discrimination Against Women		n)			
ILO Convention No. 111 on Discrimination	Irrelevant	8 June 2005	No	N/A	Yes
Convention on the Rights of the Child	(accession)	21 October 1991 (accession)	No	N/A	Yes
Convention on the Rights of Persons with Disabilities	25 September 2007	30 May 2012	No	Yes	Yes

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