

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
ESTONIA**

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Vadim Poleshchuk

MEDE European Consultancy
Hooghiemstraplein 155
3514 AZ Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@europeanconsultancy.nl
www.europeanconsultancy.nl

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

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Background information

1. Basic relative statistics

Estonia has an ethnically heterogeneous society, where the major groups are ethnic Estonians and Russians, which stems from aftermath of the migration flows that took place after WWII. The percentage of non-Estonians of Asiatic or African origin is relatively small.

Table 1. Ethnic composition of the population of Estonia, 2000 national census

Ethnic origin	%	In figures
Estonians	67.9	930,219
Russians	25.6	351,178
Ukrainians	2.1	29,012
Byelorussians	1.3	17,241
Others	3.1	42,402
Total	100	1,370,052

Source: 2000 Population and Housing Census, Citizenship, Nationality, Mother Tongue and Command of Foreign Languages, II, Statistical Office of Estonia, Tallinn, 2001, Tables 7-8

In certain urban areas non-Estonians are in absolute majority, for example in the cities of Narva (95.1 %), Sillamäe (95.8 %) and Kohtla-Järve (82,2 %).

Estonian is the mother tongue for 67 % and Russian for 30 % of the total population.

80 % of the total Estonian population are Estonian citizens, 12.4 % are stateless former Soviet citizens and 6.3 % are Russian citizens. The remainder of the reported percentage are citizens of other states or their citizenship was unknown.

The age of the Estonian society increases rapidly. According to the 2000 national census residents of 55 years of age and older accounted for 362,066 persons (26.4 % of the total population). Pensioners made up 27.6 % of the total population in 2002, while old age pensioners accounted for 298,490 persons and disability and incapacity for work pensioners accounted for 47,140 residents. Social studies among disabled revealed that they still have considerable problems in access to education and work.

In 2001 the level of unemployment was higher among non-Estonians than among Estonians and it was the highest among young generations:

Table 2. Estonians and non-Estonians by economic status and age group, 2001

Ethnicity, age group	Labour force participation rate, %	Employment rate, %	Unemployment rate, %
<u>Estonians</u>			
15-24	36.4	28.5	21.8
25-49	86.8	78.8	9.2
50-74	47.0	43.2	8.1

Total 15-74	62.5	56.1	10.4
<u>Non-Estonians</u>			
15-24	47.6	36.7	22.9
25-49	87.1	72.4	16.9
50-74	41.7	36.2	13.2
Total 15-74	64.2	53.4	16.8

Source: Labour Force 2001, Statistic Office of Estonia, Tallinn, 2002, Tables 14, 16.

According to date of 2000 national census, there are no major differences between Estonians and non-Estonians in the field of education. However, sociological studies reveal noticeable differences in wages of representatives of different ethnic origin.

Table 3. Average salary per month in Tallinn by occupation and nationality, 1999, Estonian cronos

Occupation	Total	Estonians	Non-Estonians	Non-Estonians, % of salary of Estonians
Legislators, senior officials, managers	5923	6783	4485	66.1
Professionals	4037	4384	3193	72.8
Technicians and associate professionals	3670	3872	2933	75.7
Clerks	3128	3485	2449	70.3
Service workers, shop workers	2394	3116	1839	59.0
Craft and related trade workers	3045	3346	2848	85.1
Plant and machine operators and assemblers	3073	3234	2986	92.3
Elementary occupations	1961	2165	1897	87.6

Source: Estonian Labour Force Survey 1999. Statistical Office of Estonia.

Similar disparities in wages could also be found between men and women. Official statistics provided us with the evidence that the average hourly wage of women in October 2001 was only 76% of that of men.

The Estonian society is rather indifferent towards faith, while non-Estonians are significantly more religious than Estonians:

Table 4. Population by religious affiliation and ethnic origin, 2000 national census (persons aged 15 and older, % of respondents)

Religious affiliation	Total	Estonians	Russians	Other ethnic groups
All respondents	100.0	100.0	100.0	100.0

Follower of a particular faith	31.8	26.3	42.0	46.6
Has no religious affiliation	37.0	41.3	28.8	26.9
Atheist	6.7	5.9	8.5	6.6
Cannot define the affiliation	15.8	16.6	14.5	13.5
Refused to answer	8.7	9.9	6.2	6.4

Source: 2000 Population and Housing Census, Education, Religion, IY, Statistical Office of Estonia, Tallinn, 2002, Table G

The following faiths have the biggest number of followers: Lutheranism (14.8 % of all population) and Orthodox Christianity (13.9 %). Ethnic Estonians prevail among Lutherans and Russians and other Eastern Slavs - among Orthodoxes.

The number of persons belonging to sexual minorities in Estonia is unknown since there is no relevant statistics or research.

Subjective attitudes of people towards discrimination can provide us with interesting information regarding vulnerable social problems. A question about restriction of one's rights and maltreatment at the workplace was asked during a sociological research in Tallinn in 2001:

Table 5. Did you experience, at your workplace, instances of restriction of your rights or cases of maltreatment on the ground of...?

	Sample	Estonians	Non-Estonians				
	Number	%	Number	%	Number	%	
Your sex	Yes	28	4.0	8	2.4	20	5.5
	No	672	96.0	330	97.6	342	94.5
Total	700	100.0	338	100.0	362	100.0	
Your ethnic origin	Yes	96	13.7	4	1.2	92	25.7
	No	604	86.3	334	98.8	270	74.6
Total	700	100.0	338	100.0	362	100.0	
Your mother tongue	Yes	116	16.6	3	0.9	113	31.2
	No	584	83.4	335	99.1	249	68.8
Total	700	100.0	338	100.0	362	100.0	
Your social status	Yes	66	9.4	15	4.4	51	14.1
	No	634	90.6	323	95.6	311	85.9

Total	700	100.0	338	100.0	362	100.0	
Your age	Yes	100	14.3	38	11.2	62	17.1
	No	600	85.7	300	88.8	300	82.9
Total	700	100.0	338	100.0	362	100.0	

Source: Aleksei Semjonov (ed.), *Integracija v Talline 2001 (Integration in Tallinn 2001)*, Tallinn, 2002, p. 58

The figures in Table 5 (especially on gender discrimination) in conjunction with the above-mentioned data can *inter alia* support the thesis about a low level of public awareness in the Estonian population concerning problems of discrimination.

Estonia adopted several social policy documents for better protection of the interests of vulnerable social groups. Estonia tries to overcome disparities between ethnic communities by promoting among non-Estonians Estonian language training (mostly in the framework of program “Integration in the Estonian Society. 2000 – 2007”). Additionally the Government has adopted the General Concept of Disability Policy of Estonia and National Concept on Elderly Policy. On the basis of these documents special action plans to deal with integration of the disabled and elderly were adopted. Similar social policy measures were taken to tackle gender discrimination.

Several projects aimed at promotion of equal treatment were also supported by the Delegation of the European Commission in Estonia.

2. Draft Law on Equality and Equal Treatment: Background Information

According to the National Programme for the Adoption of the Acquis 2001, the Ministry of Justice should prepare amendments supplementing “different laws in force” to allow them to meet the requirements of the Race Directive. In the beginning of 2002 the Ministry presented the Draft Law on Equality and Equal Treatment (hereinafter *Draft Law on Equality or Draft Law*) to general public including NGO community. The draft was submitted to the Parliament by the Government of the Republic on 21 October 2002 (Draft # 1198 SE). However, previously (on 14 December 2001) the Government had also initiated the Draft Law on Gender Equality (Draft # 927 SE), which was prepared by the Ministry of Social Affairs. Presently the second reading of both drafts is suspended.

In January 2003 heated debate took place in the Riigikogu (the parliament) over the Draft Law. One of the most challenging issues was a split in opinion regarding necessity of specialised laws for different grounds of discrimination. Also state institutions were not unanimous. Thus the Minister of Social Affairs considers it more effective to adopt a number of special laws to combat discrimination on different grounds. The Office of Minister for Population Affairs was of the opinion that there should be three sets of legal norms 1) to combat discrimination on the grounds of gender; 2) to combat discrimination on the grounds of racial or ethnic origin; 3) to combat discrimination on the grounds of age, disability, sexual orientation, religious and political belief. The idea of a specialised law on gender discrimination was supported by the Central Union of Estonian Trade-Unions.

According to the Explanatory Note in the Draft Law, a new act was to implement 10 different EC Directives in the field of non-discrimination. Additionally the authors of the Draft Law have actively used several proposals by the European Commission, the above-mentioned Draft Law on Gender Equality, Draft Law on Employment Contract and the draft of the Austrian Anti-discrimination Law. Additionally they considered international human rights instruments, numerous Estonian laws and the practice of the Estonian courts. The EU officials and experts were not directly involved in the preparation of the Draft.

In the opinion of the Delegation of the European Commission in Estonia, "the overall situation concerning discrimination continues to be good in Estonia". The Explanatory Note to the Draft Law on Equality argues that discrimination is not widespread in Estonia, however it is still possible, especially on the grounds of sex or ethnic origin. One of the main problems is the lack of comprehensive and long-term practice in the field of the fight against discrimination in Estonia.

These assumptions are supported by different sources. The officials of the Ministry of Social Affairs have also mentioned several sociological studies that give evidence to the existence of indirect discrimination in the Estonian labour market. In the Action Plan for Employment of the Republic of Estonia for IY Quarter of 2000 - 2001 the Ministry of Social Affairs mentioned the following risk groups in the labour market: long-term unemployed (more than 1 year), the young (16-24 years old), pupils who suspended education in the basic schools, disabled, aged workers (more than 50 years old), persons without Estonian language proficiency, children, persons who cannot work taking care of an aged or disabled person, and persons with low educational level (especially without vocational training). Experts follow this approach as well. After the representatives of the biggest non-dominant Churches, it is regrettable that the Estonian labour law does not provide workers with the right to demand days off at the most important religious holidays.

On 22 January 2003 the Riigikogu adopted several amendments to the draft. The most important of them were as following:

1. it was decided that gender equality issues will be covered by a special law;
2. New grounds of discrimination were added to the draft law to bring it in line with Article 12 of the Constitution; as a result the draft law will deal with discrimination on the basis of (sex), race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other grounds or discrimination provided for in the law (Article 2).

The new Estonian Government (formed after the last elections in March 2003) submitted on 17 April 2003 another draft - Law on Promotion of Gender Equality (Draft # 38 SE).

On 30 May 2003 the Minister of Justice and Minister of Education officially discussed the prospects of the draft laws to address discrimination. It was decided that a single law will cover all grounds of discrimination and the Ministry of Social Affairs will be responsible for preparation of a new draft. A working group of representatives of both ministries will submit a draft to the Government for approval by 1 September 2003.

It is highly probable that the basic principles of this new draft will be similar to those of the Draft Law on Equality and Equal Treatment. In this report we will refer to the Draft Law on Equality at the time when its second reading was suspended on 22 January 2003 (taking into account decisions that were adopted by the Riigikogu).

On 11 February 2003 the Parliament amended the Law on Legal Chancellor. According to this law from 1 January 2004 the Legal Chancellor Office will be a specialised body to deal with persons who deem themselves wronged by non application of the principles of equality and equal treatment which will be established for in the Draft Law on Equality. We will refer to the Law on Legal Chancellor in the version, which will be valid from 1 January 2004.

As a whole the Draft Law on Equality and amended Law on Legal Chancellor will implement in a comprehensive way requirements of the Racial Equality and Employment Equality Directives. In this report we shall in particular highlight the areas where the proposed legislation provides weaker protection than the Directives.

Chapter 1 The legal framework, definitions and scope

a. The legal framework

Article 1 (Racial Equality Directive and Employment Equality Directive)

Article 12 of the Estonian Constitution establishes an explicit ban of discrimination:

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

The incitement of national, 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”.

Article 12 does not provide an exhaustive list of grounds for discrimination. Therefore, a flexible and comprehensive mechanism of protection against discrimination may be based on this provision. “Article 12 of the Constitution does ban unequal treatment in all spheres of activities which are regulated and protected by the State”.

Additionally Article 11 of the Constitution provides for the rights or freedoms may be restricted only in accordance with the Constitution. Article 9 guarantees rights and freedoms for both citizens of Estonia and foreigners in its territory.

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

The Constitution also provides special guarantees to the elderly and disabled: "[...] An Estonian citizen has the right to state assistance in the instances of old age, incapacity to work, loss of a provider, or necessity. The categories and extent of assistance, and the conditions and procedure for the receipt of assistance shall be provided by law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by law. [...] Families with many children and persons with disabilities shall be under the special care of the state and local governments" (Article 28).

The constitutional principle of non-discrimination, worded in general terms, is repeated in some other laws, e.g. in the Law on Cultural Autonomy of National Minority (Article 3), Law on Employment Contracts (Article 10), Law on Wages (Article 5), Law on Employment Service (Article 6), Law on Advertising (Article 5, which bans offensive and discriminatory advertising), etc..

According to the Penal Code, the most severe violation of the principle of equal treatment constitutes a crime:

“Article 89. Crimes against humanity

Systematic or large-scale deprivation or restriction of human rights and freedoms, instigated or directed by a state, organisation or group, or killing, torture, rape, causing health damage, forced displacement, expulsion, subjection to prostitution, unfounded deprivation of liberty, or other abuse of civilians, is punishable by 8 to 20 years’ imprisonment or life imprisonment”.

“Article 90. Genocide

A person who, with the intention to destroy, in whole or in part, a national, ethnical, racial or religious group, a group resisting occupation or any other social group, kills or tortures members of the group, causes health damage to members of the group, imposes coercive measures preventing childbirth within the group or forcibly transfers children of the group, or subjects

members of such group to living conditions which have caused danger for the total or partial physical destruction of the group, shall be punished by 10 to 20 years' imprisonment or life imprisonment”.

“Article 152. Violation of equality

Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, political opinion, financial or social status is punishable by a pecuniary punishment or up to one year of imprisonment”.

“Article 153. Discrimination based on genetic risks

Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her genetic risks is punishable by a pecuniary punishment or up to one year of imprisonment”.

The Penal Code also bans activities which publicly incite to hatred or violence on the basis of nationality, race, colour, sex, language, origin, religion, political opinion, financial or social status (Article 151). On 28 January 2003 Estonia signed the Additional Protocol to the Convention on Cyber crime, concerning the criminalisation of acts of a racist and xenophobic nature committed through the use of computer systems.

Emphasis should be placed on the fact that such grounds as age, disability and sexual orientation are not referred to in Art. 151 and 152 of the Penal Code.

The Law on Wages establishes special guarantees to ensure equal payment irrespective of sex. As yet this is a unique step in Estonia that was adopted to harmonise domestic law with requirements of the EU Council Directive 75/117/EC.

The principle of equality before court is explicitly stipulated in the Article 13 of the Code of Criminal Law Procedure and Article 6 of the Code of Civil Procedure.

In civil and administrative court procedure a court has the right to fully or partially release a natural person from payment of legal assistance and to charge the advocate's fees to the state if the court finds that the person is insolvent (Article 94 of Code of Administrative Court Procedure; Section 1 of Article 59 of Code of Civil Procedure). In criminal procedures, a person has also a right to counsellor free of charge (Section 2 of Article 36¹ of Code of Criminal Procedure). In criminal procedures, legal aid by way of State assistance is often provided. Although at the same time similar decisions of courts in administrative court and civil procedures are relatively rare.

Additionally to domestic provisions, the norms stipulated by international treaties could be used as well. According to Article 123 of the Constitution,

“[i]f laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu, the provisions of the international treaty shall apply.”

Estonia has signed and ratified the vast majority of international instruments aimed at combating discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights together with Optional Protocol, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, etc. Within the framework of the Council of Europe, Estonia has signed and ratified the European Convention for the Protection of Human Rights, and has signed Protocol # 12 on the principle of non-discrimination hereto (ETS 155). Estonia signed and ratified the Framework Convention for the Protection of National Minorities (see also Appendix III for details). However, references to international law are relatively rare in Estonia courts (with the exception only of the State (or National) Court).

Estonia is a State party to ca 30 conventions of the International Labour Organisation, some of which can also be used to combat discrimination.

To sum up, there is no non-discrimination-related legislation as such in Estonia. There are no special provisions to combat racism, xenophobia and intolerance in the Estonian civil and administrative legal acts. However, the Draft Law on Equality offers a comprehensive system of protection against direct and indirect discrimination and harassment on the basis of (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 (Article 2). The aim of the Draft Law is to define principles of equality and equal treatment, control over their realisation, and responsibility for breach of the provisions of this law (Article 1). The Draft Law foresees the requirement of equal treatment without discrimination in public life, for reasons enlisted in Article 2 of the Draft Law.

The differences between citizens and non-citizens are not perceived as discrimination on the basis of race and ethnic origin (Section 4 of Article 10). The provision of the Law on Family that a marriage is contracted between a man and a woman is not considered as discrimination on the basis of sexual orientation (Section 4 of Article 11).

b. The definition of discrimination

Article 2 (Racial Equality Directive and Employment Equality Directive)

Direct and indirect discrimination

The basic definition of the principles of equality in the Estonian law is provided for in the Constitution (first of all Article 12) while other laws normally include different versions of this wording. However, there is no comprehensive definition of discrimination as such.

References to discrimination are rare in Estonian courts. However, the State Courts have tried several cases where alleged discrimination or unequal treatment was one of the parties' main arguments. In the decision of the Constitutional Review Chamber of the State Court # 3-4-1-2-02 of 3 April 2002 the notion "equality" was elaborated in detail:

"The equality of legislation requires, as a rule, that persons who are in similar situations must be treated equally by law. This principle expresses the idea of essential equality: those, who are equal, have to be treated equally and those who are unequal must be treated unequally. But not every unequal treatment of equals amounts to the violation of the right to equality. The prohibition to treat equal persons unequally has been violated if two persons, groups of persons or situations are treated arbitrarily unequally. An unequal treatment can be regarded arbitrary if there is no reasonable cause therefore".

The Draft Law on Equality sets up definitions of direct and indirect discrimination:

"Article 3. Discrimination

(1) Discrimination may be direct or indirect.

(2) Direct discrimination shall be taken to occur where an illegal and unfounded differential approach is employed regarding persons in a comparable situation on grounds enlisted in Article 2.

(3) Indirect discrimination shall be taken to occur where consideration of neutral or apparently neutral circumstances and similar activities put considerably bigger number of persons at a disadvantage on grounds or circumstances enlisted in Article 2 compared with other persons in a comparable situation.

(4) Giving of instruction to breach the provisions of this law shall be deemed discrimination”.

The draft law also includes special definitions of discrimination on the basis of race and ethnic origin (Article 10), language, religious, political or other belief, disability, age, sexual orientation, property or social status (Article 11). Both these definitions are based on the wording of Article 3 of the draft.

“Article 10. Discrimination on the grounds of race and ethnic origin

(1) Direct discrimination on the basis of race and ethnic origin shall be taken to occur where an illegal and unfounded differential approach is employed regarding persons in a comparable situation on ground of race and ethnic origin. Direct discrimination on the basis of race and ethnic origin is also harassment on the basis of race and ethnic origin.

(2) Indirect discrimination on the ground of race and ethnic origin shall be taken to occur where consideration of neutral or apparently neutral conditions, circumstances and similar activities put considerably larger numbers of persons of a particular race or ethnicity at a disadvantage compared with other race or ethnicity in a comparable situation.

...”

“Article 11. Discrimination on the grounds of language, religious, political or other belief, disability, age, sexual orientation, property or social status

(1) Direct discrimination on the grounds of language, religious, political or other belief, disability, age, sexual orientation, property or social status shall be taken to occur where an illegal and unfounded differential approach is employed regarding persons in a comparable situation on the above-mentioned grounds. Direct discrimination on the above-mentioned grounds is also harassment on the basis of language, religious, political or other belief, disability, age, sexual orientation, property or social status.

(2) Indirect discrimination on the grounds of language, religious, political or other belief, disability, age, sexual orientation, property or social status shall be taken to occur where consideration of neutral or apparently neutral conditions, circumstances and similar activities put considerably larger number of persons of a particular religious or other belief, disability, age or sexual orientation at a disadvantage compared with other persons in a comparable situation.

...”

Some elements incorporated into the definitions of indirect discrimination (such as "considerably larger number of persons") made them somehow more limited in scope than the definitions in the Racial Equality and Employment Equality Directives. Additionally the definition of indirect discrimination on the basis of language, religious, political or other belief, disability, age, sexual orientation, property or social status could be regarded as comprehensive.

Harassment

The Estonian law does not recognise the concept of harassment. However, certain legal provisions could be used to fight against it. Thus, the Law on Cultural Autonomy of the National Minorities prohibits:

“[t]o ridicule and to obstruct the practice of ethnic cultural traditions and religious practices and to engage in any activity, which is aimed at the forcible assimilation of national minorities (Section 2 of Article 3).”

However, this provision lacks implementation guarantees.

Several articles of the Penal Code include provisions that could be used by victims of the most violent acts of harassment. For instance, the Penal Code makes punishable a threat to kill, cause damage to health or cause significant damage to or destroy property (Article 120) and physical abuse (Article 121). Under the circumstances of “non-violent” harassment, a victim can only use those legal means that provided for the protection of honour and dignity in the cases of insult and defamation. The new Penal Code has decriminalised these offences. However, according to Article 25 of the Constitution, “everyone has the right to compensation for moral and material damage caused by the unlawful action of any person.” This is to emphasise that Estonian courts recognise the right to compensation for moral damages caused by private persons and state officials alike. However, according to the Law on Obligations, compensation for non-material damage caused by breach of an individual right (including defamation) must be paid only if it is justified by case circumstances (Section 2 of Article 134). A special Law on State Liability provides the bases of and procedure for the protection and restoration of rights violated by the exercise of powers of public authority and performance of other public duties and also provides compensation for the damage caused.

Thus, the existing Estonian regulation does not provide victims of harassment with a protection in the meaning of the EC Directives. However, the Draft Law on Equality will introduce to the Estonian legal system the concept of harassment. According to Article 10 of the draft, harassment on the basis of race and ethnic origin is direct discrimination on the same ground (Section 1). It is determined as conduct with the purpose of violating the dignity of a person and creating an intimidating, hostile and offensive environment (Section 3).

Harassment on the basis of language, religious, political or other belief, disability, age, sexual orientation, property or social status is also understood as a direct discrimination on the above-mentioned grounds (Section 1 of Article 11 of the Draft Law). It is determined as conduct with the purpose of violating the dignity of a person and creating a hostile and offensive environment (Section 3 of Article 11).

Instruction to discriminate

The formal-legal and grammatical interpretation of Article 12 of the Constitution leads to conclusion that it bans instruction to discriminate.

There are several provisions in the Estonian law that employ differential treatment on the basis of mother tongue, State language proficiency and citizenship which is out of the scope of the Racial Equality Directive and Employment Equality Directive. However, differential treatment on the basis of mother tongue may under certain circumstances lead to indirect discrimination based on ethnic origin.

As it was mentioned above, Section 4 of Article 3 of the Draft Law on Equality stipulates that “giving of instruction to breach the provisions of this law shall be deemed discrimination”.

c. Scope

Fields of application

Article 3.1 (*Racial Equality Directive and Employment Equality Directive*)

Article 12 of the Constitution is applicable to all spheres of public life.

The Draft Law on Equality includes a list of aspects of public life where the principles of equality and equal treatment must be ensured. The list included (Article 5):

- 1) entry into employment contract and appointment to office;
- 2) payment of wages;
- 3) promotion of employees and officials;
- 4) termination of employment contract or removal from service;
- 5) opportunities of training, retraining and advanced training;
- 6) opportunities to be an individual entrepreneur (self-employment);
- 7) setting of work conditions;
- 8) membership of and involvement in work of organisations of workers and employers or in professional organisations and the benefits provided for by these organisations;
- 9) access to social security, health care or social insurance services;
- 10) access to goods and services which are available to public;
- 11) activities in other spheres of public life.

Section 2 of the same article stipulates that the legal requirements will not be applied to religious organisations with registered statutes (upon profession of religion or cult or work as a priest); in family or private life relations; in realisation of the right to inheritance.

Housing is not specially referred to in this list. However, it is definitely covered by the notion "other spheres of public life".

The notion "opportunities of training, retraining and advanced training" is supposed to cover both access and acquisition to any kinds of education. In addition, the Draft Law (Article 16) includes obligation to equal treatment of students or trainees by educational and academic institution. The principle of equal treatment and equality should be considered in preparation of curriculum, training materials and research. Furthermore, according to Article 15 of the same Law, State and municipal institutions should promote equality and equal treatment principle in systematic and appropriate way by changing conditions that prevent realisation of this principle. Different needs of persons should be considered by drafting action plans on different levels.

Exceptions and exemptions

1 Occupational requirements

Article 4 (*Racial Equality Directive and Employment Equality Directive*)

According to Section 2 of Article 10 of the Law on Employment Contracts it is possible to:

- “1) allow and give preferences based on pregnancy or the raising of children;
- 2) take into account the sex of an employee in hiring or assigning duties if this is unavoidable due to the nature of the work or working conditions;

- 3) allow a suitable working and rest time regime which satisfies the religious requirements of an employee;
- 4) require language skills necessary for the work and pay compensation for proficiency in languages.”

The same law stipulates the following age limits:

“Article 2. Employee

(1) A natural person who has attained 18 years of age and has active legal capacity or restricted active legal capacity may be an employee. A higher age limit may be established by law for certain categories of employees.

(2) In exceptional cases, an employee may be:

1) a minor who has attained 15 years of age, with the written consent of one parent or a curator, if the work does not endanger the health, morality or education of the minor and is not prohibited to minors by law or a collective agreement;

2) a minor of 13 to 15 years of age, with the written consent of one parent or a guardian and the labour inspector of the location (residence) of the employer, for work set out in a list approved by the Government of the Republic, if the work does not endanger the health, morality or education of the minor and is not prohibited to minors by a collective agreement”.

The Law on Public Service foresees certain limits on the basis of age in relation to access to official state positions:

“Article 14. Requirements for state or local government officials

(1) An Estonian citizen who has attained 18 years of age, has at least a secondary education, has active legal capacity and is proficient in Estonian to the extent provided by or pursuant to law may be employed in the service as a state or local government official.

(2) A person who has attained 21 years of age and complies at least with the requirements provided for in subsection (1) of this Law may be appointed to a position of higher or senior official in the state public service”.

In way of exception the Estonian law has also provided for certain important positions in the public domain minimum age (e.g. President of the Republic) and maximum age requirements (e.g. a rector of an applied higher institution, judges, etc).

According to the Law on Employment Contracts an employer can terminate an employment contract upon unsuitability of an employee for his or her office or the work to be performed (Sections 4, 9-10 of Article 86):

- 1) due to professional skills or for reasons of health;
- 2) due to the long-term incapacity for work of an employee;
- 3) due to the age of an employee.

The law stipulates the following rules:

“Article 101. Termination of employment contract upon unsuitability of employee for his or her office or work to be performed due to professional skills or for reasons of health

...

(2) The deterioration of the health of an employee may be the reason for the termination of his or her employment contract if it is of a continuous nature and hinders or precludes continuation in his or her current position.

(3) An employer evaluates the conformity of the professional skills of the employee to the office to be held or the position to be filled. The conformity of the health of the employee is determined by the decision of a doctor.

(4) An employer may terminate an employment contract on the basis prescribed in Article 86 (4) if it is not possible to offer another position to the employee or if the employee refuses an offered position”.

“Article 107. Termination of employment contract due to long-term incapacity for work

(1) An employer has the right to terminate an employment contract on the basis prescribed in Article 86 (9) during the time that an employee is incapacitated for work:

1) if the employee has been absent from work due to incapacity to work for more than four consecutive months; if, due to contraction of tuberculosis the employee has been absent from work for more than eight consecutive months;

2) if the employee has been absent from work due to incapacity to work for more than five months during a calendar year; if, due to contraction of tuberculosis, the employee has been absent from work for more than eight months during a calendar year.

(2) An employer shall maintain the job of an employee who is temporarily incapacitated for work due to a work injury until his or her recovery or determination of his or her disability.

(3) The date of termination of an employment contract during an employee's incapacity for work is the date that such entry is made in the employment contract".

"Article 108. Termination of employment contract due to age of employee

An employer has the right to terminate the employment contract of an employee on the basis prescribed in Article 86 (10) if the employee has attained sixty-five years of age and he or she has the right to receive full old-age pension".

An employer is required to notify an employee of termination of the employment contract in writing not less than one month in advance upon unsuitability of the employee for his or her office or the work to be performed; not less than two weeks in advance in the case of long-term incapacity for work; due to age, two months in advance if the employee has been continuously employed by the employer for less than ten years and three months in advance if the employee has been continuously employed by the employer for more than ten years (Section 1 of Article 87). In a written notice concerning termination of an employment contract, the employer is required to justify the need to terminate the employment contract (Section 1¹ of Article 87). Employers are required to pay compensation to employees upon termination of their employment contracts due to age ,in the amount of two months' average wages to employees who have been continuously employed by the employer for up to five years; in the amount of three months' average wages if five to ten years; four months' average wages if more than ten years (Section 1 of Article 90). There is no corresponding obligation if disability is the reason for employment contract termination. Special rules are applied to termination of an employment contract with a minor worker. For instance, an employer has not the right to terminate such contract due to unsatisfactory results of a probationary period (Article 93).

Very similar provisions are applicable to public officials. According to the Law on Public Service,

"Article 119. Release from service due to long-term incapacity for work

(1) An official may be released from the service if he or she has been absent from the service due to illness or injury for more than four consecutive months or for more than five months within a calendar year, in the case of contracting tuberculosis, if he or she has been absent from the service for more than eight consecutive months or for more than eight months within a calendar year.

(2) An official may only be released pursuant to subsection (1) of this section during sick leave.

(3) The service relationship of an official who is temporarily incapable for work due to a work injury shall be suspended, and the official's position shall be retained until his or her recovery or determination of his or her disability".

(4) An official shall be released pursuant to subsection (1) of this section as of the date specified in the document of release.

"Article 120. Release from service due to age

(1) An official may be released from the service due to age when he or she attains sixty-five years of age.

(2) An official shall be released pursuant to subsection (1) of this section as of the date specified in the document of release".

Sections 2 and 3 of Article 131 of the Law foresees 1 month's wages compensation to officials fired due to age and 3 months wages compensations to those fired due to long-term incapacity to work.

The Estonian law imposes certain limitations for minors in the interests of protection of their health and morality (see the officially approved lists of industries where work of minors is prohibited or where restrictions are valid for persons up to 21 years old). The Law on Working and Rest Time bans overtime for minors (Section 1 of Article 8) and bans or imposes limits on work in the evening or night time (Article 11). The same Law introduces general reduction in working time for minors:

“Article 5 Reduced working time

(1) Reduced working time is:

- 1) four hours per day or twenty hours per week for employees who are 13–14 years of age or subject to the obligation to attend school;
- 2) six hours per day or thirty hours per week for employees who are 15 years of age and not subject to the obligation to attend school;
- 3) seven hours per day or thirty-five hours per week for employees who are 16–17 years of age and not subject to the obligation to attend school;

...

(2) Employees who are 13–14 years of age or subject to the obligation to attend school may be permitted to work only during school holidays or as persons engaged in creative activities in the areas of culture, sport or advertising.

(3) Employees who are 13–17 years of age may be permitted to work, taking into account the restrictions on working time set out in sections 1–3 and subsection (2) of this section, on condition that the work does not harm the health, safety, development or morality or interfere with the studies of the employee.

...”

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

Upon adoption the Law on Equality will substitute several anti-discrimination provisions in Estonian law (first of all in the (new) Law on Employment Contract and Law on Wages) with provisions worded in accordance with the draft and with references thereto.

According to the Draft Law on Equality (Section 3 of Article 6), non-fulfilment of requirements of equality and equal treatment on the grounds provided for in Article 2 will not constitute discrimination if the differentiation is objectively justified, adequate, reasonable, proportionate and necessary.

Measures to diminish or abolish inequality based on sex, disability or age is not considered to be discrimination although such measures should not aggravate the situation of other persons (Sections 2 of Article 6). The draft does not legalise similar measures to abolish inequalities based on ethnic origin or mother tongue which may be very topical in Estonia.

Equal treatment requirements will not applied to religious or other belief-based organisations which function on the basis of their own statute and customs (Article 12).

Article 14 of the Draft Law stipulates that it will be permitted to treat persons differently because of their age if it is objectively justified and necessary in order to achieve a result (see comments under Article 6 of Employment Equality Directive).

Reasonable accommodation

Article 5 (Employment Equality Directive)

According to Law on Employment Contracts, an employee can demand only those documents (including medical certificates) that are stipulated in the legal acts:

“Article 30. Documents required for entry into employment contracts

(1) In order to enter into an employment contract, an employer requires presentation of the following documents:

- 1) identification;
- 2) an employment record book;

- 3) certificate (diploma) illustrating the necessary qualifications or education;
 - 4) certificate (health record) regarding health if the employment contract is entered into for work where prior and periodic medical examinations are prescribed, or upon hiring persons who are under twenty-one years of age for work which is prescribed in the special rules. The Government of the Republic shall approve the list of such work and the Ministry of Health shall approve the format of such certificates (health records);
 - 5) the written consent of one parent or guardian and the labour inspector upon hiring a minor between thirteen and fifteen years of age;
 - 6) the written consent of one parent or curator upon hiring a minor who has attained fifteen years of age;
 - 7) a work permit upon hiring an alien or stateless person in the cases prescribed by law;
 - 8) other documents in the cases prescribed by law or regulations of the Government of the Republic;
- (2) Upon hiring, it is prohibited to require documents which are not prescribed by law or regulations of the Government of the Republic.

...”

However, the Law does not prohibit for an employer from making oral enquiries about a worker's disability, age or sexual orientation. In this case, workers are not protected by general provision of the Law that prohibits discrimination.

The Decree of the Government # 214 of 22 July 1992 has approved the category of industries where prior and periodic medical examinations are required. The different categories are divided into four groups: 1. work dangerous for one's health (work connected to chemical, biological, physical factors, and aerosols); 2. dangerous work (such as gas pipeline service); 3. work where control is necessary to prevent the spread of coetaneous diseases (production of food, providing services to children and the youth etc); 4. work where control is necessary in the interests of public safety (connected to transport).

According to the Draft Law on Equality, an employer should take reasonable measures to ensure access to work, position, promotion, training, re-training and advanced training for a disabled person. (Section 1 of Article 13). To meet these requirements an employer must provide for the disabled person a workplace, the duration and regime of working time, division of work tasks and training opportunities (Section 2 of Article 13). If the disabled person is not competent or if the disabled cannot or is not ready to fulfil working tasks connected to a workplace or to complete necessary training, the above-mentioned requirements may be ignored (Section 3 of Article 13):

- 1) upon entry into employment contract and appointment to office;
- 2) upon promotion of employees and officials;
- 3) upon termination of employment contract or removal from service;
- 4) upon opportunities of training, retraining and advanced training.

Section 4 of Article 13 stipulates additionally a requirement to provide accommodation for the disabled for persons who offer goods and services to the public.

Minimum requirements and positive action

2 Minimum requirements

Article 6 (Employment Equality Directive)

The limitations that may be imposed on the basis of age in the labour market are mentioned in comments under Article 4 of both directives. Limitations regarding minors must be objective, reasonable and justified in the interests of protection of their health and morality. Estonian Central Union of Trade Unions raised concerns regarding a "discriminative" right of an employer to terminate an employment contract on

the basis of worker's age. After the Minister of Justice, these limitations as well as some others (age limits for policemen, judges etc) are necessary and justified.

The Law on State Pension Insurance (Article 7) stipulates that persons who have attained 63 years of age and whose pension qualifying period earned in Estonia is 15 years have the right to receive an old-age pension. The same article foresees a transition period for persons born in 1944-1952. Old-age pensions can be provided, on favourable conditions to persons with certain types of disability, for example, persons who have raised disabled children or 3-4 children, rehabilitated persons and persons who participated in clean-up of the accident at the Chernobyl nuclear power station (Section 1 of Article 10). Certain groups are also entitled to a special type of pension (e.g. workers in dangerous industries, former military servicemen, former MPs etc.).

According to the same Law, there are categories of residents entitled to pensions for incapacity for work, survivor's pensions or for "basic" national pensions.

In Estonia between 1990-1995 labour force participation of older people dropped significantly when ca 53,000 "working pensioners" left the market. However, since 1996 the participation rate for older workers increased slightly (partly due to rise in retirement age since 1994). A comparison between situation in the beginning of 1998 and the second quarter of 1999 on the basis of a Estonian Labour Force Survey did not reveal significant differences in the job loss rate of older workers (50 years of age and older) compared to workers in prime age (25-39 and 40-49 years old). This means that the *en masse* practice of forced retirement of pensioners is not widespread in Estonia any longer.

According to the Draft Law on Equality differential treatment of persons in different age groups is permitted if it is objectively justified and necessary in order to obtain a result. The following differential treatment is allowed : setting of different work conditions upon entry into employment contract and appointment to office, payment of wages, termination of employment contract or removal from service; setting of age and working experience requirements upon entry to certain work and positions; setting of maximum age requirements for certain positions; setting of age requirements upon access to social security, health care or social insurance services (Article 14).

3 Positive action

Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)

Estonian legislation includes certain guarantees for the disabled and the older generation in the sphere of education. According to Section 1 of Article 4 of the Law on Education the State and local self-government shall ensure for every person an opportunity to receive obligatory education. According to Article 4 of the Law on Basic School and Gymnasium,

"(1) Depending on the need of students to receive special education, special support, special treatment due to behavioural problems, or treatment, a basic school or a gymnasium may be a school for students with special needs or it may also be a sanatorium school.

(2) Schools for students with special needs are intended for students with physical disabilities, speech impairments, sensory or learning disabilities, or mental disorders, and for students who need special treatment due to behavioural problems.

(2¹) Students may be referred to schools for students who need special treatment due to behavioural problems at the request of a juvenile committee on the basis of a court ruling or on the basis and pursuant to the procedure provided for in the Juvenile Sanctions Act.

(3) Sanatorium schools are intended for students with health disorders where students study and receive the necessary treatment.

(4) In the case of special education, arising from a curriculum, the number of academic years may differ from that established in Article 2 of this Law. The specific number of academic years, list of

subjects and number of lessons in schools for students with special needs and sanatorium schools shall be established by a regulation of the Minister of Education”.

The Government has also established special rules enabling disabled persons to study in vocational schools, which is provided for in Section 4 of Article 14 of the Law on Vocational School. These rules are actively applied in practice. Thus in the 1998/1999 academic year there were 10 special groups for the disabled in vocational educational institutions. The same year 197 students with special needs studied there due to their disability (mostly mental disability).

The Law on Adult Education enables adults to receive education at any age and at any educational level. The Law provides certain guarantees for adults who want to continue their studies. Local self-governments shall provide for interested adults the receipt of basic and secondary education (Section 1 of Article 7).

The Law on Traffic contains guarantees for movement of physically disabled persons on the roads (Chapter 10).

As was mentioned above under comments to Article 4 of the Racial Equality Directive and Employment Equality Directive, the Law on Equality and Equal Treatment will not regard as discrimination the measures that have been taken to diminish or abolish unequal treatment on the basis of sex, disability and age (Section 2 of Article 6). Additionally, according to Article 17 of the draft an employer shall employ (if possible) persons of different sex, race, ethnic origin, age and the disabled and ensure their equal treatment, shall create for workers suitable working conditions, promote a combination of working and family life taking into account an employers needs; provide measures to protect workers against discrimination; and to raise employers' awareness about rights guaranteed by this law.

Thus, no positive action is permitted to overcome inequalities on the basis of ethnic origin or mother tongue. In addition religion is not mentioned (however, religious discrimination is seemingly not widespread in Estonia). Employers are not encouraged to employ representatives of sexual and religious minorities.

Chapter 2 Remedies and enforcement

Article 7 (Racial Equality Directive) and Article 9 (Employment Equality Directive)

a. Judicial and/or administrative procedures

A victim of discrimination can use penal procedures (if the victim has suffered from crimes stipulated by the Penal Code), administrative court procedures (complaints against action of an official or state/municipal institution) and civil procedures (e.g. moral damage etc.). Additionally a person can file an application to non-judicial entities such as Labour Disputes Resolution Commission, National Labour Inspection and ombudsman (Legal Chancellor).

The Draft Law on Equality foresees that in addition to courts, discrimination disputes may be solved by a special pre-judicial institution - Legal Chancellor (Article 18). According to the amended Law on Legal Chancellor there are two procedures available depending on the nature of the dispute. If the dispute concerns activities of public institutions, the general procedure of the ombudsman can be used (Article 33-35⁴) (in this case the procedure can be initiated on the basis of victim's application or at the Chancellor's own initiative). If the dispute is between private parties, a conciliation procedure is available (Article 35⁵-35¹⁵). The aim of this procedure is to reach an agreement between a victim and a person suspected of discrimination. The conciliation procedure can be initiated only on the basis of victim's application and it

presupposes the consent of an alleged discriminator. The agreement between parties in a conciliation procedure may include an obligation to pay compensation (Article 35¹²).

b. Associations

In general penal, administrative court and civil procedure associations and other entities with a legitimate interest can act only as natural persons - representatives of the party, i.e. they can engage only indirectly in any judicial or administrative procedure on behalf or in support of the complaint (Article 85 of the Code of Civil Procedure, Article 36 of the Code of Criminal Procedure).

According to Section 2 of Article 23 of the amended Law on Legal Chancellor only a person with a legitimate interest in ensuring equal treatment requirements can be a representative of a victim.

c. Time limits

The Penal Code stipulates the following general rules regarding limitation period:

“Article 81. Limitation period of offence

(1) No one shall be convicted of or punished for the commission of a criminal offence if the following terms have expired between the commission of the criminal offence and the entry into force of the corresponding court judgement:

1) ten years in the case of commission of a criminal offence in the first degree;

2) five years in the case of commission of a criminal offence in the second degree.

(2) Offences against humanity, war crimes and offences for which life imprisonment is prescribed do not expire.

...”

According to the same Article, the limitation period for a criminal offence is interrupted if a procedural act is performed with regard to the person in a criminal matter concerning the person or if the person commits a new criminal offence before the time limits expires. The limitation period of a criminal offence is suspended for the period during which the person who committed the criminal offence absconds from investigation or court. According to the above-mentioned rules in conjunction with Article 4 of the Code, there are no time limits for crimes stipulated in Articles 89 and 90. No one can be convicted for crimes stipulated in Article 151, 152 and 153 after 5 years between the commission of the criminal offence and the entry into force of the corresponding court judgement.

As for time limits to bring an action, Article 9 of the Code of Administrative Court Procedure stipulates the following requirements:

"Article 9. Term for filing of action

(1) An action for annulment of an administrative act may be filed with an administrative court within thirty days after the date on which the administrative act was made public, unless otherwise provided by law.

(2) If an administrative authority refuses to issue an administrative act or take a measure, an action requiring the issue of the administrative act or the taking of the measure may be filed within thirty days after the date on which refusal was communicated, unless otherwise provided by law.

(3) After pre-trial proceedings, an action may be filed with an administrative court within thirty days after the date on which the person was notified of the judgement on the whole or partial dismissal of the application included in the action in the pre-trial proceedings.

(4) An action for compensation for damage caused by an administrative act or measure may be filed within three years after the person filing the action became aware or should have become aware of the damage and of the person who caused it, but not later than ten years after the administrative act was issued or the unlawful measure was taken.

- (5) An action for the unlawful declaration of an administrative act or measure may be filed within three years after the administrative act was issued or the unlawful measure was taken.
- (6) An action for the establishment of the existence or absence of a public law relationship may be filed without a term.
- (6¹) An action against a private or legal person may be filed in accordance with the terms provided for in law.
- (7) An action against a decision on extradition of a person to a foreign state shall be filed with an administrative court within three days after the decision on extradition was made.
- (8) If several applications are included in an action, an appropriate term applies to each application. A new application may be included in an action only in accordance with the terms provided for in this section.

... "

According to the Law on General Principles of the Civil Code, the general limitation period for claims based on legal provision is ten years (Article 149) and 3 years in case of illegal causing of damage (Art. 150). A court shall apply the limitation only at the request of an interested party (Article 143).

According to Article 143 of the Law of Republic of Estonia on Employment Contracts:

- “(1) The parties have recourse to a labour dispute resolution body for resolution of disputes which arise in the application of this Law within four months after the date following the date on which they became aware or should have become aware of the violation of their rights.
- (2) The parties have recourse to a labour dispute resolution body to dispute the justification for termination of an employment contract within one month, calculated from the date which followed the date that they became aware or should have become aware of the violation of their rights”.

According to the amended Law on Legal Chancellor, an application to the Chancellor Office may be submitted within one year (discrimination in public sector) or within four months (conciliation procedure between private parties) from the day when a person becomes aware or should become aware of discrimination (Section 2 of Article 34 and Article 35⁶). The Chancellor's decision addressed to a public institution is a recommendation (Article 35²). If in the conciliation procedure the parties are unable to reach an agreement or one of the parties does not consent to take part in it, an action should be brought to the court within 30 days from the day of receipt of a relevant note (Section 1 of Article 35¹⁵). If the parties came to an agreement, it becomes obligatory and enforceable by a bailiff (Section 2 of Article 35¹⁴).

d. The burden of proof

There is no shift in the burden of proof in cases regarding discrimination on the basis of race, ethnic origin, age, disability, sexual orientation or religious belief in Estonian penal, administrative or civil courts.

The first version of the Draft Law on Equality did incorporate this principle. However, after the amendments were introduced to the draft, the alleged discriminator's "obligation to prove" absence of discrimination in a particular case was substituted with the "obligation to clarify" the circumstances of the case:

“Article 7. Shared obligation of proof

In a case where a person alleges to be a victim of the breach of equal treatment principle and submits an application to a competent institution and this application makes evident that a case of direct or indirect discrimination has taken place, a person against whom this application was brought is obliged to clarify the circumstances of the case”.

Considering the very terms used in this provision of the Draft Law on Equality we may conclude that it foresees weaker protection for discrimination victims comparing with Racial Equality and Employment Equality Directives.

e. Victimization

Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive)

Estonian law does not recognise the concept of victimisation. A victim can use only ordinary protective mechanism against unlawful actions. However, Article 94 of the Law of the Republic of Estonia on Employment Contracts limits employer’s opportunities for termination of an employment contract with an employee who is elected to represent other employees.

According to Section 2 of Article 17 of the Draft Law on Equality, an employer cannot act so as to deteriorate an employer's circumstances because the latter has addressed the Legal Chancellor, court or other institution in order to protect his or her rights.

f. Sanctions

Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive)

The sanctions for the above-mentioned discrimination-related crimes are efficient and proportional. Additionally the Estonian court recognises the right to moral damage compensation if appropriate. Restrictions in this field are mostly connected to the right of public figures for compensation for moral damages. In such cases, compensation is paid only if a court finds that the negative information based on false data has blackened considerably public figure’s reputation.

According to Law on Employment Contract, the Labour Inspection has a right to make precepts in case of violation of this act (Article 145). The Law also foresees sanctions for illegal termination of the contract:

“Article 117. Liability of employer upon illegal termination of employment contract

(1) Upon illegal termination of an employment contract by an employer, the employee has the right to demand reinstatement in his or her position, amendment of the statement which was the basis for termination of the employment contract and payment of his or her average wages for the time of compelled absence from work.

(2) If an employee waives reinstatement of his or her position, the employer is required to pay compensation to the employee which amounts to six months’ average wages.

(3) If a representative of the employees waives reinstatement of his or her position, the employer is required to pay compensation to the representative which amounts to six months’ average wages”.

An employee may apply to a labour dispute commission or directly to the court. Decisions of the Labour Dispute Commissions may be disputed in courts also.

There are no case law or practice on the issue in Estonia. The Labour Inspection did not reveal cases of discrimination on the basis of race, ethnic origin, disability, sexual orientation or religious belief. There

were no employers' applications regarding discrimination on the above-mentioned basis filed to the Inspection. Neither did the Labour Dispute Commissions solve cases concerning discrimination.

According to the Draft Law on Equality, a person who is wronged by discrimination may bring an action or complaint to the court. He or she can also apply to the Legal Chancellor Office. If the conciliation procedure (non-official domain) results in an agreement confirmed by the Chancellor, this decision becomes final and a person can apply to the court only if the Chancellor had considerably breached the procedure and it could (or might) influence the agreement (Section 2 of Article 35¹⁵ of the Law on Legal Chancellor). The agreement between parties of the conciliation procedure may include an obligation to commit certain actions and to pay compensation to a victim (Article 35¹²). The court will also decide on compensation for damages (including moral damages) if a victim brings an action against an employer or other person. In all cases compensation must be effective and proportionate: It must depend on the extent, duration and type of discrimination. Compensation may be diminished if an employer has removed discriminative circumstances by the beginning of the court procedure (Article 23 of the Draft Law on Equality).

g. Dissemination of information

Article 10 (Racial Equality Directive) and Article 12 (Employment Equality Directive)

The problem of fight against discrimination has very recently been recognised by Estonian officials. The incentive for change brought about the Racial Equality Directive and Employment Equality Directive, whose requirements should be introduced to the legal systems of EU Candidate-States.

As it was mentioned above, Article 17 of the Draft Law on Equality requires that an employer will raise workers' awareness about rights guaranteed by this Law.

According to the Draft Law on Equality (Articles 21 and 22), respective ministries ought "to counsel and inform the Government of the Republic and governmental and local self-government institutions and other interested persons and the common public on the issues related to implementation of that Law". The same obligation is stipulated for Legal Chancellor in the amended Law on Legal Chancellor (Article 35¹⁶).

h. Social dialogue and NGOs

Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

The Ministry of Justice has drawn educational institutions and NGOs into the process of the elaboration of the Draft Law on Equality. They were invited to make comments relating to the draft law which were later analysed by the authors of the draft. Public debate on the draft was initiated at the Internet portal of the Foundation *Estonian Law Centre*.

The Ministry of Social Affairs has also tried to attract public attention and initiate public discussion on gender equality issues and on the draft of the Law on Gender Equality.

According to the amended Law on Legal Chancellor, he or she will be obliged to assist relative co-operation between different persons and institutions, which will promote social dialog on the issue (Article 35¹⁶).

Chapter 3 Specialised bodies

Article 13 (Racial Equality Directive)

As yet there is no specialised body to fight against discrimination in Estonia. However, at least to a certain extent, the relevant assistance can be provided to a victim by the Legal Chancellor who since 1999 has received special powers of ombudsman.

According to the Law on Legal Chancellor (in old version valid till 1 January 2004) everyone has a right without limitation to apply to him or her to supervise the performance of the state institutions, including the provision for constitutional rights and freedoms (Article 19). The said procedure may be initiated upon filing a respective application, or by the Chancellor on the basis of information available to him/her (Article 21). If there are violations detected, the Chancellor may advise the respective state body on how this can be rectified. He or she can also issue a memorandum or an appeal – this is the right guaranteed to everybody, under Article 46 of Constitution (Section 2 of Article 20).

In 1999-2001 there was only one complaint connected to Article 12 of the Constitution. It concerned the provision of the Law on Family that bans marriage between persons of the same sex. In this case the ombudsman found no contradiction with the constitutional principle of non-discrimination.

In June 2001 a branch of the Legal Chancellor Office was founded in Ida-Viru County (a region on the Estonian-Russian boarder where minorities constitute majority of urban population).

The amended Law on Legal Chancellor will make it possible for him or her to provide effective protection against discrimination (including cases of multiple discrimination while the same body will deal with discrimination on the basis 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 (Section 2 of Article 19). Furthermore, the Chancellor will have other duties as follows (Article 35¹⁶):

- 1) The influence of the implementation of legal acts on differing status levels in society;
- 2) to counsel and inform the Government of the Republic and governmental and local self-government institutions and other interested persons and the common public on the issues related to implementation of the principles of equality and equal treatment;
- 3) to make proposals to the Government of the Republic, governmental and local self-government institutions, and employers to change legal acts;
- 4) In order to implement the principles of equality and equal treatment, to promote co-operation between private and legal persons and institutions on an international and domestic level;
- 5) to promote in co-operation with other persons the principles of equality and equal treatment.

Additionally, activities to work out guidelines for promotion of equality and equal treatment and relative counselling of the Government will be a responsibility of the special Equality and Equal Treatment Board which will be formed by high ranked officials, parliamentarians, and representatives of workers, employers, higher schools, NGOs and the Government (Articles 19 and 20 of the Draft Law on Equality). Additionally the Law scrutinises responsibilities of the state institutions in the field of the fight against discrimination. Thus, the Ministry of Social Affairs is to promote gender equality (Article 21).

Chapter 4 Compliance and implementation

Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive)

a. Screening

The provisions of the Estonian Constitution are directly applicable and the basic principle of equal treatment is provided for in Article 12. These provisions have priority over all other legal acts in Estonia. International treaties will not be ratified if they contradict Constitution (Article 123 of the Constitution).

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

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

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

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

Appendix I. Index of the Estonian Laws Referred to in the Report

English version of the title of the legal act	Estonian (original) title of the legal act	References to the official State Gazettes
Code of Administrative Court Procedure	<i>Halduskohtumenetluse seadustik</i>	RT I 1999, 31, 425
Code of Civil Procedure	<i>Tsiviilkohtumenetluse seadustik</i>	RT I 1998, 43/45, 666
Code of Criminal Procedure	<i>Kriminaalmenetluse koodeks</i>	ENSV ÜT 1961, 1, 4 and lisa, consolidated text RT I 2000, 56, 369
Constitution of the Republic of Estonia	<i>Eesti Vabariigi põhiseadus</i>	RT 1992, 26, 349
Criminal Code (invalid)	<i>Kriminaalkoodeks (kehtetu)</i>	RT 1992, 20/22, 287, consolidated text RT I 1999, 38, 48
Law on Advertising	<i>Reklaamiseadus</i>	RT I 1997, 52, 835
Law on Adult Education	<i>Täiskasvanute koolituse seadus</i>	RT I 1993, 74, 1054, consolidated text RT I 1998, 71, 1200
Law on Applied Higher Institution	<i>Rakenduskõrgkooli seadus</i>	RT I 1998, 61, 980
Law on Basic School and Gymnasium	<i>Põhikooli- ja Gümnaasiumiseadus</i>	RT I 1993, 63, 892, consolidated text RT I 1999, 42, 497

Law on Cultural Autonomy of National Minority	<i>Vähemusrahvuse kultuuriautonomias seadus</i>	RT I 1993, 71, 1001
Law on Courts	<i>Kohtute seadus</i>	RT I 2002, 64, 390
Law on Employment Service	<i>Tööturuteenuse seadus</i>	RT I 2000, 57, 370
Law on General Principles of the Civil Code	<i>Tsiviilseadustiku üldosa seadus</i>	RT I 2002, 35, 216
Law on Holidays	<i>Puhkuseseadus</i>	RT I 2001, 42, 233
Law on Individual Labour Dispute Resolution	<i>Individaalse töövaidluse lahendamise seadus</i>	RT I 1996, 3, 57
Law on Juvenile Sanctions	<i>Alaealise mõjutusvahendite seadus</i>	RT I 1998, 17, 264
Law on Legal Chancellor	<i>Õiguskantsleri seadus</i>	RT I 1999, 29, 406
Law on Military Service	<i>Kaitseväeteenistuse seadus</i>	RT I 2000, 28, 167
Law on Obligations	<i>Võlaõigusseadus</i>	RT I 2001, 81, 487
Law on Occupational Health and Safety	<i>Töötervishoiu ja tööohutuse seadus</i>	RT I 1999, 60, 616
Law on Pre-school Children Institution	<i>Koolieelse lasteasutuse seadus</i>	RT I 1999, 27, 387
Law on Public Service	<i>Avaliku teenistuse seadus</i>	RT I 1995, 16, 228; consolidated text RT I 1999, 7, 112
Law of the Republic of Estonia on Education	<i>Eesti Vabariigi haridusseadus</i>	RT 1992, 12, 192
Law of the Republic of Estonia on Employment Contracts	<i>Eesti Vabariigi töölepingu seadus</i>	RT 1992, 15/16, 241
Law of the Republic of Estonia on Superannuated Pensions	<i>Eesti Vabariigi soodustingimustel vanaduspensionide seadus</i>	RT 1992, 21, 292
Law of the Republic of Estonia on Wages, Pension and Social Guarantees for Members of Riigikogu	<i>Eesti Vabariigi seadus Riigikogu liikmete ametipalga, pensioni ja muude sotsiaalsete garantiide kohta</i>	RT 1992, 28, 381
Law on State Liability	<i>Riigivastutuse seadus</i>	RT I 2001, 47, 260
Law on State Pension Insurance	<i>Riikliku pensionikindlustuse seadus</i>	RTI 2001, 100, 648
Law on Traffic	<i>Liiklusseadus</i>	RT I 2001, 3, 6; consolidated text RT I 2002, 92, 531
Law on Vocational School	<i>Kutseõppeasutuse seadus</i>	RT I 1998, 64-65, 1007; consolidated text RT I 2001, 68, 406
Law on Wages	<i>Palgaseadus</i>	RT I 1994, 11, 154
Law on Working and Rest Time	<i>Töö- ja puhkeaja seadus,</i>	RT I 2001, 17, 78
Penal Code	<i>Karistusseadustik</i>	RT I 2001, 61, 364, RT I 2002, 86, 504

NOTE: most of the texts of these laws are available on the Internet at: <http://www.riigiteataja.ee> (in Estonian) and <http://www.legaltext.ee> (in English).

Appendix II. List of Communications Referred to in the Report

1. Comments on the final draft of this report by the Ministry of Justice, Communication from the Ministry of Justice # 3-2-4/2162 of 6 June 2003. Signed by Mr. Priidu Pärna, Chancellor of the Ministry (on behalf of the Minister of Justice)
2. Comments on the first draft of this report by the Ministry of Justice, Communication from the Ministry of Justice #3-2-4/2162 of 11 February 2003. Signed by Mr. Priidu Pärna, Chancellor of the Ministry (on behalf of the Minister of Justice)
3. Communication from the Office of Eminent Kornelius, Metropolitan of Tallinn and all Estonia, Chairman of the Synod of the Estonian Orthodox Church of Moscow Patriarchate # 25 of 3 February 2003. Signed by Eminent Kornelius, Metropolitan of Tallinn and all Estonia
4. Communication from the Estonian Labour Market Board of 28 January 2003. Signed by Ms. Elo Parveots, Acting Director of Strategy and Analysis Bureau, Estonian Labour Market Board
5. Communication from the Minister for Population Affairs # 3-4.3/8542 of 17 January 2003. Signed by H.E. Mr. Eldar Efendijev, Minister for Population Affairs
6. Communication from the Legal Chancellor Office # 1-14/391 of 24 December 2002. Signed by Mr. Allar Jõks, Legal Chancellor.
7. Communication from the Head of the Delegation of the European Commission in Estonia # D0009/02 of 6 January 2003. Signed by H.E. Mr. John Kjaer, Head of Delegation
8. Communication from the Ministry of Justice of 3 January 2003. Signed by Ms. Helen Kranich, Adviser of the Public Law Department
9. Communication from the young lesbians' organisation "Mea culpa" of 3 December 2002. Signed by Ms. Epp-Kristiina Keerov, Leader
10. Communication from the Labour Inspection # 4-2/375v of 9 December 2002. Signed by Mr. Priit Siitan, Chief-Director
11. Communication from the Ministry of Social Affairs # 1-6/6687 of 5 December 2002. Signed by Ms. Pille Rebane, Director of Labour Market Department, Acting Vice-Chancellor
12. Communication from the Security Police Board # 5706 of 15 January 2002. Signed by Mr. Toivo Kamenik, Director
13. Communication from the Security Police Board # 6649 of 19 January 2001. Signed by Mr. Toivo Kamenik, Director
14. Communication from the Legal Chancellor Office # 1-14/328 of 5 January 2001. Signed by Mr. Aare Reenumägi, Acting Legal Chancellor

Appendix III. Ratification by Estonia of International Anti-discrimination Instruments

Adopted in the framework of the UN

Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entry into force in Estonia 19 January 1992 (RT II 1994/27/103))

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entry into force in Estonia 20 November 1991 (RT II 1995/5-6/30))

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force in Estonia 21 January 1992 (RT II 1993/10-11/13))

International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force in Estonia 21 January 1992 (RT II 1993/10-11/11))

Optional Protocol to the Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force in Estonia 21 January 1992 (RT II 1993/10-11/12))

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (adopted 26 November 1968, entry into force in Estonia 21 January 1992 (RT II 1994/16-17/50))

International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entry into force in Estonia 20 November 1991 (RT II 1995/5-6/29))

Convention on the Elimination of All Forms of Discrimination against woman (adopted 18 December 1979, entry into force in Estonia 20 November 1991 (RT II 1995/5-6/31))

International Convention against Apartheid in Sports (adopted 10 December 1985, entry into force in Estonia 20 November 1991 (RT II 1996/8/26))

Convention on the Rights of the Child (adopted 20 November 1989, entry into force in Estonia 20 November 1991 (RT II 1996/16/56))

Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees (adopted 28 July 1951 and 31 January 1967, entry into force in Estonia 9 July 1997 and 9 April 1997 (RT II 1997, 6, 26))

Adopted in the framework of Council of Europe

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 3, 5, 8 and as completed by Protocol N° 2 (ETS 5, 9, 44, 45, 55, 118, 146, 155) (adopted 4 November 1950, entry into force in Estonia 16 April 1996 (RT II 1996/11-12/34))

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS 9) (adopted 20 March 1952, entry into force in Estonia 16 April 1996 (RT II 1996/11-12/34))

Protocol N° 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms other than those included in the Convention and in Protocol N° 1 (ETS 46) (adopted 16 September 1963, entry into force in Estonia 16 April 1996 (RT II 1996/11-12/34))

Protocol N° 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (ETS 114) (adopted 28 April 1983, entry into force in Estonia 1 May 1998 (RT II 1998/12/22))

Protocol N° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS 117) (adopted 22 November 1984, entry into force in Estonia 1 July 1996 (RT II 1996/11-12/34))

Protocol N° 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS140) (adopted 6 November 1990, entry into force in Estonia 1 July 1996 (RT II 1996/11-12/34))

Protocol N° 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS 146) (adopted 25 March 1992, ratified by Estonia 13 March 1996, does not in force yet (RT II 1996/11-12/34))

Protocol N° 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (ETS 155) (adopted 11 May 1994, entry into force in Estonia 1 November 1998 (RT II 1996/11-12/34))

Protocol N° 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, on principle of non-discrimination (ETS 155, **not yet in force**) (signed 4 November 2000)

Framework Convention for the Protection of National Minorities (ETS 157) (adopted 5 November 1992, entry into force in Estonia 1 February 1998 (RT II 1996/40/154))

European Social Charter (revised)(ETS 163) (adopted 3 May 1996, entry into force in Estonia 14 July 2000 (RT II 2000/15/93))