

Executive Summary

Estonian Country Report on measures to combat discrimination

by Vadim Poleshchuk, 2007

1. Introduction

Estonia is a multi-ethnic society. According to the 2000 national census, non-ethnic Estonians made up one third of all residents, the majority of them are (80%) ethnic Russians. In 2007, almost 1/5 of the total population were not citizens of Estonia (the majority are stateless former Soviet citizens and citizens of the Russian Federation). Most of them are members of minorities who settled in Estonia after the Second World War and their descendants. In recent years Estonia has adopted several policy documents to deal with vulnerable social groups, e.g. the State Programme “Integration in Estonian Society 2000-2007” (ethnic and national minorities). New programme was approved in April 2008 to facilitate minority groups’ integration into the society. Special social policy measures were taken to address the concerns of women, disabled, elderly and the young. Estonian society is rather indifferent towards religion and faiths.

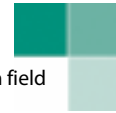
Before the accession of Estonia to the EU there was no detailed anti-discrimination legislation. Furthermore, most of the recent positive changes in this field were the result of harmonisation of Estonian legislation with the *acquis*. The more significant changes took place in 2003-2004. Importantly, the process of harmonisation has enriched the non-discrimination discourse. In spring 2008 a draft Law on Equal Treatment was pending in the Parliament.

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

It appears that the level of awareness regarding discrimination issues is rather low in Estonian society. Special measures are vitally needed to propagate new opportunities to fight against discrimination on the basis of the amended Law on Employment Contracts and the Law on the Chancellor of Justice. Importantly, the level of cooperation of the equality body with NGOs and social partners should also be enhanced.

2. Main legislation

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



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

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

In addition to generally worded anti-discrimination provisions in the Constitution and other laws, and as well as relevant criminal provisions, the structure of Estonian anti-discrimination law is now shaped by three legal acts: Law on Gender Equality (adopted 7 April 2004); Law on Employment Contracts (relevant amendments adopted on 22 April 2004); Law on the Chancellor of Justice (relevant amendments adopted on 11 February 2003). The two latter laws were specifically amended to transpose the requirements of the EU anti-discrimination directives 2000/43 and 2000/78.

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

The Law on Employment Contracts regulates *only* employment relations on the basis of this contract and prohibits ‘unequal treatment’ on the grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership of workers’ associations, political opinions or membership of a political party or religious or other beliefs.

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

If adopted, the new Law on Equal Treatment will finalise the process of harmonisation of Estonian legislation with the *acquis*.



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) and in some other laws. Only the Law on Gender Equality and the Law on Employment Contracts include very detailed definitions of direct and indirect discrimination ('unequal treatment'), harassment and the prohibition of the instruction to discriminate. However, according to their definitions, harassment can only take place in "a relationship of subordination or dependency".

The Penal Code includes provisions that may protect victims from the most violent acts of harassment. Under the circumstances of 'non-violent' harassment, a victim can also use those legal means that are provided by law for compensation for moral damage.

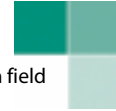
The Law on Employment Contracts does not regard it as discrimination if an employer considers sex, level of language proficiency, age or disability upon employment of a person, or upon giving instructions or enabling access to retraining or in-service training, if it is an essential and determinative professional requirement. The same law includes provisions regarding reasonable accommodation, which was worded as the permission of preferential treatment of disabled workers in the context of the working environment (but without any positive obligations for an employer). General requirements regarding working conditions for disabled workers might be found in the Law on Occupational Health and Safety. Partial reimbursement of employer's expenses that are necessary for the accommodation of a disabled worker is now possible on the basis of the Law on Labour Market Services and Benefits.

The Law on Employment Contracts also allows preferences to be granted on the following grounds: pregnancy; confinement; care for minors or adult children or parents who are unable to work; representation of the interests of employees or membership of workers' associations. Furthermore, it is possible to allow a suitable regime of working and rest time which satisfies the religious requirements of an employee.

The concept of victimisation does not exist in Estonian law (save for the special protection afforded to an employee who is elected to represent other workers). There are also no rules, plans for adoption of such rules or case law dealing with situations of multiple discrimination and discrimination by association.

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

The draft Law on Equal Treatment includes definitions of harassment, reasonable accommodation and victimisation, which are very similar with those in the Directives.



4. Material scope

Article 12 of the Constitution bans discrimination in all spheres of activities which are regulated and protected by the state. As for existing laws, there are no detailed rules against discrimination on grounds other than sex in the field of education (apart from employees' training), social protection and advantages, access to publicly available goods and service and housing. The draft Law on Equal Treatment is going to ban discrimination on the grounds of ethnicity, race, colour, religion or belief, age, disability and sexual orientation in the areas requested by the respective directives.

As for the sphere of employment, the Law on Employment Contracts is applicable solely to the relations between an employer and an employee on the basis of an employment contract. People who have applied for employment are also protected. The prohibition of discrimination is applicable to employment and entry into employment contracts, remuneration, promotion in employment or office, giving work-related tasks, termination of employment contracts, access to retraining or in-service training or otherwise engaged in employment relations.

The Law on Employment Contracts does not regulate the work of public officials, self-employed people and some other categories of the working population. There are no special anti-discrimination provisions covering access to membership of workers' organisations. Furthermore, the Law does not apply to work in a religious organisation as a person conducting religious services, if the statute of the organisation does not require entry into an employment contract with such person.

The Law on Public Service does not include special anti-discrimination provisions regarding the armed forces, police, prison or emergency services and other fields of public service in Estonia (these areas are covered only by the Constitution and the Penal Code). However, the Law on Employment Contracts is applicable to the support staff (workers without a status of a public official) of the state and municipal institutions and therefore these persons are protected by its anti-discrimination provisions.

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

5. Enforcing the law

A victim of discrimination can use criminal procedures (if s/he has suffered from crimes stipulated by the Penal Code), administrative court procedures (e.g. complaints against action by an official or state/municipal institution) and civil procedures (e.g. moral damage) to bring forward their complaints. Additionally, a person can file an application to non-judicial entities such as the labour dispute commissions and the Chancellor of Justice's Office. However, there is still no developed practice of judicial or quasi-judicial bodies dealing with discrimination-related offences in Estonia.



In Estonia detailed anti-discrimination rules were established in the field of employment, while individual labour disputes regarding discrimination are solved by labour dispute resolution bodies (labour dispute commissions and courts) and the Chancellor of Justice. The Law on Employment Contracts introduced a provision regarding a shift in the burden of proof. It was worded as an obligation to give clarification, but not as an obligation to prove to a labour dispute resolution body or to the Chancellor of Justice, the absence of discrimination in a particular case. Special reference is made to the right to compensation for physical and moral damages to a victim of discrimination; however, these provisions have rarely been applied in practice.

The labour dispute commissions follow a quasi-court procedure established in the Law on the Resolution of Individual Labour Disputes. Decisions must be based on law and must be substantiated. In 2006-2007 the commissions received altogether fourteen complaints with demands related to the issue of discrimination (including sexual harassment).

In case of discrimination by public institutions the Chancellor of Justice may be involved as an ombudsman and the procedure can be initiated on the basis of an application from the victim or on the Chancellor's own initiative. The opinion of the Chancellor of Justice regarding such cases consists of a suggestion, proposal or critical notes and is not of a legally binding nature. However, the law makes provision for certain measures to ensure the fulfilment of the Chancellor of Justice's suggestions and proposals (the Chancellor of Justice may report about non-compliance or failure to cooperate to the authority which exercises supervision over the relevant agency, to the government or to the parliament).

As a special quasi-judicial institution, the Chancellor of Justice's Office may deal with discrimination by natural persons and legal persons in private law in the context of a special conciliation procedure. The aim of this procedure is to reach an agreement between the victim and the person suspected of discrimination on the above-mentioned grounds. The conciliation procedure can be initiated only on the basis of an application from the victim. In such a procedure a person who has a legitimate interest in monitoring compliance with the requirements for equal treatment may also act as a representative of a victim of discrimination. The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff. It may also include an obligation to pay compensation. If the conciliation procedure fails, a victim may seek protection of his or her rights in court.

The Chancellor may experience difficulties in dealing with discrimination on grounds other than sex and/or in fields other than ordinary employment because there are no detailed legal provisions to address these issues in Estonia. Furthermore, information about the new responsibilities of the Chancellor of Justice is limited among the general public and this has resulted in a very small number of complaints being made on the basis of the new provisions of the Law on the Chancellor of Justice (twelve applications to start a conciliation procedure in 2004-2007).

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



6. Equality body

Since 1 January 2004 the Chancellor of Justice was vested with new powers on combating discrimination in Estonian society. Now he or she is supposed to:

- 1) analyse the effect of the implementation of legislation to the condition of the members of the society;
- 2) advise and inform the Government of Estonia, governmental and local government institutions, other interested persons and the general public on issues related to the implementation of the principles of equality and equal treatment;
- 3) make proposals to the Government of Estonia, governmental and local government institutions and employers to change legal acts;
- 4) promote co-operation between private and legal persons and institutions on an international and domestic level in the interests of adherence to the principles of equality and equal treatment;
- 5) promote in co-operation with other persons and bodies the principles of equality and equal treatment. In practice the work of the Chancellor of Justice in the field shall be enhanced.

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 of Justice has the same rights which are granted by law to a minister in directing a ministry. The Chancellor is independent in his or her decision-making and the office has a budget of its own.

The draft Law on Equal Treatment foresees the creation of the second equality body – the equality commissioner who *inter alia* will provide assistance to people pursuing their complaints about discrimination and will publish specific reports on non-discrimination matters.