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including summary

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# **Country report**

## **Non-discrimination**

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

### **Estonia**

Vadim Poleshchuk

Reporting period 1 January 2020 – 1 January 2021

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**Universiteit Utrecht**

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## EXECUTIVE SUMMARY

### 1. Introduction

Estonia is a heterogeneous society. According to the 2011 national census, there were representatives of more than 150 ethnic groups residing in Estonia, including the two biggest groups: Estonians (70 %) and Russians (25 %). According to data from the Population Registry, in 2019, 15 % of the population were non-citizens, including former Soviet citizens with 'undetermined' citizenship.

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

### 2. Main legislation

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

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

In addition to generally worded anti-discrimination provisions in the Constitution and some other laws, the structure of Estonian anti-discrimination law is now shaped by two laws: the Chancellor of Justice Act<sup>2</sup> and the Equal Treatment Act.<sup>3</sup> These laws were specifically amended/adopted to transpose the requirements of the EU anti-discrimination Directives 2000/43 and 2000/78.

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

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

Under the criminal provisions of the Penal Code,<sup>4</sup> 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, violence or discrimination on the basis of ethnic origin, race, colour,

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

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

<sup>3</sup> Equal Treatment Act (*Võrdse kohtlemise seadus*), RT I 2008, 56, 315.

<sup>4</sup> Penal Code (*Karistusseadustik*), RT I 2001, 61, 364, RT I 2002, 86, 504.

sex, language, origin, religious belief (*usutunnistus*), sexual orientation, political opinion, financial or social status).<sup>5</sup>

Furthermore, the Gender Equality Act<sup>6</sup> prohibits discrimination on the basis of sex. It covers all spheres of public life. This act might be useful in the context of multiple discrimination.

### **3. Main principles and definitions**

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

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

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

According to the Employment Contracts Act, an employer can terminate an employment contract, inter alia, for reasons of an employee's long-term incapacity for work. Similar provisions are applicable to public officials. In 2014, the Tartu Administrative Court confirmed<sup>7</sup> that release from service of an ordinary public official on the ground of redundancy cannot be based on age criteria as that would be a breach of the principle of equal treatment (discriminatory redundancy).

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

### **4. Material scope**

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

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

In the private sector, the Chancellor of Justice in the context of conciliation procedures does not recognise discrimination-related complaints that concern the following: the professing and practising of faith or working as a person conducting religious services in religious organisations, relations in family or private life and the exercise of the right of succession.<sup>8</sup> In the public sector, the Chancellor, acting as an ombudsman may deal with any questions if it is appropriate to do so.

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<sup>5</sup> The term 'social status' is not defined in the text of the law. In practice, it can mean, for example, property status, the fact of being married, etc.

<sup>6</sup> Gender Equality Act (*Soolise võrdõiguslikkuse seadus*), RT I 2004, 27, 181.

<sup>7</sup> Tartu Administrative Court, Judgment of 10 October 2014 in administrative Case No. 3-14-164, *XXX v Social Insurance Board*.

<sup>8</sup> Participation in the conciliation procedure requires the consent of both parties. It is used very rarely in practice.



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

## 5. Enforcing the law

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

### – Judicial procedures

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

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

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

### – Non-judicial procedures

- Quasi-judicial procedures at labour disputes committees

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

- Conciliation at the Chancellor of Justice

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

- Ombudsman-like procedures

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

- Challenge proceedings at administrative authorities

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

In conciliation procedures, a person who has a legitimate interest in monitoring compliance with the requirements for equal treatment is guaranteed the legal right to act as a

representative of a victim of discrimination. Following some recent changes in legislation, no similar rules are now applicable to discrimination-related labour disputes. No special rules were introduced in Estonia in any other judicial or quasi-judicial procedures.

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

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

## **6. Equality bodies**

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

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

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

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

## **7. Key issues**

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

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

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

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

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

## INTRODUCTION

### The national legal system

The Estonian national legal system is typical for continental Europe. Historically it has been influenced by German (and to a lesser degree Russian and Scandinavian) legal traditions. The main sources of normative legal rules are provisions of the Constitution, laws and by-laws (secondary legislation). Case law (court decisions) cannot be regarded as a source of normative legal rules<sup>9</sup> in the way that legislation of general application can. However, the decisions of the Supreme (National) Court<sup>10</sup> do influence local legal practice to a considerable extent (they can be used as guidelines by the local legal community).

At the top of the Estonian legal system is the Constitution,<sup>11</sup> which includes the most important legal provisions (including provisions regarding fundamental human rights and freedoms and general principles of non-discrimination). The next level consists of the laws adopted by the *Riigikogu* – the Parliament. According to Article 102 of the Constitution, all laws must be adopted in accordance with the Constitution. The third level comprises other legal acts adopted by competent authorities on the basis of laws (e.g. decrees of the Government of the Republic). Additionally, there are normative acts of local self-government, which are valid in the respective territories: '[a]ll local issues shall be resolved and managed by local self-governments, which shall operate independently pursuant to law' (Article 154(1) of the Constitution).

According to Article 123 of the Constitution, Estonia cannot enter into international treaties that are in conflict with its Constitution. Furthermore, '[i]f laws or other legislation of Estonia are in conflict with international treaties ratified by the Parliament, the provisions of the international treaty shall apply'. Additionally, at a referendum held on 14 September 2003, the people of Estonia amended the Constitution with the following provision:<sup>12</sup> 'As of Estonia's accession to the European Union, the Constitution of the Republic of Estonia applies taking account of the rights and obligations arising from the Accession Treaty'. Furthermore, 'generally recognised principles and rules of international law are an inseparable part of the Estonian legal system' (Article 3(1)). Estonia has signed and ratified the vast majority of international instruments aimed at combating discrimination (see annex 2 to this report).

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

A request to review the constitutionality of legislation of general application or international treaties may be filed with the Supreme Court by the President of the Republic, the Chancellor of Justice,<sup>13</sup> the Parliament or a local council. Additionally, a court may initiate proceedings by delivering its judgment or ruling to the Supreme Court (Article 4 of the Constitutional Review Court Procedure Act).<sup>14</sup>

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<sup>9</sup> The exception to this is decisions of the Supreme Court in issues that are not regulated by other sources of criminal procedural law, but which arise in the application of law - Article 2(4) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Riigi Teataja I 2003, 27, 166, RT I 2004, 65, 456). Riigi Teataja (hereinafter RT) – Official State Gazette. For texts of Estonian legal acts and English translations of most of them: <http://www.riigiteataja.ee>.

<sup>10</sup> *Riigikohus*, the court of highest instance in Estonia.

<sup>11</sup> Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), 28 June 1992, RT 1992, 26, 349.

<sup>12</sup> RT I 2003, 64, 429. Valid since 14 December 2003.

<sup>13</sup> *Õiguskantsler*.

<sup>14</sup> Constitutional Review Court Procedure Act (*Põhiseaduslikkuse järelevalve kohtumenetluse seadus*), 13 March 2002, RT I 2002, 29, 174.

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

### **List of main legislation transposing and implementing the directives**

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

- Chancellor of Justice Act<sup>15</sup> (adopted 25 February 1999; entered into force on 1 June 1999; first relevant amendments adopted on 11 February 2003). Grounds covered (conciliation procedure): sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law; material scope (conciliation procedure): private sector except for 1) the professing and practising of faith or working as a minister of religion in religious associations with registered articles of association; 2) relations in family or private life; 3) the exercising of the right of succession.
- Equal Treatment Act<sup>16</sup> (adopted on 11 December 2008; entered into force on 1 January 2009). Grounds covered: ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation; material scope: identical with Directives 2000/43 and 2000/78 for the relevant grounds. The Equal Treatment Act introduced a new equality body: the Commissioner for Gender Equality and Equal Treatment.

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

Furthermore, the Penal Code<sup>17</sup> bans activities that publicly incite people to hatred, violence or discrimination on the basis of ethnic origin, race, colour, sex, language, origin, religion,<sup>18</sup> sexual orientation, political opinion or financial or social status (Article 151). Article 152 of the code penalises 'violation of equality', which is referred to as 'unlawful restriction of the rights of a human being or granting of unlawful preferences to a human being (*inimene*) on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion or financial or social status.'

Additionally, Article 153 of the code bans discrimination based on the genetic characteristics of the person, and Articles 154-155 provide for the protection of freedom of religion. Emphasis should be placed on the fact that the grounds of age and disability are not referred to in Articles 151 and 152 of the Penal Code.

The Gender Equality Act<sup>19</sup> (adopted 7 April 2004) prohibits sex discrimination in all spheres of public life (excluding professing and practising faith or working as a minister of religion in a registered religious association and relations in family or private life).

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<sup>15</sup> Chancellor of Justice Act (*Õiguskantsleri seadus*), 25 February 1999, RT I 1999, 29, 406.

<sup>16</sup> Equal Treatment Act (*Võrdse kohtlemise seadus*), 11 December 2008, RT I 2008, 56, 315.

<sup>17</sup> Penal Code (*Karistusseadustik*), 6 June 2001, RT I 2001, 61, 364, RT I 2002, 86, 504.

<sup>18</sup> In the Estonian context the term 'religion' (*usutunnistus*) would refer to any religious belief.

<sup>19</sup> Gender Equality Act (*Soolise võrdõiguslikkuse seadus*), 7 April 2004, RT I 2004, 27, 181.

## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

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

'Article 12.

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

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

These provisions apply to all areas covered by the directives. The Constitution provides an open-ended list of grounds of discrimination. Therefore, Estonian courts have repeatedly addressed the issue of discrimination on the grounds of age,<sup>20</sup> disability,<sup>21</sup> sexual orientation,<sup>22</sup> etc. in the context of Article 12 of the Constitution.

The material scope of the constitutional provisions is broader than those of the directives. In one of its judgments, the Constitutional Review Chamber of the Supreme Court claimed that the general principle of equality is applicable to 'all spheres of life'.<sup>23</sup> An Estonian academic who studied the application of this provision by the Supreme Court made the following summary:

'Article 12 of the Constitution does ban unequal treatment in all spheres of activities which are regulated and protected by the State. Legislative, executive and judicial powers should observe the principle of equal treatment. (...) The principle of equal treatment is valid for all laws regardless of their scope of application.'<sup>24</sup>

The constitutional anti-discrimination provisions are directly applicable.

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

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<sup>20</sup> E.g. Constitutional Review Chamber of the Supreme Court, Judgment of 1 October 2007, case 3-4-1-14-07.

<sup>21</sup> E.g. Supreme Court *en banc*, Judgment of 10 December 2003, case 3-3-1-47-03.

<sup>22</sup> E.g. Constitutional Review Chamber of the Supreme Court, Judgment of 18 December 2019, case 5-19-42.

<sup>23</sup> Constitutional Review Chamber of the Supreme Court, Judgment of 6 March 2002, Case No. 3-4-1-1-02, point 13; published in RT III 2002, 8, 74.

<sup>24</sup> Lõhmus, K. (2003) 'Võrdsusõiguse kontroll Riigikohtus ja Euroopa Inimõiguste Kohtus' (Control over Equality in the Supreme Court and in the European Court of Human Rights), *Juridica*, No. 2, Vol. 11, p. 109.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The grounds of discrimination explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives (as listed in the Introduction above) are outlined below.

1) Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. Furthermore, the Equal Treatment Act 'does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified above, in particular due to family-related duties, social status, representation of the interests of employees or membership of an organisation of employees, level of language proficiency or duty to serve in defence forces' (Equal Treatment Act, Articles 1(1) and 2(3)).

2) Sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law - conciliation procedure (Chancellor of Justice Act, Article 19 (2)); no grounds are specifically mentioned in the Chancellor of Justice Act in the context of the ombudsman-like procedure.

The Public Service Act (Article 13) does not specify the grounds of discrimination. However, both the Equal Treatment Act and the Gender Equality Act apply to the protection of public officials.

The Employment Contracts Act (Article 3) refers to the Equal Treatment Act and the Gender Equality Act.

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

##### a) Racial or ethnic origin

The explanatory note that was attached to the draft Equal Treatment Act included the following clarifications regarding the protected grounds:<sup>25</sup>

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

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

There is no case law to highlight differences between 'race' and 'ethnicity' or to define the terms 'race' or 'ethnicity' ('ethnic origin').

The term 'ethnicity' is often understood in primordial terms. For instance, in one case the Tallinn District Court argued that 'ethnic origin cannot be altered but a person can develop better language proficiency'.<sup>26</sup>

##### b) Religion and belief

The explanatory note that was attached to the draft Equal Treatment Act included the following clarifications regarding religious, political and other beliefs (*usutunnistus*,

<sup>25</sup> See explanatory note attached to the draft No. 384 SE (11<sup>th</sup> Riigikogu); available at: <http://www.riigikogu.ee>.

<sup>26</sup> Judgment of the Tallinn District Court (*Tallinna Ringkonnakohtus*) of 30 November 2009 in administrative case 3-08-2604, para. 15.

*poliitilised või muud veendumused*): 'religious beliefs refer to a religious "world view"; political and other beliefs are all non-religious beliefs'.<sup>27</sup>

In law and practice, religion and belief are understood as covering both the *forum internum* and the *forum externum* (CJEU, *Achbita* C-157/15, para 28). According to Article 40(3) of the Constitution:

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

There is no case law related to the definition of the term 'religion'.

#### c) Disability

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

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

This definition might be compared with that provided in Article 2(1) of the Social Benefits for Disabled Persons Act:<sup>28</sup>

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

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

Therefore, the Estonian definition of disability is quite broad, but it is compatible with the concept of disability as worded in CJEU *HK Danmark (Ring and Skouboe Werge)*, C-335/11 and C-337/11.<sup>29</sup> However, there is no case law to clarify the definition of the term 'disability'.

#### d) Age

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

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

#### e) Sexual orientation

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

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<sup>27</sup> See explanatory note attached to draft No. 384 SE (11<sup>th</sup> *Riigikogu*); available at: <http://www.riigikogu.ee>.

<sup>28</sup> Social Benefits for Disabled Persons Act (*Puuetega inimeste sotsiaaltoetuste seadus*), 27 January 1999, RT I 1999, 16, 273.

<sup>29</sup> EU, OJ C 156, 1.6.2013, p. 6. The Estonian definition was adopted much earlier than these cases and the explanatory note refers only to the judgment of 11 July 2006, Chacón Navas, C-13/05, ECLI:EU:C:2006:456. However, the environmental aspect has always been implied.



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

### **2.1.2 Multiple discrimination**

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

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

In practice, Estonian courts and equality bodies do recognise that discrimination can occur on the basis of more than one characteristic / ground. However, no special rules were developed by courts and equality bodies to deal with cases of multiple discrimination.

### **2.1.3 Assumed and associated discrimination**

#### a) Discrimination by assumption

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

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

#### b) Discrimination by association

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

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

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

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

### a) Prohibition and definition of direct discrimination

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

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

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

### b) Justification for direct discrimination

The Equal Treatment Act does not provide for any justification for direct discrimination apart from the general exception in Article 9(1), which is examined in detail in Sections 2.3 and 4.7 below.

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

### a) Prohibition and definition of indirect discrimination

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

### b) Justification test for indirect discrimination

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

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

Some concerns have been raised in the context of official Estonian language proficiency requirements, which are officially established in both public and private sectors of employment (Article 23 of the Language Act).<sup>30</sup> In general, they are interpreted in Estonia as officially established occupational requirements. However, there is almost no case law that analyses language proficiency requirements in the context of anti-discrimination provisions.<sup>31</sup>

### 2.3.1 Statistical evidence

#### a) Legal framework

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

In Estonia, there are national rules permitting data collection. These are set out in the Personal Data Protection Act.<sup>32</sup> This act does not provide its own list/definition of sensitive data. However, it refers to EU Regulation 2016/679.<sup>33</sup> Article 20(1) of the Personal Data Protection Act provides for the rules of processing of sensitive data ('personal data of special categories'):

<sup>30</sup> Language Act (*Keeleseadus*), 23 February 2011, RT I, 18.03.2011, 1.

<sup>31</sup> See further analysis of Estonian law and practice in: Kochenov, D., Poleshchuk, V., Dimitrovs, A. (2013) 'Do Professional Linguistic Requirements Discriminate? – A Legal Analysis: Estonia and Latvia in the Spotlight', *European Yearbook of Minority Issues*, vol. 10; Poleshchuk, V. (2018) 'Professional Linguistic Requirements, Proportionality and Challenges for Estonia', *European Equality Law Review*, No. 1, 2018.

<sup>32</sup> Personal Data Protection Act (*Isikuandmete kaitse seadus*), 12 December 2018, RT I, 04.01.2019, 11.

<sup>33</sup> Special categories of personal data, aka sensitive data, are listed in Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1–88): data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

'Processing of personal data of special categories is permitted only if this is strictly necessary and only in the following cases:

- 1) admissibility of processing is provided for in the legislation;
- 2) processing is necessary in order to protect the vital interests of the data subject or of any other natural person; or
- 3) processing relates to personal data which are manifestly made public by the data subject'.

The Employment Contracts Act<sup>34</sup> (2009) provides that in pre-contractual negotiations or upon preparation of an employment contract in another manner, including in a job advertisement or job interview, an employer may not ask the person applying for employment for any data with regard to which the employer does not have any legitimate interest. The absence of the employer's legitimate interest is presumed first of all in the case of questions which disproportionately concern the private life of the person applying for employment or which are not related to their suitability for the job offered (Article 11 (1)-(2)).

In Estonia, statistical evidence may be permitted in order to establish (indirect) discrimination. Estonian law does not explicitly ban the use of statistical evidence in courts (Article 229 of the Code of Civil Procedure).<sup>35</sup> The explanatory note to the draft Equal Treatment Act refers to statistical and sociological data in the context of indirect discrimination (although without providing any details or explanations).<sup>36</sup> In practice, Estonian courts permit statistical evidence in discrimination-related cases, although such claims must be substantiated.<sup>37</sup>

#### b) Practice

In Estonia, statistical evidence in order to establish indirect discrimination is rarely used in practice in order to establish indirect discrimination.

### **2.4 Harassment (Article 2(3))**

#### a) Prohibition and definition of harassment

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

In Estonia, harassment explicitly constitutes a form of discrimination.

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

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

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<sup>34</sup> Employment Contracts Act (*Töölepingu seadus*), 17 December 2008, RT I 2009, 5, 35.

<sup>35</sup> Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*), 20 April 2005, RT I 2005, 26, 197.

<sup>36</sup> See explanatory note attached to the draft No. 384 SE (11<sup>th</sup> *Riigikogu*); available at: <http://www.riigikogu.ee>.

<sup>37</sup> For example, in one of the 2020 cases, the Estonian court considered the complainant's statistical evidence but did not find it convincing. The case concerned alleged age discrimination in access to employment in a municipality. See: Judgment of the Tartu District Court (*Tartu Ringkonnakohus*) of 19 November 2020 in administrative case no. 3-19-504. See also the case summary in section 12.2 of this report.

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

b) Scope of liability for harassment

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

The Estonian Equal Treatment Act is silent about such issues. However, according to the Law of Obligations Act<sup>38</sup> (Article 1054):

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

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

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

## **2.5 Instructions to discriminate (Article 2(4))**

a) Prohibition of instructions to discriminate

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

In Estonia, instructions explicitly constitute a form of discrimination.

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

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

b) Scope of liability for instructions to discriminate

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

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<sup>38</sup> Law of Obligations Act (*Võlaõigusseadus*), 26 September 2001, RT I 2001, 81, 487.

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

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

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

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

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

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

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

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

It should be noted that Estonian law also provides for general employer's obligations regarding vulnerable groups of workers. According to Article 10<sup>1</sup>(4) of the Occupational Health and Safety Act:<sup>39</sup>

'The work, work equipment and workplace of a disabled employee shall be adapted to his or her physical and mental abilities. Adaptation means making the building, workroom, workplace or work equipment of the employer accessible and usable for a disabled person. This requirement also applies to commonly used routes and non-workrooms used by disabled employees.'

Certain legal provisions might be especially valuable in supporting the making of reasonable accommodations. Thus, the Labour Market Services and Benefits Act<sup>40</sup> provides unemployed disabled people with special services, including adaptation of premises and equipment. This service might be granted on the basis of an administrative contract between the Unemployment Insurance Fund<sup>41</sup> and an employer, in which the state will compensate the employer for 50-100 % of the reasonable expenses that are necessary for that adaptation (Article 20). Another service, namely 'providing free use of a technical appliance necessary for work', might be offered on the basis of an administrative contract between the Unemployment Insurance Fund and an employer or a disabled person (Article 21). Two other services are communication support at the interview with a potential employer and work with the assistance of a support person (Articles 22-23). According to Article 9(5) of the act, all of these services will only be granted to disabled persons<sup>42</sup> if they are necessary to overcome the disability-related obstacle to his or her employment, and if other employment services (e.g. information on the situation in the labour market,

<sup>39</sup> Occupational Health and Safety Act (*Töötervishoiu ja tööohutuse seadus*), 16 June 1999, RT I 1999, 60, 616. The relevant provisions were added in 2007. They were not intended to address the issue of reasonable accommodation, although they might be useful in this context.

<sup>40</sup> Labour Market Services and Benefits Act (*Tööturuteenuste ja -toetuste seadus*), 28 September 2005, RT I 2005, 54, 430.

<sup>41</sup> *Eesti Töötukassa*.

<sup>42</sup> In this context a disabled person is an unemployed person who has a disability or incapacity for work recognised on the basis of valid legislation (Article 2(4) of the Labour Market Services and Benefits Act).

employment mediation, vocational training, etc.) have been ineffective. There is no evidence that these measures are in fact being used to support de facto reasonable accommodation.

The provisions of the Labour Market Services and Benefits Act might be of added value for a worker who has become partially incapacitated for work in the employer's enterprise as a result of an occupational accident or occupational disease. According to the Occupational Health and Safety Act (Article 10<sup>1</sup>(3)), an employer is required to enable such a worker to continue work suitable for him or her in the enterprise, pursuant to the procedure provided in employment law.

b) Case law

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

c) Definition of disability and non-discrimination protection

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

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

In Estonia, failure to meet the duty of reasonable accommodation is not recognised as a form of discrimination.

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

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

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

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

### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

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

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

According to the formal interpretation of relevant legal provisions, those with an irregular status are entitled to the protection of the directives.

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

###### a) Protection against discrimination

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

The general anti-discrimination clause of the Constitution (Article 12) seems to cover both natural and legal persons for the purpose of protection against discrimination. The Supreme Court recognised equality before the law (the first sentence of Article 12 of the Constitution) as a right belonging to both natural and legal persons.<sup>43</sup> There have been no similar cases as regards prohibition of discrimination (the second sentence of Article 12 of the Constitution).

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

###### b) Liability for discrimination

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

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

###### a) Protection against discrimination

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

###### b) Liability for discrimination

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<sup>43</sup> Constitutional Review Chamber of the Supreme Court, Decision of 6 March 2002 in case 3-4-1-1-02 (*Petition of the Tallinn Circuit Court to declare the second sentence of Article 18(8) of Value Added Tax Act invalid*); published in RT III 2002, 8, 74, para. 13.

In Estonia, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination (Equal Treatment Act, Articles 2 and 24(1)).

## **3.2 Material scope**

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

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

### **3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

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

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

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

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

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

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

In Estonia, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive; only discrimination based on race, ethnic origin and colour is prohibited in respect of social protection<sup>44</sup> (Equal Treatment Act, Article 2(1)5). General anti-discrimination provisions of the Constitution (Article 12) also apply in this context.<sup>45</sup>

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<sup>44</sup> In the national context, social housing is covered under social protection: Social Welfare Act (*Sotsiaalhoolekande seadus*), 9 December 2015, RT I, 30.12.2015, 5.

<sup>45</sup> See e.g., Constitutional Review Chamber of the Supreme Court, Decision of 18 December 2019, Case No. 5-19-42. The case concerned the payment by the state of social tax for dependent spouses of insured employed persons, who are raising at least one child under eight years of age. The payment of social tax



a) Article 3(3) exception (Directive 2000/78)

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

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

In Estonia, national legislation prohibits discrimination in social advantages, as formulated in the Racial Equality Directive. Only discrimination based on race, ethnic origin and colour are prohibited in respect of social advantages (Equal Treatment Act, Article 2(1)5). Social advantages are translated as social benefits (*sotsiaaltoetused*) in the text of the Act. General anti-discrimination provisions of the Constitution (Article 12) also apply in this context.

In Estonia, the term 'benefits' will cover most of the likely social advantages available.

### 3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Estonia, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive; only discrimination based on race, ethnic origin and colour is prohibited in respect of education (Equal Treatment Act, Article 2(1)6). General anti-discrimination provisions of the Constitution (Article 12) also apply in this context.

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

In Estonia, the general approach to education for pupils with disabilities does not give rise to problems or major public concerns.

According to Article 4(1) of the Education Act,<sup>46</sup> the state and local self-government must ensure every person the opportunity to receive compulsory education (this requirement is essentially based on Article 37 of the Constitution). In conjunction with Article 12 of the Constitution this provision might be interpreted to the effect that compulsory education should be provided without any discrimination on any grounds. Several other provisions might be used by state and local government authorities to this end. For instance, it is possible to establish schools for students in need of enhanced support or special support (Article 2(4) of the Basic Schools and Upper Secondary Schools Act).<sup>47</sup> The Minister of Education and Research establishes special rules concerning the study of pupils with special educational needs at school (Article 32(7) of the Vocational Educational Institutions Act).<sup>48</sup>

The main approach in Estonia is inclusive education of pupils with disabilities in the mainstream educational system.<sup>49</sup>

In practice, criticism has been expressed regarding the reform of minority schools, i.e. the transition of upper secondary and professional Russian-language schools to studies being

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gives such spouses automatic access to the national health insurance system. The Supreme Court found it unconstitutional (*inter alia*, violating Art. 12 of the Constitution) that dependent registered same-sex partners did not have access to the scheme.

<sup>46</sup> Republic of Estonia Education Act (*Eesti Vabariigi haridusseadus*), 23 March 1992, RT I 1992, 12, 192.

<sup>47</sup> Basic Schools and Upper Secondary Schools Act (*Põhikooli- ja gümnaasiumiseadus*), 9 June 2010, RT I 2010, 41, 240.

<sup>48</sup> Vocational Educational Institutions Act (*Kutseõppeasutuse seadus*), 12 June 2013, RT I 22.12.2013, 2; Conditions and Procedure for Studying in a Vocational Educational Institution for Students with Special Educational Needs (*Haridusliku erivajadusega õpilase kutseõppeasutuses õppimise tingimused ja kord*), RT I, 08.01.2019, 8.

<sup>49</sup> See e.g., the most recent statistics available in: Kallaste, E. (2016), *Haridusliku erivajadusega õpilaste kaasava hariduskorralduse ja sellega seotud meetmete tõhusus. Teemaatliline raport: Statistiline ülevaade HEV levikust, kaasamisest ja tugimeetmete kasutamisest Eestis 2010-2014*, Eesti Rakendusuuringute Keskus CentAR, p. 28.

conducted predominantly in Estonian (the minimum is 60 % of educational work). For instance, in its most recent concluding observations on Estonia the UN Committee on Economic, Social and Cultural Rights stated that it 'remains concerned' at:

'[t]he lack of flexibility in implementation of the 60 percent quota of teaching in Estonian in the Russian-speaking secondary schools and vocational schools. This often creates difficulties for Russian-speaking students in the Russian-speaking schools to acquire mastery in core subjects that are taught only in Estonian and, in the case of vocational schools, leads to the insufficient number of qualified teachers capable of teaching the specialized subjects, as to adequately reflect this percentage and the school specificity.'<sup>50</sup>

The Estonian Government did provide an exception to the 60 % rule for the Tallinn German Upper Secondary School but refused to make a similar exception for several Russian-language schools. The Tallinn Administrative Court did not find violation of the principle of equal treatment in that respect.<sup>51</sup>

a) Trends and patterns regarding Roma pupils

In Estonia, there are no specific patterns existing in education regarding Roma pupils such as segregation. In the academic year 2017/2018 there were only 55 pupils in Estonian general education schools who spoke Roma language at home and 50 of them studied in ordinary classes of ordinary schools.<sup>52</sup>

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

In Estonia, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive (Article 2(1)7 of the Equal Treatment Act). Ethnic origin, race and colour are the only grounds that are covered. General anti-discrimination provisions of the Constitution (Article 12) also apply in this context.

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

a) Distinction between goods and services available publicly or privately

In Estonia, national law distinguishes between goods and services available to the public and those only available privately but provides no further details (Article 2(1)7 of the Equal Treatment Act). Although the provisions are contained in the Equal Treatment Act, which covers further grounds, only discrimination based on race, ethnic origin and colour is prohibited in respect of access to and supply of goods and services.

### **3.2.9 Housing (Article 3(1)(h) Directive 2000/43)**

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

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<sup>50</sup> UN, Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Estonia*, E/C.12/EST/CO/3, 8 March 2019, para. 48(g). The UN Committee did not qualify the situation of Russian-language schools in legal terms.

<sup>51</sup> Tallinn Administrative Court, Decision of 25 January 2016, Case No. 3-15-2725.

<sup>52</sup> Ministry of Foreign Affairs (2019), *Eesti kaheteistkümnnes ja kolmeteistkümnnes perioodiline aruanne rassilise diskrimineerimise kõigi vormide likvideerimise konventsiooni täitmise kohta*, May 2019, para. 76. (on file with the author).

Although the provisions are contained in the Equal Treatment Act, which covers more grounds, only discrimination based on race, ethnic origin and colour is prohibited in respect of housing. General anti-discrimination provisions of the Constitution (Article 12) also apply in this context.

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

In a positive development, the Supreme Court has recently held that constitutional provisions on the right to family life, the protection of family and the principle of equality (Articles 26(1), 27(1) and 12(1) of the Constitution) are applicable to same-sex partnerships.<sup>53</sup> In another case, the Supreme Court endorsed a particular form of access of a same-sex registered partner to healthcare reserved for 'spouses'.<sup>54</sup> Similar logic can easily be applied to housing.

a) Trends and patterns regarding housing segregation for Roma

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

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<sup>53</sup> Supreme Court *en banc*, Judgement of 21 June 2019, Case No. 5-8-15. The case concerned a non-issuance of a residence permit to a registered partner of a citizen of Estonia.

<sup>54</sup> Constitutional Review Chamber of the Supreme Court, Decision of 18 December 2019, Case No. 5-19-42.

## 4 EXCEPTIONS

### 4.1 Genuine and determining occupational requirements (Article 4)

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

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

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

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

In Estonia, national law provides for an exception for employers with an ethos based on religion or belief.

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

'(2) In the case of occupational activities within religious associations<sup>55</sup> and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

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

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

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

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<sup>55</sup> According to Article 2(1) of the Churches and Congregations Act, 'religious associations' are churches, congregations, associations of congregations and monasteries as well as institutions of a church operating on the basis of an international agreement. Estonia, Churches and Congregations Act (*Kirikute ja koguduste seadus*), 12 February 2002, RT I 2002, 24, 135; available at: <https://www.riigiteataja.ee/akt/121062014030?leiaKehtiv> (Estonian); <https://www.riigiteataja.ee/en/eli/523012015005/consolide> (English). In other words, the term 'a religious association' in Estonian law is essentially equivalent to the term 'a church' in Directive 2000/78.

Review Chamber of the Supreme Court has confirmed that the general constitutional principle of equality is applicable to 'all spheres of life'.<sup>56</sup>

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

The number of public or private organisations the ethos of which is based on religion or belief (other than parishes/churches) is very small and they do not play any significant social role. It should be noted that Estonian society is not religious as such: only 29.3 % of all people aged 15 and older reported themselves to be followers of a particular faith (2011 national census).<sup>57</sup>

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)**

In Estonia, national legislation does not provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

A general exception can be found in Article 9(2) of the Equal Treatment Act:

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

For certain groups of public officials, maximum age limits have been established, for example: the general retirement age<sup>58</sup> for military servicemen (Article 90 of the Military Defence Service Act),<sup>59</sup> and a retirement age of 58-60 for some categories of prison officials (Article 152 of the Imprisonment Act).<sup>60</sup> In certain circumstances, prison officials' service may be prolonged. As of 1 January 2020, there are no maximum age limits for police officers.<sup>61</sup>

The Minister of Defence (for military servicemen) and the Government (for policemen) establish the requirements concerning the state of health necessary for the performance of duties (Article 32(2) of the Military Defence Service Act and Article 71(4) of the Police and Border Guard Act).<sup>62</sup>

On the basis of Article 93(1) of the Public Service Act,<sup>63</sup> a public official may be released from the service due to a decrease in capacity for work if he or she is not capable of performing the functions, based on the certificate of incapacity for work, for over four consecutive months or over five months within a year. This provision is valid for policemen, prison officers and most other groups of public officials.

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<sup>56</sup> Constitutional Review Chamber of the Supreme Court, Decision of 6 March 2002, Case No. 3-4-1-1-02, point 13.

<sup>57</sup> Statistics Estonia, information provided at: <http://pub.stat.ee>.

<sup>58</sup> The age of 65; transitional requirements are valid for people born in 1953-1960. Article 7 of the State Pension Insurance Act (*Riikliku pensionikindlustuse seadus*), 5 December 2001, RT I 2001, 100, 648.

<sup>59</sup> Military Defence Service Act (*Kaitseväeteenistuse seadus*), 13 June 2012, RT I, 10.07.2012, 1.

<sup>60</sup> Imprisonment Act (*Vangistusseadus*), 14 June 2000, RT I 2000, 58, 376.

<sup>61</sup> Amendments published: RT I, 06.07.2018, 3.

<sup>62</sup> Police and Border Guard Act (*Politsei ja piirivalve seadus*), 6 May 2009, RT I 2009, 26, 159.

<sup>63</sup> Public Service Act (*Avaliku teenistuse seadus*), 13 June 2012, RT I, 06.07.2012, 1.

#### 4.4 Nationality discrimination (Article 3(2))

##### a) Discrimination on the ground of nationality

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

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

In Estonia, nationality (citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law. However, the general anti-discrimination provisions of the Constitution (Article 12) are applicable in this context. Lack of citizenship and language as a protected ground in specific legislation has previously been criticised by Council of Europe bodies. For example, the European Commission against Racism and Intolerance (ECRI) strongly recommended that the Estonian authorities 'further strengthen the Equal Treatment Act by, inter alia, prohibiting discrimination based on language and citizenship.'<sup>64</sup> There have been no attempts at the national level to implement this recommendation.

According to the data of the Population Registry,<sup>65</sup> in 1992 only 68 % of the whole population were citizens of Estonia. In 2019, persons who are not citizens of Estonia (non-citizens) made up 15 % of the total population.<sup>66</sup> The biggest groups of non-citizens are former Soviet citizens with 'undetermined' citizenship and citizens of the Russian Federation.

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

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

According to the 2016 national study, ethnic minorities were much more likely than ethnic Estonians to believe that during the past two years they had been discriminated against at work or in their search for work: due to ethnicity (14.4 % versus 1.1 % for Estonians), due to their native language (16.0 % versus 1.3 %), because of age (13.6 % versus 4.0 %), and because of a health condition (7.0 % versus 2.8 %).<sup>67</sup>

According to the 2011 national census results, ethnic Estonians made up 1.6 % and ethnic Russians 78.4 % of all residents without Estonian citizenship.<sup>68</sup> In the specific national context, discrimination based on nationality may be a form of indirect ethnic discrimination.

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

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<sup>64</sup> Council of Europe, European Commission against Racism and Intolerance (2010), *Report on Estonia (4th monitoring cycle)*, adopted 15 December 2009, published 2 March 2010, ECRI (2010), Section 51. A similar recommendation was repeated in: CoE, European Commission against Racism and Intolerance (2015), *Report on Estonia (5th monitoring cycle)*, adopted 16 June 2015, published 13 October 2015, ECRI (2015), Section 13.

<sup>65</sup> Population Registry (*Rahvastikuregister*), <https://www.rahvastikuregister.ee/>.

<sup>66</sup> Data from the Population Registry. UN Committee on the Elimination of Racial Discrimination, Combined twelfth and thirteenth periodic reports submitted by Estonia under article 9 of the Convention, due in 2018, 26 July 2019, para. 121.

<sup>67</sup> Volkov, V.V., Poleshchuk, V.V. 'Current State of Interethnic Communication in Latvia and Estonia', *Sotsiologicheskie issledovaniya* (Sociological Studies), 2019, No. 2, pp. 59-67, at p. 64.

<sup>68</sup> Statistics Estonia; public database available at: <http://www.stat.ee>.

In Estonia, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

General exceptions in relation to health and safety are formulated only in the context of Article 2(5), Directive 2000/78 (please see section 4.7 of this report).

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

##### **4.6.1 Direct discrimination**

###### a) Exceptions to the prohibition of direct discrimination on grounds of age

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

'(1) This Act does not prejudice the application of specific measures which are in accordance with law and are necessary to ensure public order and security, prevent crime, and protect health and the rights and freedoms of others. Such measures shall be in proportion to the objective being sought.

(2) Differences of treatment on grounds of age, if provided by law, do not constitute discrimination if they are objectively and reasonably justified by a legitimate aim related to employment policy, labour market, vocational training or social security, and if the means of achieving that aim are appropriate and necessary. [...]'

###### b) Justification of direct discrimination on the ground of age

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

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

In this court case, a working 67 year-old, old-age pensioner was not provided with sickness benefits on an equal footing with younger persons (by virtue of Article 57(6) of the Health Insurance Act<sup>69</sup> - insured persons are those who work on the basis of a contract of employment and for whom the employer is required to pay social tax). A constitutionality control procedure was initiated by the Tartu Circuit Court (court of second instance).<sup>70</sup>

In this case the Supreme Court used a proportionality test (which has been largely borrowed from Germany by the Estonian courts), as it considers itself permitted to do under the general provisions of Article 11 of the Constitution relating to the restriction of rights. Similar to the approach to proportionality assessments taken when considering whether the limitation of rights can be justified that is widely recognised in other jurisdictions' interpretations of their own non-discrimination provisions, the Court reviewed the conformity of the restriction to the proportionality principle through the three characteristics thereof: suitability, necessity and proportionality in the narrowest sense.<sup>71</sup>

The Court delivered the judgment that neither the worse-than-average state of health of the elderly nor the receipt of an old-age pension nor the health insurance fund's need to save money could justify the unequal treatment on the ground of age in relation to the

<sup>69</sup> Health Insurance Act (*Ravikindlustuse seadus*), 19 June 2002, RT I 2002, 62, 377.

<sup>70</sup> If a court declares the legislation to be in conflict with the Constitution and refuses to apply it, this triggers the constitutional review procedure at the Supreme Court.

<sup>71</sup> On the test of proportionality in other jurisdictions, see: Grimm, D. (2007) 'Proportionality in Canadian and German Constitutional Jurisprudence', *University of Toronto Law Journal*, Vol. 57.

receipt of sickness benefit. Finally, the Supreme Court *en banc* declared that the relevant provision of the Health Insurance Act was unconstitutional and invalid.

c) Permitted differences of treatment based on age

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

By way of exception, Estonian law has provided maximum age requirements (e.g. for military servicemen and prison officers; see section 4.3 above for details). For safety reasons, upper age limits have also been established for pilots of commercial airlines (65 years).<sup>72</sup>

d) Fixing of ages for admission to occupational pension schemes

In Estonia, national law allows – in the sense that it is not prohibited – occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for in Article 6(2) of Directive 2000/78.

According to Article 66(1) of the Funded Pensions Act,<sup>73</sup> persons born before 1 January 1983 are not required to make contributions to a mandatory funded pension. However, persons born between 1942 and 1982 were entitled to make contributions to a mandatory funded pension if they had submitted a choice application in 2002-2010 (the deadline was different for various age groups (Article 66(2)), presumably to ensure the smooth introduction of these changes in pension policies.

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

In Estonia the law does not regulate the use of age criteria in actuarial calculations and does not impose any explicit restrictions on the use of such criteria.

#### 4.6.2 Special conditions for younger and older workers

In Estonia, there are special conditions set by law for younger workers in order to promote their vocational integration. There are no such special conditions set by law for older workers.

The Equal Treatment Act (Article 9(2)) introduced provisions that are rather similar to those of Article 6(1) of Directive 2000/78 (the first sentence).<sup>74</sup>

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<sup>72</sup> The requirements for the age and qualifications, training and examination of aviation specialists, and the rules for the issue of aviation personnel licences and recognition of aviation licences issued by foreign states (*Lennundusspetsialistide vanusele ja kvalifikatsioonile, nende koolitusele ja eksamineerimisele esitatavad nõuded ning lennundusspetsialistidele lennunduslubade väljaandmise ja välisriikides väljaantud lennunduslubade tunnustamise eeskiri*), 21 December 2001, RTL 2002, 5, 52, Article 5.

<sup>73</sup> Funded Pensions Act (*Kogumispensionide seadus*), 14 April 2004, RT I 2004, 37, 252.

<sup>74</sup> Article 6(1), Directive 2000/78 provides for an exception 'objectively and reasonably justified by a legitimate aim including [while in the Equal Treatment Act: 'related to'] legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.' Furthermore, the Estonian text omitted the adjective 'legitimate' in the phrase 'legitimate employment policy' but added 'social security' to the list. In other words, the scope of Article 9(2) of the Equal Treatment Act is somehow narrower than that in the Directive: The act provides for the list of four aims (justifications), while the Directive includes an open-ended list of such aims with three examples. This cannot be interpreted as a breach of the Directive. It is also necessary to keep in mind the general exception in Article 9(1) of the same act – see section 4.7 of this report for more detail.



According to the Employment Contracts Act (Article 56), an extended annual holiday (35 calendar days) must be granted to minors. Compensation of such (extended) paid holiday is paid from the state budget (Article 66).

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

According to Articles 10<sup>1</sup>(1)-(2) of the Occupational Health and Safety Act, an employer must create suitable working and rest conditions for minors as well as taking measures to prevent health risks to them, on the basis of a risk assessment.

#### **4.6.3 Minimum and maximum age requirements**

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

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

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

Some laws may require both minimum age and a minimum number of years of work in a particular area for certain positions as a precondition of employment (e.g. Article 15 of the Prosecutor's Office Act).<sup>75</sup>

#### **4.6.4 Retirement**

##### **a) State pension age**

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

The State Pension Insurance Act (Article 7) stipulates (for both men and women) that persons who have attained 65 years of age<sup>76</sup> and whose pension-qualifying period earned in Estonia is 15 years have the right to receive an old-age pension. Old-age pensions with favourable conditions can be received by people with a certain type of disability, people who have raised disabled children or three or four children (Article 10).

If an individual wishes to work beyond state pension age, the pension cannot be deferred (with rare exceptions). Thus, a person who receives a state old-age pension may work and collect his or her pension. However, the survivor's pension and national pension<sup>77</sup> will not normally be paid to people who are employed (Article 43(1) of the State Pension Insurance

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<sup>75</sup> Prosecutor's Office Act (*Prokuratuuriseadus*), 22 April 1998, RT I 1998, 41/42, 625.

<sup>76</sup> A transition period (a lower age requirement) was established for those born in 1953-1960. RT I 2010, 18, 97.

<sup>77</sup> A national pension is paid to a person of pensionable age, a disabled person etc. with an insufficient pension qualifying period (State Pension Insurance Act, Article 22(1)).

Act). Additionally, an early-retirement pension<sup>78</sup> will not be paid to a working pensioner before s/he has attained 'pensionable age' (Article 43(1<sup>1</sup>)).

b) Occupational pension schemes

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

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

c) State imposed mandatory retirement ages

In Estonia, there are no state-imposed mandatory retirement ages. There are a few exceptions, however, stipulated for some categories of military and law-enforcement officials (see section 4.3 for details) as well as for some specific professions, e.g. judges (Article 48 of the Courts Act).<sup>79</sup>

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

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

In its judgment the Supreme Court did not refer to the directive but to its own previous judgment that the prohibition to treat equal persons unequally would be violated if two persons, groups of persons or situations were treated arbitrarily unequally. Unequal treatment can be regarded as arbitrary if there is no reasonable cause, therefore, if there is a reasonable and appropriate cause, unequal treatment in legislation is justified. However, in this particular case, unequal treatment is neither reasonable nor justified and evidently arbitrary.<sup>80</sup>

d) Retirement ages imposed by employers

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<sup>78</sup> 'A person who has worked for the pension qualifying period [...] for grant of an old-age pension has the right to receive an early-retirement pension up to three years before attaining the pensionable age' (State Pension Insurance Act, Article 9(1)).

<sup>79</sup> Courts Act (*Kohtute seadus*), 19 June 2002, RT I 2002, 64, 390.

<sup>80</sup> 'The Supreme Court concluded that there could be no reasonable justification for Article 120 in so far as it resulted in a situation where it was possible for an employer to keep on one employer over 65 whilst releasing another from service solely on the basis of age. Good reasons for the unequal treatment of officials who have attained 65 years of age could not be found in the explanatory note attached to the Public Service Act. The opinions of the Constitutional Committee of parliament and the Minister of Justice could not be accepted as a reasonable justification. Their claims that it was easier for an elderly person to cope with release from service due to age rather than due to unsuitability for office did not convince the Supreme Court. Instead, the Court held that, in order to avoid arbitrary unequal treatment, the motives for release from service must be transparent and reflect the actual situation.' Poleshchuk, V. (2014) 'Older Age, Employment and Equality in Legislation: A "Progressive" Estonian Approach?', *Equal Rights Review*, Vol. 12, p. 17, available at: <http://www.equalrightstrust.org/ertdocumentbank/vadim.pdf>.

In Estonia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally. No such provision can be found in Estonian laws.<sup>81</sup>

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

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

f) Compliance of national law with CJEU case law

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

#### **4.6.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

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

b) Age taken into account for redundancy compensation

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

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

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

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

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

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

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<sup>81</sup> In Estonia, it is likely that such behaviour would be regarded as discriminatory. See for detailed analysis: Poleshchuk, V. (2014) 'Older Age, Employment and Equality in Legislation: A 'Progressive' Estonian Approach?', *Equal Rights Review*, Vol. 12.

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

This wording is seemingly based on two provisions:

- Article 2(5) of Directive 2000/78 (however, there are no references to 'a democratic society' but to the principle of proportionality).<sup>82</sup>
- Article 11 of the Estonian Constitution ('Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted').

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

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

#### **4.8 Any other exceptions**

In Estonia there are no other exceptions to the prohibition of discrimination (on any ground covered by this report).

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<sup>82</sup> The initial version of the draft law (Bill. 67) did not permit these measures in the context of ethnic and racial discrimination. As stated in the explanatory note, this approach was based on understanding of the directives. This initial version, however, was amended by the Parliament without any public debates. This amended version was used for the drafts Nos. 262 and 384 (the latter was adopted in December 2008).

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

### a) Scope for positive action measures

In Estonia, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law. In practice, most positive action in Estonia is taken through employment policy measures that benefit some vulnerable groups, such as people not in education, employment or training (NEET), linguistic minorities, and disabled people. However, these measures are rarely interpreted as positive action measures by policymakers themselves.

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

### b) Quotas in employment for people with disabilities

In Estonia, national law does not provide for quotas for the employment of people with disabilities.

## 6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

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

- Judicial procedures

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

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

- Non-judicial procedures

- Quasi-judicial procedures at labour disputes committees

Article 23 of the Equal Treatment Act stipulates that discrimination disputes will be resolved by court and labour dispute committees.<sup>83</sup> A labour dispute committee is an extrajudicial authority within the Labour Inspectorate that adjudicates labour disputes (Article 4(1) of the Resolution of Labour Disputes Act). Their decisions are based on laws and other legislation, international agreements, collective agreements and employment contracts (Article 4(2)). If the parties do not agree with a decision of a labour dispute committee, they have recourse to the courts, which may hear the same labour dispute (Article 58(1)). Participation in this procedure is not compulsory before bringing the lawsuit to court.

- Conciliation

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

- Ombudsman-like procedures

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

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

- Challenge proceedings

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<sup>83</sup> *Töövaidluste komisjonid*. Resolution of Labour Disputes Act (*Töövaidluste lahendamise seadus*), 14 June 2017, RT I, 28.12.2017, 18.

A person who finds that his/her rights are violated or his/her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge with an administrative authority that exercises supervisory control over the administrative authority that issued the challenged act or took the challenged measure (Chapter 5 of the Administrative Procedure Act).<sup>84</sup> The annulment of a decision on a challenge may be requested in an appeal filed with an administrative court (Article 87).

- b) Barriers and other deterrents faced by litigants seeking redress
  - Equality bodies

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

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

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

- Judicial and quasi-judicial procedures

As for judicial and quasi-judicial procedure, in Estonia, state legal aid is granted on the basis of the State Legal Aid Act<sup>85</sup> to insolvent natural or legal persons in connection with proceedings in an Estonian court or administrative authority.

In Estonia, about a fifth of the population does not speak Estonian (most of those people speak Russian),<sup>86</sup> although Estonian is the only official language of court procedure. Nevertheless, exceptions to this rule are possible (Article 5 of the Courts Act). According to Article 10(2) of the Code of Criminal Procedure, the assistance of a translator or interpreter must be ensured for the participants in court proceedings and for those parties who are not proficient in Estonian.

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

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

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

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

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<sup>84</sup> Administrative Procedure Act (*Haldusmenetluse seadus*), 6 June 2001, RT I 2001, 58, 354.

<sup>85</sup> State Legal Aid Act (*Riigi õigusabi seadus*), 28 June 2004, RT I 2004, 56, 403.

<sup>86</sup> 2011 Population and Housing Census, database of Statistics Estonia, available at: <http://pub.stat.ee>.

court procedures on the basis of Article 82(1)-(2) of the Code of Administrative Court Procedure.<sup>87</sup>

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

To a certain extent, language-related problems may be alleviated through the State Legal Aid Act. Applications for state legal aid should be submitted in Estonian (EU citizens and residents of EU countries can also submit them in English) (Article 12(5)). According to the recent amendments (Article 12(7)),<sup>88</sup> applications may also be submitted in 'another language widely used in Estonia' (i.e. in Russian). The request for state legal aid does not limit the right of a participant in the proceeding to use the services of an interpreter or translator.

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

Public buildings (including courts) are normally wheelchair accessible.

c) Number of discrimination cases brought to justice

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

The number of cases is rather modest, most probably due to low public awareness of anti-discrimination legislation, low public support for some vulnerable groups, and a lack of broad social confidence in the ability of the current legislation to provide sufficient support or to give relief to the victims.

– Labour dispute committees

In recent years, the number of complaints with demands related to the issue of discrimination remained stable: 26 complaints were received in 2014, 25 complaints were received in both 2015 and 2016, 26 complaints in 2017, 19 in 2018, and 22 in 2019.<sup>89</sup> In 2020 there were 17 complaints.<sup>90</sup>

– Equality bodies

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<sup>87</sup> Code of Administrative Court Procedure (*Halduskohtumenetluse seadustik*), 27 January 2011, RT I, 23.02.2011, 3.

<sup>88</sup> RT I 28.12.2016, 14.

<sup>89</sup> Labour Inspectorate; Written communications no. 1.4-1/272-2 of 13 March 2015, of 21 March 2016, of 1 February 2017, of 8 January 2018, 27 February 2019, and 3 July 2020.

<sup>90</sup> Labour Inspectorate, data provided at:

[https://www.ti.ee/sites/default/files/dokumendid/Meedia\\_ja\\_statistika/Toeovaidlused/tvk\\_ebavordne\\_kohtlemine\\_2020.pdf](https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Toeovaidlused/tvk_ebavordne_kohtlemine_2020.pdf). Unfortunately, in almost all of the 2020 complaints, it is impossible to identify a prohibited ground of discrimination. Indirectly, this highlights the low level of public awareness of anti-discrimination issues.



In 2016, the Chancellor of Justice conducted one conciliation procedure (age discrimination by a payment service provider);<sup>91</sup> there were no conciliation procedures between 2012 and 2015.<sup>92</sup> In 2017, the Chancellor received one application to start a conciliation procedure (discrimination on the ground of belief), which was refused for procedural reasons.<sup>93</sup> In 2018 and 2019, there were no conciliation procedures.<sup>94</sup> No conciliation procedures were commenced in 2020.<sup>95</sup>

In September 2017 – August 2018 the Chancellor received 20 complaints related to discrimination on specific grounds; the same number of complaints was for the period September 2018 – August 2019.<sup>96</sup> Between September 2019 and August 2020, the Chancellor received 11 complaints related to discrimination.<sup>97</sup> The statistics for the rest of 2020 are not yet available.

The number of applications filed with the Commissioner for Gender Equality and Equal Treatment rapidly increased and then stabilised. In 2015, the Commissioner received 209 applications, in 2016 – 332,<sup>98</sup> and in 2017 – 471.<sup>99</sup> In 2018, there were 304 applications related to discrimination on the following grounds: sex – 137, disability – 28, age – 30, ethnic origin – 25, language skills – 4, sexual orientation – 9, religion or belief – 4, type of employment contract – 3, representation of employees or membership in an association – 3, other (no mandate) – 61.<sup>100</sup> In 2019, there were 308 applications related to discrimination on the following grounds: sex – 86, performance of family obligations<sup>101</sup> – 56, disability – 46, age – 22, ethnic origin – 23, other – 53; 123 applications concerned employment, 52 the provision of services and 49 related to education.<sup>102</sup>

It is highly likely that the small number of complaints indicates a low level of public awareness of anti-discrimination legislation and existing legal remedies.

#### d) Registration of national court decisions on discrimination

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

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<sup>91</sup> Chancellor of Justice; Written communication No. 5-3/1701772 of 22 May 2017.

<sup>92</sup> Chancellor of Justice; Written communications No. 5-3/1300180 of 4 February 2013, No. 5-3/1400234 of 7 February 2014, No. 5-3/1500612 of 13 March 2015, and of 5 January 2016.

<sup>93</sup> Chancellor of Justice; Written communication No. 5-3/1800936 of 12 March 2018.

<sup>94</sup> Chancellor of Justice (2018) *Annual report 2017/2018*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2018/equal-treatment>; Chancellor of Justice (2019) *Annual report 2018/2019*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2019/social-security#i6>.

<sup>95</sup> Chancellor of Justice; Written communication No. 5-3/2101130 of 2 March 2021.

<sup>96</sup> Chancellor of Justice (2018) *Annual report 2017/2018*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2018/equal-treatment>; Chancellor of Justice (2019) *Annual report 2018/2019*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2019/social-security#i6>.

<sup>97</sup> Chancellor of Justice (2020), *Annual report 2019/2020*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2020/equal-treatment>.

<sup>98</sup> Commissioner for Gender Equality and Equal Treatment (2017), *Riigikogu põhiseaduskomisjonile voliniku tööst 2016*, 4 April 2017, pp. 20, 22-23.

<sup>99</sup> Commissioner for Gender Equality and Equal Treatment (2018), *Riigikogu põhiseaduskomisjonile voliniku tööst 2017*, 11 June 2018, p. [17].

<sup>100</sup> Commissioner for Gender Equality and Equal Treatment (2019), *Riigikogu põhiseaduskomisjonile voliniku tööst 2018*, 10 June 2019, p. 27.

<sup>101</sup> It should be noted that the Commissioner's mandate regarding discrimination on the ground of sexual orientation is limited to work-related areas.

<sup>102</sup> Office of the Commissioner for Gender Equality and Equal Treatment, Written communication of 17 March 2020. No fresh statistics are available so far.

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

### a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Estonia, associations/organisations/trade unions are not entitled to act on behalf of victims of discrimination with only one exception: In conciliation proceedings for the resolution of discrimination disputes (in the private sector) at the Chancellor of Justice, a person (meaning both a legal and a natural person) who has a legitimate interest in checking compliance with the requirements for equal treatment may also act as a representative (Article 23(2)).<sup>103</sup>

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

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

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

### b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

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

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

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

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

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<sup>103</sup> In general, a petitioner must file a petition with the Chancellor of Justice in person or through an authorised representative (Article 23(1) of the Chancellor of Justice Act).

written proceedings, a petition with the court conducting proceedings in the matter in order to involve the third party in the proceeding.'

As for administrative court procedure, the relevant code seems to apply a fairly restrictive approach to third parties.<sup>104</sup>

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

c) Actio popularis

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

d) Class action

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

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

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

The Equal Treatment Act (Article 8) states:

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

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

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

The Equal Treatment Act bans discrimination on all five grounds plus colour (Article 1(1)).

The jurisdiction of administrative courts is the adjudication of disputes in public law and other matters which are placed within the competence of administrative courts by law (Code of Administrative Court Procedure, Article 4). For instance, employment-related complaints of public officials fall within the competence of administrative courts. There is no shift in the burden of proof in administrative court procedure because this court investigates facts of the case within the meaning of Article 8(5) of the Directive 2000/43 and Article 10(5) of the Directive 2000/78.

Shift in the burden of proof is also not applicable to conciliation procedures at the Chancellor of Justice because these procedures are voluntary.

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<sup>104</sup> 'In the case that the administrative court's decision *may affect the rights or obligations of a person* who is not a party to the matter, the court must join such a person to the proceedings as a third party.' Article 20(1) of the Code of Administrative Court Procedure.

#### **6.4 Victimization (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

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

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

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

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

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

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

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

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

##### b) Compensation – maximum and average amounts

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

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

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

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

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

##### c) Assessment of the sanctions

The relevant provisions in the Equal Treatment Act, Public Service Act and Employment Contract Act are quite general and do not include many details. Given the national context,

the provisions are not helpful in enabling the judiciary to make decisions on effective, proportionate and dissuasive sanctions.

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

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

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

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

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

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

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

As a positive trend it should be mentioned that the Estonian Government approved the *Social Welfare Development Plan for 2016–2023*. The available budget of the plan is EUR 12.18 billion for 2016-2020.<sup>105</sup> The activities envisaged by the development plan create a more favourable general background for the work of the equality bodies aimed at promoting the principles of equality and equal treatment.

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

### *LGBT:*

The Registered Partnership Act<sup>106</sup> entered into force on 1 January 2016. No implementing legislation has been adopted so far due to opposition from several political parties. In practical terms, this means that protection and promotion of the rights and interests of LGBT people cannot rely on clear and detailed legislation and many principles and provisions of the act remain declarative or dormant. The Supreme Court made two judgments in 2019 that might improve the situation (see section 3.2.10 for details).

### *Ethnic minorities:*

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

- c) Institutional architecture

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

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

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<sup>105</sup> Approval of the Social Welfare Development Plan for 2016–2023 and Action Plan thereto for 2016-2020 (*'Heaolu arengukava 2016–2023' ja selle rakendusplaanid aastateks 2016–2020 heakskiitmine*), 30 June 2016, Riigi Teataja III, 05.07.2016, 18.

<sup>106</sup> Registered Partnership Act (*Kooseluseadus*), 9 October 2014, RT I, 16.10.2014, 1. A registered partnership contract may be entered into between both 'opposite'-sex and same-sex people.

Secondly, the Chancellor of Justice was initially solely the guardian for constitutionality and ombudsman, but later also became an equality body (the first relevant amendments to the Chancellor of Justice Act<sup>107</sup> were adopted on 11 February 2003). The Chancellor also deals with protection of the rights of children and young people (ombudsman for children), persons with disabilities,<sup>108</sup> prevention of ill-treatment,<sup>109</sup> etc.

The Chancellor's tasks as an equality body are provided for in Articles 19 and 35<sup>16</sup> of the Chancellor of Justice Act. Importantly, the Chancellor as an ombudsman can deal with cases of discrimination by public bodies and institutions on any grounds. In January 2004, the Chancellor of Justice's Office became a *quasi*-judicial institution for disputes regarding discrimination by natural persons and legal persons in private law on the grounds of sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other grounds of discrimination provided for in the law (known as the conciliation procedure).

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

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

i) Status of the body

According to the Equal Treatment Act, the Commissioner for Gender Equality and Equal Treatment is an *independent* and impartial expert appointed for a five-year period by the Minister of Social Affairs. His or her activities, supported by the office, are funded by the state budget. The office of the Commissioner is governed under statute enacted by the Government of the Republic. In practice, the Commissioner's Office does not have a completely independent budget (it is funded from the budget of the Ministry of Social Affairs). The Commissioner is free to decide on office structure and recruitment (Article 15). No special rules exist regarding the financial accountability of the Commissioner.<sup>110</sup>

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

ii) Independence of the body

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

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<sup>107</sup> Chancellor of Justice Act (*Õiguskantsleri seadus*), 25 February 1999, RT I 1999, 29, 406.

<sup>108</sup> Based on Article 33(2) of the Convention on Rights of Persons with Disabilities.

<sup>109</sup> As an 'independent national preventive mechanism for the prevention of torture at the domestic level' in the meaning of Article 17 of the UN Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>110</sup> However, the Commissioner must publish on the website an annual overview of his or her activities and the activities of his or her office (Estonia, Statute of the Gender Equality and Equal Treatment Commissioner (*Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku ning kantselei põhimäärus*), Article 12(1), Riigi Teataja I 2010, 33, 170).

Independence of the Chancellor of Justice is guaranteed by its exceptional autonomous status provided in the Constitution (see section 7(d)(i) above).

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

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

e) Grounds covered by the designated body/bodies

The Commissioner for Gender Equality and Equal Treatment deals with discrimination on the grounds of sex, ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation (within the material scope similar to Directives 2000/43 and 2000/78 for the respective grounds).<sup>111</sup> Historically, the majority of applications relate to gender discrimination.

The Chancellor of Justice deals with unspecified—in fact, any—ground of discrimination in the public sector, through ombudsman-like procedures.<sup>112</sup> Furthermore, he or she deals with conciliation in the private sector in cases of discrimination on the grounds of sex, ethnic and racial origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law.

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

i) Independent assistance to victims

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

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

ii) Independent surveys and reports

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<sup>111</sup> In other words, the Commissioner cannot deal with discrimination on the grounds of religion or other beliefs, age, disability or sexual orientation in the areas outside employment.

<sup>112</sup> For instance, in 2020, the Chancellor of Justice was asked to evaluate the practice of *Tartu Üliõpilasküla* (student dormitories of the University of Tartu) to grant priority rights to foreign students when applying for accommodation (on the basis that it is more difficult for foreign students to find a place to live in Tartu than it is for Estonian students). The Chancellor considered that the priority allocation of dormitories to foreign students is not a proportionate measure, as the same goal can be achieved without less favourable treatment of local students. Chancellor of Justice: Written communication No. 5-3/2101130 of 2 March 2021.



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

iii) Independent recommendations

In Estonia, both designated bodies - the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment - have the competence to issue independent recommendations on discrimination issues.<sup>113</sup>

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

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

iv) Other competences

The Commissioner for Gender Equality and Equal Treatment and the Chancellor of Justice are obliged to inform official bodies (e.g. ministries, city councils) about the principles of equality and equal treatment.<sup>114</sup> The activities of the Commissioner are mostly limited to the scope of application of the Equal Treatment Act and the Gender Equality Act. The relevant competence of the Chancellor is based on Article 12 of the Constitution and the Chancellor has almost no limits as regards material scope and grounds of discrimination (Article 12 includes an open-ended list of discrimination grounds, and as such it covers even those grounds that are not specifically mentioned, e.g. age and sexual orientation). In practice, relevant activities are organised independently and on *ad hoc* basis.

g) Legal standing of the designated body/bodies

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

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

h) Quasi-judicial competences

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

According to Article 23 of the Chancellor of Justice Act, a petitioner must file a complaint in person or through an authorised representative. The Chancellor cannot initiate the conciliation procedure without an application from a victim (Article 35<sup>5</sup>). However, an alleged discriminator is not obliged to participate in the procedure (Article 35<sup>11</sup> (1)). The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff (Article 35<sup>14</sup>). It may also include an obligation to pay compensation (Article 35<sup>12</sup>).

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<sup>113</sup> Chancellor of Justice Act 1999, Article 35<sup>16</sup> and Estonia, Equal Treatment Act 2008, Article 16.

<sup>114</sup> Chancellor of Justice Act 1999, Article 35<sup>16</sup> and Estonia, Equal Treatment Act 2008, Article 16.

If a conciliation procedure fails, a victim may address the court for the protection of his or her rights (Article 35<sup>15</sup>).

The conciliation procedure is *very* rarely used in practice and therefore, any comprehensive analysis of its implementation is impossible. In 2016, the Chancellor of Justice conducted one conciliation procedure (age discrimination by a payment service provider) and one in 2017 (discrimination on the ground of belief);<sup>115</sup> there were *no* conciliation procedures between 2012 and 2015, or between 2018 and 2020.<sup>116</sup> The procedure can hardly be considered to be an efficient legal instrument.

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

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

In Estonia, both equality bodies register the number of complaints of discrimination made and/or decisions (by ground, field, type of discrimination, etc). These data are available to the public (often on request). However, these data are not always complete and entirely comparable from year to year.

The number of applications filed with the Commissioner for Gender Equality and Equal Treatment is relatively large. In 2016, there were 332 applications,<sup>117</sup> in 2017 – 471,<sup>118</sup> in 2018 – 304,<sup>119</sup> and in 2019 – 308.<sup>120</sup> Data for 2020 is not available at the time of writing.

In 2016, the Chancellor of Justice conducted one conciliation procedure (age discrimination) as well as one in 2017 (discrimination on the ground of belief); there were no conciliation procedures in 2012-2015 and 2018-2020.<sup>121</sup>

j) Roma and Travellers

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

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<sup>115</sup> Chancellor of Justice; Written communications no. 5-3/1701772 of 22 May 2017; no. 5-3/1800936 of 12 March 2018.

<sup>116</sup> Chancellor of Justice; Written communications No. 5-3/1300180 of 4 February 2013, No. 5-3/1400234 of 7 February 2014, No. 5-3/1500612 of 13 March 2015, of 5 January 2016, and No. 5-3/1901052 of 7 March 2019; Chancellor of Justice (2018) *Annual report 2017/2018*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2018/equal-treatment>; Chancellor of Justice (2019) *Annual report 2018/2019*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2019/social-security#i6>; Chancellor of Justice (2020) *Annual report 2019/2020*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2020/equal-treatment>. Data for 2020 covers January to August.

<sup>117</sup> Commissioner for Gender Equality and Equal Treatment (2017), *Riigikogu põhiseaduskomisjonile voliniku tööst 2016*, 4 April 2017, pp. 20, 22-23.

<sup>118</sup> Commissioner for Gender Equality and Equal Treatment (2018), *Riigikogu põhiseaduskomisjonile voliniku tööst 2017*, 11 June 2018, p. 17.

<sup>119</sup> Commissioner for Gender Equality and Equal Treatment (2019), *Riigikogu põhiseaduskomisjonile voliniku tööst 2018*, 10 June 2019, p. 27.

<sup>120</sup> Office of the Commissioner for Gender Equality and Equal Treatment, Written communication of 17 March 2020. No statistics for 2020 are publicly available so far.

<sup>121</sup> Chancellor of Justice; Written communications of 5 January 2016, No. 5-3/1800936 of 12 March 2018, and No. 5-3/1901052 of 7 March 2019; Chancellor of Justice (2018) *Annual report 2017/2018*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2018/equal-treatment>; Chancellor of Justice (2019) *Annual report 2018/2019*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2019/social-security#i6>; Chancellor of Justice (2020) *Annual report 2019/2020*, 'Equal treatment', at: <https://www.oiguskantsler.ee/annual-report-2020/equal-treatment>. Data for 2020 covers January to August.

## **8 IMPLEMENTATION ISSUES**

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

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

In 2020, Estonian authorities continued (with due respect to COVID-19 restrictions) to support various activities, including seminars and media publications,<sup>122</sup> to promote equality and non-discrimination in Estonia on the grounds provided in the directives.

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

The Chancellor of Justice convened two councils, which are intended to advise the Chancellor of Justice on human rights and the rights of persons with disabilities. Members were elected to the councils in a public competition.

The Commissioner for Gender Equality and Equal Treatment, like the Office of the Chancellor of Justice, deemed it necessary to promote dialogue with the third sector. This dialogue has also been promoted by state and municipal institutions, especially in the context of social integration activities. In practice, the Commissioner's activities (seminars, media articles, published materials) cover all relevant grounds of discrimination, not just gender.

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

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

- d) Addressing the situation of Roma and Travellers

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

### **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

- a) Compliance of national legislation (Articles 14(a) and 16(a))

Estonia has taken the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished (Article 14(a) of Directive 2000/43 and Article 16(a) of Directive 2000/78).

There are no laws, regulations and administrative provisions that are manifestly contrary to the principle of equal treatment and still valid/applicable.

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

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<sup>122</sup> See e.g. Commissioner for Gender Equality and Equal Treatment, at: <https://volinik.ee/meedia>.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Estonia has taken the necessary measures to ensure compliance with Article 14(b) of Directive 2000/43 and Article 16(b) of Directive 2000/78.

The principles of *lex specialis derogat legi generali* and *lex posteriori derogat legi priori* are known to Estonian law.

According to the common rule in relation to undertaking transactions (including treaties of any kind) as stipulated in Articles 86 and 87 of the General Principles of the Civil Code Act,<sup>123</sup> a transaction that is contrary to the public order, good morals or the law is void. A breach of the constitutional provision will obviously be recognised as being contrary to good morals or as a significant violation of the law.

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

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

According to Article 4(2) of the Collective Agreements Act,<sup>124</sup> the terms and conditions of a collective agreement that are 'less favourable to employees than those prescribed by an Act or other legislation' are invalid unless exceptions are permitted by an act.

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

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<sup>123</sup> General Principles of the Civil Code Act (*Tsiviilseadustiku üldosa seadus*), 27 March 2002, RT I 2002, 35, 216.

<sup>124</sup> Collective Agreements Act (*Kollektiivlepingu seadus*), 14 April 1993, RT I 1993, 20, 353.

## 9 COORDINATION AT NATIONAL LEVEL

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

According to the Government of the Republic Act,<sup>125</sup> it is the responsibility of the Ministry of Social Affairs<sup>126</sup> to promote equal treatment as well as equality of men and women, including coordination of activities in this field, and the preparation of the corresponding draft legislation (Article 67(1)).

However, each ministry, within its area of responsibility, should monitor compliance with the requirements of the Equal Treatment Act and cooperate with other persons and agencies in the promotion of the principle of equal treatment (Article 14 of the Equal Treatment Act). In practical terms that means that the Ministry of Culture deals with issues related to discrimination on the grounds of racial and ethnic origin (within social integration policies), the Ministry for the Interior<sup>127</sup> deals with discrimination on the ground of religion or belief, and the Ministry of Social Affairs, in addition to general coordination of all relevant anti-discrimination work, concentrates on issues related to the grounds of age, disability, sexual orientation and sex.<sup>128</sup>

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<sup>125</sup> Government of the Republic Act (*Vabariigi Valitsuse seadus*), 13 December 1995, RT I 1995, 94, 1628.

<sup>126</sup> *Sotsiaalministeerium*.

<sup>127</sup> *Siseministeerium*. The area of government of the Ministry for the Interior includes the management of issues relating to churches and congregations.

<sup>128</sup> Ministry of Social Affairs; Written communication No. 1.2-3/1884 of 9 April 2012.

## 10 CURRENT BEST PRACTICES

The NGO Human Rights Centre continues the Diversity Day project – a day when numerous photo competitions for employees, students and partners, thematic quizzes and film screenings, festivals of ethnic cuisine, etc. are organised.<sup>129</sup> However, in 2020 almost all of these activities were not possible due to COVID-19 restrictions and they were not replaced by alternative events.

In recent years, tens of public institutions, companies and organisations signed the Estonian Diversity Charter, meaning that they agreed to follow the principles of diversity and equal treatment in the context of their human resources policy. The campaign continued in 2020, when the number of signatories surpassed 130.<sup>130</sup>

No best practices can be reported in relation to the use of artificial intelligence (AI) to improve the effective implementation of the national legislation transposing the directives.

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<sup>129</sup> Human Rights Centre, <https://humanrights.ee/en/topics-main/mitmekesisus-ja-kaasatus/diversity-day/>.

<sup>130</sup> Diversity Enriches; <http://www.erinevusrikastab.ee/mitmekesisuse-kokkulepe/liitunud-ettevoted>.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives at the national level**

- Article 9(1) of the Equal Treatment Act permits direct discrimination on the grounds of race and ethnicity in circumstances other than genuine and determining occupational requirements or positive action measures. In other words, this provision goes beyond possible exceptions provided in Articles 4 and 5 of Directive 2000/43. See section 2.2.b of this report for analysis.
- There are no specific provisions regarding the legal standing of 'a person who has a legitimate interest in checking compliance with the requirements for equal treatment' (the right to act as a representative of a victim of discrimination) in areas outside the conciliation procedure at the Chancellor of Justice (regarding discrimination by natural persons and legal persons in private law). This might be a breach of Article 7(2), Directive 2000/43 and Article 9(2), Directive 2000/78. As a result, Estonian NGOs face difficulties if they want to support discrimination victims in formal (especially court) procedures. For more details see section 6.2 of this report.
- There are no provisions in national law to guarantee that sanctions applicable to infringements of the national anti-discrimination provisions are 'effective, proportionate and dissuasive' as required by Article 15 of Directive 2000/43, and Article 17 of Directive 2000/78. See more details in section 6.5 of this report.

### **11.2 Other issues of concern**

- The awareness level of policy makers, legal practitioners and the general public about principles of equality and non-discrimination remains low.
- In 2020, the number of discrimination cases was very low. Courts often prefer to dismiss the discrimination-related arguments of the parties involved and to solve cases with references to other provisions.
- There is no or very limited political will to deal with discrimination against certain ethnic and linguistic groups (the Russian-speaking population) and LGBT people in spite of some efforts by the equality bodies and courts. As a result, many of the practical problems (e.g., discrimination in the labour market) experienced by these vulnerable groups are not solved and are not even openly recognised by state authorities; the inaction by authorities leads to frustration among minority representatives and does not promote tolerance in society.

## 12 LATEST DEVELOPMENTS IN 2020

### 12.1 Legislative amendments

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

### 12.2 Case law

**Relevant discrimination ground(s):** Age

**Name of the court:** Tartu District Court

**Date of decision:** 19 November 2020

**Name of the parties:** X. v. Tartu linn

**Reference number:** 3-19-504

**Link:** <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=278966486>

**Brief summary:** The case concerned a recruitment procedure in the Tartu City Government. The position at stake was filled by a 27-year-old person. Another candidate X, aged 60, with rich professional experience and a much higher level of education, was not even invited for an oral interview.

X felt he was a victim of age discrimination. X requested an explanation from the city authorities. This right is provided in Article 7 of the Equal Treatment Act. X did not receive any clear explanation. However, one of the letters from the potential employer contained the following passage: '[...]it is obvious that it is not possible for younger people to achieve the same variety of work experience as for older people. At the same time, leaving, for this reason, young people without the opportunity to contribute to the development of society, would mean we really were making decisions based on age and would not give room for fresh ideas.'

X filed a court request for compensation of non-pecuniary damages as a victim of possible age discrimination. In addition to the letter quoted above, he referred primarily to the following circumstances, which could indicate preferential treatment of young people by the Tartu municipal authorities: the recruitment announcement contained a description of required skills but there was no need for any work experience; the Tartu municipal authorities did not have any special documents and policies aimed at promoting the principle of equality; and the absence of age-related balance in the staff of the relevant city service.

In Estonia, employment-related complaints of (potential) public officials fall within the competence of the administrative court. According to Article 8(3) of the Equal Treatment Act, there is no shift in the burden of proof in administrative court procedure (this court investigates facts of the case within the meaning of Article 10(5) of Directive 2000/78). Therefore, the district court was guided by Article 59(1) of the Code of Administrative Court Procedure, which states that a participant in proceedings (including a complainant) must prove the factual assertions on which his or her submissions are founded. Thus, the complainant had to prove precisely discrimination on the ground of age.

According to the court, the complainant did not prove the fact of age discrimination. Based on the case file, the court suggested that the reason why the complainant was not selected was his publications on urban planning. The court did not analyse differences in candidates' skills, education etc. The court was ready to consider statistical evidence (e.g. 4 out of 5 employees of the relevant city service were under 40). According to the court, however, the statistics presented do not give grounds to assume the existence in the Tartu City Government of an environment favourable to age discrimination. The court further found that although some documents for the recruitment had been drawn up incorrectly, this does not indicate discrimination on the basis of age.



## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Estonia  
**Date:** 31 December 2020

<p><b>Title of the law: Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>)</b> Abbreviation: CRE Date of adoption: 28 June 1992 Latest relevant amendments: 6 May 2015 Entry into force: 3 July 1992 Web link: <a href="https://www.riigiteataja.ee/en/eli/530102013003/consolide">https://www.riigiteataja.ee/en/eli/530102013003/consolide</a> Grounds covered: unlimited (ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or other grounds)<sup>131</sup> Civil/administrative/criminal law: administrative Material scope: Not specified Principal content: Equality before the law; prohibition of discrimination</p>
<p><b>Title of the law: Equal Treatment Act (<i>Võrdse kohtlemise seadus</i>)</b> Abbreviation: --- Date of adoption: 11 December 2008 Latest relevant amendments: 13 April 2017 Entry into force: 1 January 2009 Web link: <a href="https://www.riigiteataja.ee/en/eli/530102013066/consolide">https://www.riigiteataja.ee/en/eli/530102013066/consolide</a> Grounds covered: ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation Civil/administrative/criminal law: Civil/administrative Material scope: identical with Directives 2000/43 and 2000/78 for respective grounds Principal content: definitions of direct and indirect discrimination, harassment, provisions regarding victimisation, instruction to discriminate, genuine occupational requirements, reasonable accommodation, burden of proof, positive action measures, exceptions for associations and other public or private organisations the ethos of which is based on religion or belief. Detailed provisions regarding one of the specialised bodies (Commissioner for Gender Equality and Equal Treatment)</p>
<p><b>Title of the law: Chancellor of Justice Act (<i>Õiguskantsleri seadus</i>)</b> Abbreviation: --- Date of adoption: 25 February 1999 Latest relevant amendments: 13 May 2020 Entry into force: 1 June 1999 Web link: <a href="https://www.riigiteataja.ee/en/eli/505012015001/consolide">https://www.riigiteataja.ee/en/eli/505012015001/consolide</a> Grounds covered: not specified (public sector); sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law (conciliation procedure, private sector) Civil/administrative/criminal law: Administrative (with elements of civil) Material scope: Not specified (public sector); the Chancellor will ignore discrimination-related complaints that concern 1) the professing and practising of faith or working as a minister of religion in religious associations with registered articles of association; 2) relations in family or private life; 3) the exercising of the right of succession (private sector) Principal content: Procedure in cases of discrimination by 1) state agency, local government agency or body, legal person in public law, natural person or legal persons</p>

<sup>131</sup> Article 12 of the Constitution includes an open-ended list of grounds of prohibited discrimination: Sexual orientation and age are not specifically mentioned but both are covered.

in private law performing public duties; 2) a natural person or a legal person in private law; responsibilities of the Chancellor as a body for the promotion of equality

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

Abbreviation: PC

Date of adoption: 6 June 2001

Latest amendments: 13 June 2018

Entry into force: 1 September 2002

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

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

Civil/administrative/criminal law: criminal

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

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

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

Abbreviation: ---

Date of adoption: 7 April 2004

Latest amendments: 19 December 2018

Entry into force: 1 May 2004

2004

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

Grounds covered: sex

Civil/administrative/criminal law: Administrative/ civil

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

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

## ANNEX 2: INTERNATIONAL INSTRUMENTS

**Country: Estonia**

**Date: 31 December 2020**

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	14 May 1993	16 April 1996	No	Yes	Yes
Protocol 12, ECHR	4 November 2000	No	N/A	N/A	N/A
Revised European Social Charter	4 May 1998	11 September 2000	No	collective complaints - No	Yes
International Covenant on Civil and Political Rights	(accession)	21 October 1991 (accession)	No	Yes	Yes
Framework Convention for the Protection of National Minorities	2 February 1995	6 January 1997	No; however, according to the Estonian declaration only Estonian citizens may be recognised as national minority members	N/A	Yes (in the case of self-executing norms)
International Covenant on Economic, Social and Cultural Rights	(accession)	21 October 1991 (accession)	No	N/A	Yes
Convention on the Elimination of All Forms of Racial Discrimination	(accession)	21 October 1991 (accession)	No	Yes	Yes
ILO Convention No. 111 on	Irrelevant	8 June 2005	No	N/A	Yes

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

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