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# Country report

## Non-discrimination

Estonia

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including summary



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*European Commission  
B-1049 Brussels*

# **Country report**

## **Non-discrimination**

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

### **Estonia**

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## EXECUTIVE SUMMARY

### 1. Introduction

Estonia is a multi-party parliamentary democracy. The Estonian Republic declared its independence in 1918, but due to almost half a century of Soviet occupation (1944-1991), modern equality law came into existence only in 1992 with the adoption of the new Constitution.<sup>1</sup> Estonia became a member of the European Union (EU) in 2004. The non-discrimination principle was further defined by the adoption of the Equal Treatment Act<sup>2</sup> in 2009, which transposed the EU Directives 2000/78/EC<sup>3</sup> and 2000/43/EC<sup>4</sup> into the Estonian legal system.

According to the 2021 national census, there were representatives of 211 nationalities residing in Estonia, but only 14 ethnic groups had more than 1 000 members.<sup>5</sup> The biggest ethnic groups beside Estonians (69.1 %) are Russians (23.7 %) and Ukrainians (2.1 %). The Roma community is very small. In 2021 there were 676 people who identified themselves as Roma. Regardless of the small size of the community, the Roma have two associations who actively work on various social and cultural issues relevant for the Roma population.<sup>6</sup>

According to 2017 data, there are 149 900 persons with disabilities (11.4 % of the population) in Estonia.<sup>7</sup> The disability movement in the post-occupation era dates to 1989 and is currently well institutionalised with the umbrella organisation, the Estonian Chamber of Disabled People, being represented across Estonia, with 16 county boards and with 32 nationwide disability-specific unions and associations as members.

More than half of the population considers themselves non-religious (58 %) according to the 2021 census data. The largest religious group is Orthodox (16 %), followed by Lutherans (8 %), which was previously the largest religious community. The Constitution stipulates that there is no state church.<sup>8</sup>

LGBTQI people's rights and equality issues have been an important part of the public debate for the last 10 years. Since 2012, the Estonian Human Rights Centre has monitored the population's attitudes towards LGBT+ topics. The 2021 survey showed that 61 % of the Estonian-speaking population and 38 % of speakers of other languages regard homosexual attraction as acceptable. People aged 15-19 are the most open-minded: 87 % of them think that this type of attraction is a normal part of society. The survey also found that 47 % of people support gay and lesbian marriages.<sup>9</sup> The law currently in force only allows gays and lesbians to enter into registered partnerships.<sup>10</sup>

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

<sup>3</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive).

<sup>4</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive).

<sup>5</sup> Statistics Estonia data at: <https://rahvaloendus.ee/et/tulemused/rahvastiku-demograafilised-ja-etno-kultuurilised-naitajad>.

<sup>6</sup> Balti Uuringute Instituut (2014), *Ülevaade romade olukorrast Eestis*.

<sup>7</sup> Habicht, A., Kask, H. (eds) (2018) *Puuetega inimeste eluolu Eestis. ÜRO puuetega inimeste õiguste konventsiooni täitmise variraport*. Eesti Puuetega Inimeste Koda 2018.

<sup>8</sup> The commentary on the Constitution (Art 40). Available at: <https://pohiseadus.ee/sisu/3511>.

<sup>9</sup> Comparative results of 2012, 2014, 2017, 2019 and 2021 surveys available at: <https://humanrights.ee/en/topics-main/equal-treatment/attitudes-towards-lgbt-topics-estonia/>.

<sup>10</sup> After the cut-off date for this report a law was passed in the Estonian Parliament that established marriage equality for all people including lesbian, gay and queer couples. The law will enter into force on 1 January 2024.

## 2. Main legislation

According to the Estonian Constitution,<sup>11</sup> the ratified international treaties have priority over domestic legislation. Estonia has signed and ratified the vast majority of international human rights instruments aimed at combating discrimination.

Article 12 of the Estonian Constitution includes an open-ended list of grounds of prohibited discrimination. The commentary on the Constitution regards this provision as a protection of each person's human dignity by prohibiting discrimination regardless of the identity of the person.<sup>12</sup> This article is directly applicable to 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 equality law is shaped by two laws: the Equal Treatment Act<sup>13</sup> and the Chancellor of Justice Act<sup>14</sup>. The first of these laws was specifically adopted and the second one amended 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 widened the mandate of the existing equality body – the Gender Equality Commissioner (established in 2005 under the Gender Equality Act) – whose name was altered and became the Gender Equality and Equal Treatment Commissioner. The equality body, which had been designated to give opinions in cases of discrimination on the ground of gender, was now also able to receive discrimination complaints on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability and sexual orientation.

The Chancellor of Justice scrutinises legislative instruments to ensure conformity with the law. The Chancellor also has the duties of an ombudsman to guarantee the protection of people's constitutional rights and freedoms. It can also deal with cases of discrimination on any grounds by public bodies and institutions. In January 2004, the Chancellor of Justice's Office acquired powers to carry out conciliation procedures in disputes regarding discrimination by natural persons and private legal entities on the grounds of gender, 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.

Under the criminal provisions of the Penal Code,<sup>15</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, gender, language, origin, religious belief (*usutunnistus*), sexual orientation, political opinion, financial or social status).<sup>16</sup>

Furthermore, the Gender Equality Act<sup>17</sup> prohibits discrimination on the basis of gender, pregnancy and childbirth, parenting, performance of family obligations and other circumstances related to gender (e.g. being transgender). The scope of the Gender Equality

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

<sup>12</sup> Commentary to the Constitutions. Available at: [https://pohiseadus.ee/sisu/3483/paragrahv\\_12](https://pohiseadus.ee/sisu/3483/paragrahv_12).

<sup>13</sup> Equal Treatment Act (*Võrdse kohtlemise seadus*), RT I 2008, 56, 315.

<sup>14</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>15</sup> Penal Code (*Karistusseadustik*), RT I 2001, 61, 364, RT I 2002, 86, 504.

<sup>16</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>17</sup> Gender Equality Act (*Soolise võrdõiguslikkuse seadus*), RT I 2004, 27, 181.



Act is wider than the Equal Treatment Act. It covers all spheres of life with very few exceptions (e.g. situations between family members). The act is 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 in 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 persons with disabilities, 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 exclude 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 preferential treatment is appropriate and necessary); pregnancy; confinement; caring for children, adult children or parents in need of care.

The previous drafts of legislative proposals to amend the Equal Treatment Act have been informed by the concepts of intersectionality and multiple discrimination. However, none of the bills has included an explicit provision to this end. The law in force does not stipulate a prohibition on multiple discrimination or discrimination by association.

### **4. Material scope**

Article 12 of the Constitution bans discrimination in all spheres of life 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 context of conciliation procedures between private parties, the Chancellor of Justice's mandate does not extend to discrimination 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>18</sup> In the public sector, the Chancellor, acting as an ombudsman may deal with any questions if it is appropriate to do so.

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

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<sup>18</sup> Participation in the conciliation procedure requires the consent of both parties. As of December 2021 it has only been used once.

## 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 they suffered from crimes/misdemeanours), *administrative court* procedures (e.g. complaints against the action of an official or state/municipal institution, including disputes between a public official and their employer) or *civil court* procedures (e.g. labour disputes in the private sector and the award of non-pecuniary damage).

Discrimination cases are solved on the basis of general procedural 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.

The Equal Treatment Act entitles a victim of discrimination to demand an end to the discrimination and a compensation for the damage caused to them 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. Upon determination of the amount of compensation, a court or a labour dispute committee must take into account, among other things, the scope, duration and nature of discrimination. 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.

- Quasi-judicial procedure of giving a legal opinion at the Gender Equality and Equal Treatment Commissioner

The Gender Equality and Equal Treatment Commissioner carries out an investigation into whether discrimination has occurred. The outcome of the procedure is a legally non-binding opinion.

- 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 their 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 their rights are violated or their 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. A similar rule applies in procedures of the Equality Commissioner. The Commissioner will provide opinions to victims of discrimination or to persons who have a legitimate interest in monitoring compliance with the requirements for equal treatment. However, no similar rules have been introduced regarding discrimination-related disputes before the labour dispute committees or courts.

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. The Equal Treatment Act Article 6 allows positive measures in line with Article 7(1) of the Directive 2000/78. The Act provides that it does not prejudice the application of specific measures to prevent or diminish inequality deriving from any protected characteristic specified in the Act under the condition that such measures must be proportional to the objective being sought. In Estonia, among the most important of such measures are tax benefits and special labour market services for unemployed persons with disabilities.

The Gender Equality and Equal Treatment Commissioner 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 Gender Equality and Equal Treatment Commissioner, who, from January 2009 has had a mandate to deal with other grounds in addition to gender. From 2004 to 2009, this role was played by the Chancellor of Justice, which still has some obligations relating to the promotion of the principles of equality and non-discrimination in Estonia.

The Gender Equality and Equal Treatment Commissioner is an independent expert appointed for a five-year period by the Minister of Social Affairs. The Commissioner's 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 gender 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 their 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 also made 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 some issues that should be addressed in the context of future revision of relevant laws. In broader terms the equality laws need an assessment of their applicability, as there have been very few court cases. There may be different reasons for this, including that people do not know their rights, hiring a lawyer is expensive, in the event of losing at court some of the legal costs of the defendant may be imposed on the claimant, and the laws may not encourage the enforcement of equality rights.

First, the scope of the Equal Treatment Act, although in line with the directives, creates a hierarchy of grounds, which is not in line with the Estonian Constitution. There have been debates in the Riigikogu (Estonian Parliament) and among the lawyers working in the public sector since 2009 over widening the scope to include the same areas of application (e.g. provision of goods and services, education, health etc.) to all the protected grounds listed in the Equal Treatment Act. The idea to widen the scope has also been advocated by the human rights non-governmental organisations. Two legislative proposals have been prepared to this end but there is no political will to pass these amendments to the Equal Treatment Act.

Secondly, in addition to circumstances that relate to genuine and determining occupational requirements or positive action measures, the Equal Treatment Act permits, exceptionally, 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 (Directive 2000/43).

Thirdly, there are no specific provisions regarding the right to act as a representative of a victim of discrimination outside the procedure before the Gender Equality and Equal Treatment Commissioner and the conciliation procedure at the Chancellor of Justice. Relevant regulation could be enhanced to better meet the requirements of the directives.

Fourthly, 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. 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>19</sup> in the way that legislation of general application can. However, the decisions of the Supreme (National) Court<sup>20</sup> do influence local legal practice to a considerable extent.

At the top of the Estonian legal system is the Constitution,<sup>21</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. 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.

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>22</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 1 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>23</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>24</sup>

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.

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<sup>19</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, RT I 2003, 27, 166, RT I 2004, 65, 456). For texts of Estonian legal acts and English translations of most of them, see: <http://www.riiqiteataja.ee>.

<sup>20</sup> Riigikohus, the court of highest instance in Estonia.

<sup>21</sup> Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), 28 June 1992, RT 1992, 26, 349.

<sup>22</sup> RT I 2003, 64, 429. Valid since 14 December 2003.

<sup>23</sup> *Õiguskantsler* (Chancellor of Justice).

<sup>24</sup> Constitutional Review Court Procedure Act (*Põhiseaduslikkuse järelevalve kohtumenetluse seadus*), 13 March 2002, RT I 2002, 29, 174.

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

<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  Entry into force: 3 July 1992  Latest relevant amendments: 6 May 2015  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, gender, language, origin, religion, political or other opinion, property or social status, or other grounds)<sup>25</sup>  Civil/administrative/criminal law: administrative law  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>)<sup>26</sup></b>  Abbreviation: ---  Date of adoption: 11 December 2008  Entry into force: 1 January 2009  Latest relevant amendments: 13 April 2017  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 law  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 (Gender Equality and Equal Treatment Commissioner)</p>
<p><b>Title of the law: Chancellor of Justice Act (<i>Õiguskantsleri seadus</i>)<sup>27</sup></b>  Abbreviation: ---  Date of adoption: 25 February 1999  Entry into force: 1 June 1999  Latest relevant amendments: 13 May 2020  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); gender, 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) law  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 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</p>

<sup>25</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.

<sup>26</sup> Equal Treatment Act (*Võrdse kohtlemise seadus*), 11 December 2008, RT I 2008, 56, 315.

<sup>27</sup> Chancellor of Justice Act (*Õiguskantsleri seadus*), 25 February 1999, RT I 1999, 29, 406.

## 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, gender, 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>28</sup> disability,<sup>29</sup> sexual orientation,<sup>30</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>31</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>32</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>28</sup> E.g. Supreme Court, constitutional review chamber, Judgment of 1 October 2007, case 3-4-1-14-07.

<sup>29</sup> E.g. Supreme Court *en banc*, Judgment of 10 December 2003, case 3-3-1-47-03.

<sup>30</sup> E.g. Supreme Court, constitutional review chamber, Judgment of 18 December 2019, case 5-19-42.

<sup>31</sup> Supreme Court, constitutional review chamber, Judgment of 6 March 2002, case 3-4-1-1-02, point 13; published in RT III 2002, 8, 74.

<sup>32</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 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>33</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>34</sup>

#### b) Religion or belief

The explanatory note that was attached to the draft Equal Treatment Act included the following clarifications regarding religious, political and other beliefs (*usutunnistus, poliitilised või muud veendumused*): 'religious beliefs refer to a religious 'world view'; political and other beliefs are all non-religious beliefs'.<sup>35</sup>

In Estonian law and in everyday practice, religion and belief are understood as covering both the *forum internum* and the *forum externum* similarly to the interpretation by the Court of Justice of the European Union (CJEU, *Achbita* C-157/15).<sup>36</sup> 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' or the term 'belief'.

#### 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 a deviation 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.'

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<sup>33</sup> See explanatory note attached to the draft No. 384 SE (11<sup>th</sup> Riigikogu); available at: <http://www.riigikogu.ee>.

<sup>34</sup> Judgment of the Tallinn District Court (*Tallinna Ringkonnakohus*) of 30 November 2009 in administrative case 3-08-2604, para. 15.

<sup>35</sup> See explanatory note attached to draft No. 384 SE (11<sup>th</sup> Riigikogu); available at: <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/cc5e0cc0-2620-3f44-e381-071e238b4195/V%C3%B5rdse%20kohtlemise%20seadus>.

<sup>36</sup> CJEU, judgment of 14 March 2017, *Achbita* C-157/15, ECLI:EU:C:2017:203, para. 28.



Unlike the definition cited above, the definition of disability in Article 2(1) of the Social Benefits for Disabled Persons Act makes a clear reference to the social model of disability:<sup>37</sup>

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

Regardless of this reference to attitudes and the environmental restrictions, the subsequent provisions of the Social Benefits for Disabled Persons Act on establishing the severity of disability that gives access to various services and benefits focus on the degree of assistance and supervision that the person needs. The Committee on the Rights of Persons with Disabilities has noted with regard to Estonia that 'the use, in laws and policies, of derogatory concepts and terminology concerning persons with disabilities, including the use of words such as 'abnormalities', 'helpless persons' and 'mental disorders', which emphasize persons' impairments, reflect the medical and paternalistic approaches to disability'.<sup>38</sup>

Since there are no court interpretations that would elaborate on the definition of disability as provided in the Equal Treatment Act, the grammatical reading of the provision lends itself to the conclusion that the definition is not compatible with the concept of disability as worded in CJEU *HK Danmark (Ring and Skouboe Werge)*, C-335/11 and C-337/11.<sup>39</sup>

In a 2022 case investigated by the Gender Equality and Equal Treatment Commissioner<sup>40</sup> (the national equality body), Decree No. 51 on the health requirements, procedure for medical examination and forms of medical certificates of persons applying for entry into seafarers' employment contracts, crew members, students at maritime educational institutions and persons commencing studies at maritime educational institutions was analysed since it considers schizophrenia as a condition that 'absolutely excludes' someone from working in any maritime job. The Commissioner found that the explanatory note of the decree should have explained why certain psychiatric diagnoses are considered as absolute obstacles to working at sea and since it did not contain such an explanation it is not known whether such a ban is proportional. The Commissioner relied on the expert opinion by a commission of psychiatrists, which stated that it is justified to ban people with a diagnosis of schizophrenia from all seafarers' jobs and therefore concluded that there is no discrimination on ground of disability.

The Commissioner did not seem to ponder whether schizophrenia must be considered 'a curable or incurable illness' entailing 'a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers' as did the CJEU in *HK Danmark, (Ring and Skouboe Werge)*. Instead it was presumed that the diagnosis of schizophrenia amounts to disability as a protected ground.

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<sup>37</sup> Social Benefits for Disabled Persons Act (*Puuetega inimeste sotsiaaltoetuste seadus*), 27 January 1999, RT I 1999, 16, 273.

<sup>38</sup> UNCRPD (2021), *Concluding observations on the initial report of Estonia*, 5 May 2021, <https://www.ohchr.org/en/documents/concluding-observations/crpdcestco1-concluding-observations-initial-report-estonia>.

<sup>39</sup> Judgment of 11 April 2013, *HK Danmark (Ring and Skouboe Werge)*, joined cases C-335/11 and C-337/11, ECLI:EU:C:2013:222. 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.

<sup>40</sup> There is no case no reference, the overview of the case was provided by the Commissioner's Office in correspondence with the expert on 1 May 2023.

d) Age

The explanatory note to the draft Equal Treatment Act does not define the term 'age'. No definition of this ground of unlawful discrimination can be found in case law.

e) Sexual orientation

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

No definition of this ground is provided in case law.

## 2.2 Multiple and intersectional discrimination

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

In Estonia, intersectional discrimination is not explicitly prohibited in national law.

The previous two drafts of legislative proposals to amend the Equal Treatment Act have been informed by the concepts of intersectionality and multiple discrimination, however, none of the bills has included an explicit provision to this end.<sup>41</sup>

There has been no court case regarding multiple and/or intersectional discrimination. The Gender Equality and Equal Treatment Commissioner has given several opinions where the combination of several protected grounds were at the heart of the complaint.<sup>42</sup> However, the amount of cases is not sufficient to observe any patterns. For example, for the years 2020 and 2021 the document registry of the Commissioner's office does not allow users to count complaints where several grounds of discrimination were invoked.<sup>43</sup>

## 2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Estonia, discrimination based on a perception or assumption of a person's characteristics is not explicitly 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 2.4 below).

b) Discrimination by association

In Estonia, discrimination based on association with persons with particular characteristics, is not explicitly 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 2.4 below).

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

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<sup>41</sup> After the cut-off date for this report, the Government expressed a wish to unite the Gender Equality Act and the Equal Treatment Act into one act. One of the topics of the discussion has been how to provide for the concepts of intersectionality and multiple discrimination.

<sup>42</sup> For example, the opinion No. 32 from 14 May 2013 (recruitment case concerning the grounds of age, disability, and gender).

<sup>43</sup> This information is from the author's correspondence with the Commissioner's office, 29 March 2022.

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

### a) Prohibition and definition of direct discrimination

In Estonia, direct discrimination is prohibited by law. The definition is identical with that in the directives.

According to the Equal Treatment Act direct discrimination occurs 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 permits exceptionally and unlike the Racial Equality Directive, 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. This exception is examined in detail in sections 4.6-4.8 below.

## **2.5 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.

### **2.5.1 Statistical evidence**

Section 2.5.1 is not updated for 2022. Regarding the legal framework and the practice, please see Country report Non-discrimination Estonia 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, reporting period 01.01.2021 – 01.01.2022.

### **2.6 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.

#### b) Scope of liability for harassment

In Estonia, where harassment is perpetrated by an employee, judicial interpretation is required regarding the potential liability of the employer and/or the employee.

Unlike the Gender Equality Act, which explicitly places an obligation on the employer to protect their employees from harassment, and provides for their liability if they fail to do so, the Estonian Equal Treatment Act is silent about the liability of the employer.

### **2.7 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, gender, 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 under the Article 3(5) of the Equal Treatment Act. Since the discriminator is liable under the general provisions of prohibition of discrimination, both the instructor and the discriminator are liable.

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

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

In Estonia, the duty to provide reasonable accommodation is included in national law. It is defined in Article 11 of the Equal Treatment Act 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.

In the *Tartu Prison* case,<sup>44</sup> the Supreme Court emphasised that there was no evidence that the claimant was not able to perform their duties as a prison guard, but 'even if it were established ... that the applicant's hearing impairment prevented them from doing so it could not inevitably result in the applicant losing their job, since it was incumbent upon the State to ensure that instead of dismissing them from the service, appropriate and necessary measures were adopted to enable them to continue their service. However, this is provided that such measures would not have imposed a disproportionate burden on the employer'. The Supreme Court referred to the UN CRPD and the obligation of the state to provide reasonable accommodation but did not elaborate further on the desired balance between the opposing interests of the claimant and the defendant when deciding whether the accommodation is disproportionately burdensome on the employer. According to the Supreme Court, it cannot be ruled out that 'the continuation of the claimant's service would have been possible in addition to the possibility of using the hearing aid thanks to other appropriate measures'. For example, 'the prison could have considered making changes to the claimant's duties, reducing the number of duties requiring direct contact with prisoners, etc.' (p. 81).

It should be noted that Estonian law also provides for general employer's obligations regarding certain groups of employees. According to Article 10<sup>1</sup>(4) of the Occupational Health and Safety Act:<sup>45</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

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<sup>44</sup> Riigikohus, 15 March 2022, No. 5-19-29, pp 78 and 81. See also sections 4.1 and 12.2 below.

<sup>45</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.

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 accommodation. Thus, the Labour Market Services and Benefits Act<sup>46</sup> provides unemployed persons with disabilities 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>47</sup> and an employer, in which the state will compensate the employer for 50 to 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 person with disabilities (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 persons with disabilities<sup>48</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, 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 the *Tartu Prison* case<sup>49</sup> the Supreme Court touched upon the concept of reasonable accommodation for the first time. The court declared unconstitutional and invalid the provisions of Regulation No. 12 that imposed an absolute bar on the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception, without allowing it to be ascertained whether that officer is capable of fulfilling their duties, after the adoption of reasonable accommodation measures where appropriate.

Regarding the reasonable accommodation measures, the Supreme Court stated that 'an absolute health requirement, the non-compliance with which leads to person being unsuitable for a job, must be in accordance' with the reasonable accommodation provision of the Equal Treatment Act and 'an absolute health requirement may be imposed only if reasonable measures to overcome the shortcomings of non-compliance with the health requirement would result in disproportionately high costs'.

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<sup>46</sup> Labour Market Services and Benefits Act (*Tööturuteenuste ja -toetuste seadus*), 28 September 2005, RT I 2005, 54, 430.

<sup>47</sup> *Eesti Töötukassa* (Unemployment Insurance Fund).

<sup>48</sup> In this context, a person with a disability 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).

<sup>49</sup> Riigikohus, 15 March 2022, No. 5-19-29, p 64.

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.c of this report.

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

In Estonia, failure to meet the duty of reasonable accommodation is not recognised as a form of discrimination in the text of the law. Judicial interpretation is required to ascertain whether the courts would recognise the failure to accommodate as discrimination.

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

In Estonia, there is no duty to provide reasonable accommodation for persons with disabilities outside the employment field. However, there are legal provisions which oblige the transport and building sectors to abide by the rules that aim to improve accessibility of public space and buildings. Decree No. 28 uses the term 'accommodate' in relation to considering the special needs of persons with disabilities in the context of public transport, road and railway crossings and requirements for buildings (including parking areas).<sup>50</sup>

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

Section 2.8.f is not updated for 2022. Please see Country report Non-discrimination Estonia 2022, Transposition and implementation at national level of Council Directives 2000/43/EC and 2000/78/EC, reporting period 01.01.2021 – 01.01.2022.

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<sup>50</sup> *Puudega inimeste erivajadustest tulenevad nõuded ehitisele*, (Building requirements in relation to the special needs of disabled people), RT I, 31.05.2018, 55, Articles 6, 9, 17 and 22.

### **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)**

Similarly to the wording of the equality directives, Estonian equality law does not cover differences of treatment based on nationality. Furthermore, the Equal Treatment Act cannot be invoked to challenge provisions and conditions relating to the entry and residence of third-country nationals and stateless persons in its territory. In Estonia, there are no residence, citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

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

###### a) Protection against discrimination

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

The general anti-discrimination clause of the Constitution (Article 12) seems to cover both natural and legal persons for the purpose of protection against discrimination. The Supreme Court recognised equality before the law (the first sentence of Article 12 of the Constitution) as a right belonging to both natural and legal persons, however the decision did not consider whether legal persons can be discriminated against.<sup>51</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).

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<sup>51</sup> Supreme Court, constitutional review chamber, 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.



b) Liability for discrimination

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. The Act uses the formal legal term for self-employment (*füüsilisest isikust ettevõtja*), which corresponds according to the Estonian tax law to a natural person who is engaged in entrepreneurship (sole proprietor).

There is no case law regarding the scope of Estonian equality law in relation to access to self-employment.

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

#### **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).

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

#### **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).

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

### **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).

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

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

In Estonia, national legislation prohibits discrimination in services of social welfare, social security and healthcare, including social benefits, as formulated in Directive 2000/43; only discrimination based on race, ethnic origin and colour is prohibited in respect of social protection (Equal Treatment Act, Article 2(1)5). According to the Social Welfare Act, social welfare includes services related to housing.<sup>52</sup>

General anti-discrimination provisions of the Constitution (Article 12) also apply in this context.<sup>53</sup> The grounds covered by Directive 2000/78 are protected by the Constitution in all areas of life, going further than the Equal Treatment Act. The recent practice by the Supreme Court gives reason to believe that such cases can be heard with the help of the Constitution. For example, the Court held that the 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 partnerships of people of the same gender.<sup>54</sup> In another case, the Supreme Court endorsed a particular form of access to healthcare of a registered partner of a same-gender couple, which is reserved for 'spouses'.<sup>55</sup>

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

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

The Equal Treatment Act does not rely on the exception in Article 3(3) of Directive 2000/78 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 Directive 2000/43. Only discrimination based on race, ethnic origin and colour are prohibited in respect of social advantages (Equal Treatment Act, Article 2(1)5).

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<sup>52</sup> In the national context, social housing is covered under social welfare: Social Welfare Act (*Sotsiaalhoolekande seadus*), 9 December 2015, RT I, 30.12.2015, 5.

<sup>53</sup> See e.g. Supreme Court, constitutional review chamber, 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 gives such spouses automatic access to the national health insurance system. The Supreme Court found it unconstitutional that dependent registered partners did not have access to the scheme on an equal footing with married partners. The court, however, did not discuss whether the applicant was discriminated against on the ground of sexual orientation.

<sup>54</sup> Supreme Court *en banc*, Judgment of 21 June 2019, Case No. 5-8-15. The case concerned a non-issuing of a residence permit to a registered partner of a citizen of Estonia.

<sup>55</sup> Supreme Court, constitutional review chamber, Decision of 18 December 2019, Case No. 5-19-42.

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

Social advantages are translated as social benefits (*sotsiaaltoetused*) in the text of the Act. There is no case law regarding discrimination on the grounds of race, ethnic origin or colour related to social advantages. The general anti-discrimination provisions of the Constitution (Article 12) also apply in this context. The grounds covered by Directive 2000/78 are protected by the Constitution in areas not covered by the Equal Treatment Act with the recent Supreme Court practice supporting this interpretation.

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 Directive 2000/43; only discrimination based on race, ethnic origin and colour is prohibited in respect of education (Equal Treatment Act, Article 2(1)6). Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

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.

According to Article 4(1) of the Education Act,<sup>56</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>57</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>58</sup>

The main approach in Estonia is inclusive education of pupils with disabilities in the mainstream educational system.<sup>59</sup> The principle of inclusive education provides that all children regardless of their disability go to the school close to their home. However, there are also special schools for children with special needs regarding their hearing, vision or speech.

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<sup>56</sup> Republic of Estonia Education Act (*Eesti Vabariigi haridusseadus*), 23 March 1992, RT I 1992, 12, 192.

<sup>57</sup> Basic Schools and Upper Secondary Schools Act (*Põhikooli- ja gümnaasiumiseadus*), 9 June 2010, RT I 2010, 41, 240.

<sup>58</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>59</sup> See e.g., the most recent statistics available in: Kallaste, E. (2016), *Haridusliku erivajadusega õpilaste kaasava hariduskorralduse ja sellega seotud meetmete tõhusus. Teemaatiline raport: Statistiline ülevaade HEV levikust, kaasamisest ja tugimeetmete kasutamisest Eestis 2010-2014*, Eesti Rakendusuuringute Keskus CentAR, p. 28.

a) Trends and patterns regarding Roma pupils

In Estonia, there is little data about education regarding Roma pupils.

In the academic year 2017/2018 there were 55 pupils in Estonian general education schools who spoke the Roma language at home and 50 of them studied in ordinary classes of ordinary schools.<sup>60</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 Directive 2000/43 (Article 2(1)7 of the Equal Treatment Act). Ethnic origin, race and colour are the only grounds that are covered.

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

The general anti-discrimination provisions of the Constitution (Article 12) also apply in this context. The grounds covered by Directive 2000/78 are protected by the Constitution in areas not covered by the Equal Treatment Act with the recent Supreme Court practice supporting this interpretation.

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 Directive 2000/43 (Article 2(1)7 of the Equal Treatment Act).

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

Gender identity, gender expression and sex characteristics are not explicitly covered in national legislation.

General anti-discrimination provisions of the Constitution (Article 12) also apply in this context. The grounds covered by Directive 2000/78 are protected by the Constitution in areas not covered by the Equal Treatment Act with the recent Supreme Court practice supporting this interpretation.

a) Trends and patterns regarding a) housing segregation for Roma

In Estonia, there is no data about housing segregation or discrimination against the Roma.

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<sup>60</sup> Ministry of Foreign Affairs (2019), *Eesti kaheteistkümnes ja kolmeteistkümnes perioodiline aruanne rassilise diskrimineerimise kõigi vormide likvideerimise konventsiooni täitmise kohta*, May 2019, para. 76. (on file with the author).

## 4 EXCEPTIONS

### 4.1 Genuine and determining occupational requirements (Article 4) Directive 2000/43, Article 4(1) Directive 2000/78

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 2017, a former guard of Tartu Prison challenged his dismissal, which was initiated because his level of auditory acuity did not meet the minimum standards of sound perception prescribed by Regulation No. 12. The second-instance court found Regulation No. 12 relating to the auditory acuity requirements to be contrary to the general principle of equal treatment enshrined in the Constitution (Article 12) and initiated the procedure for reviewing the constitutionality of those provisions before the Supreme Court.<sup>61</sup>

The Supreme Court referred the following question to the Court of Justice of the European Union for a preliminary ruling: 'Should Article 2(2), read in combination with Article 4(1), of [Directive 2000/78] be interpreted as precluding provisions of national law which provide that impaired hearing below the prescribed standard constitutes an absolute impediment to work as a prison officer and that the use of corrective aids to assess compliance with the requirements is not permitted?'<sup>62</sup>

The CJEU found that the minimum standards of sound perception for prison officers may be regarded as a 'genuine and determining occupational requirement' within the meaning of Article 4(1).<sup>63</sup> The Court took the view that the Article 2(2)(a), Article 4(1) and Article 5 of Directive 2000/78 preclude national legislation that imposes an absolute bar on the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures. The Estonian Supreme Court was to assess whether Regulation No. 12 has imposed a requirement that goes beyond what is necessary to attain the objectives pursued by it.

The Supreme Court, in its judgment of 15 March 2022, declared unconstitutional and invalid the provisions of Regulation No. 12 that impose an absolute bar on the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception, without allowing it to be ascertained whether that officer is capable to fulfil their duties, after the adoption of reasonable accommodation measures where appropriate.

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<sup>61</sup> Tartu Ringkonnakohus, 11 April 2019, No. 3-17-1569.

<sup>62</sup> Riigikohus, 24 Oct 2019, No. 5-19-29.

<sup>63</sup> Judgment of 15 July 2021, *Tartu Vangla*, Case C-795/19 ECLI:EU:C:2021:606.

#### **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>64</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 wording of 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, even though the national legislation lacks the *expressis verbis* indication that this provision is not able to justify discrimination on any other ground beyond religion and belief.

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 review chamber of the Supreme Court has confirmed that the general constitutional principle of equality is applicable to 'all spheres of life'.<sup>65</sup>

It is worth mentioning that the Chancellor of Justice, in its 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)1 of the Chancellor of Justice Act). In other words, complaints may concern working in any other position in a religious organisation. In such cases, the victim of discrimination may still file a complaint to the Equality Commissioner, labour dispute committee or court.

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<sup>64</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.

<sup>65</sup> Supreme Court, constitutional review chamber, Decision of 6 March 2002, Case No. 3-4-1-1-02, point 13.

### **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.’

Maximum age limits have been established for certain groups of public officials, for example: the general retirement age<sup>66</sup> for military servicemen (Article 90 of the Military Defence Service Act),<sup>67</sup> and a retirement age of 58-60 for some categories of prison officials (Article 152 of the Imprisonment Act).<sup>68</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>69</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>70</sup>

On the basis of Article 93(1) of the Public Service Act,<sup>71</sup> a public official may be released from the service due to a decrease in capacity for work (e.g. disability) if they are not capable of performing the functions 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.

### **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 and hence takes a similar approach to Directive 2000/43.

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’.

In Estonia, nationality (citizenship) is not mentioned as a protected ground in national anti-discrimination law nor is it explicitly part of the list of grounds in Article 12 of the Constitution. However, Article 9 of the Constitution declares that the rights, freedoms and duties of everyone and each person, as set out in the Constitution, are equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia. The European Commission against Racism and Intolerance (ECRI) recommended that the Estonian authorities ‘further strengthen the Equal Treatment Act by, inter alia, prohibiting

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<sup>66</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>67</sup> Military Defence Service Act (*Kaitseväeteenistuse seadus*), 13 June 2012, RT I, 10.07.2012, 1.

<sup>68</sup> Imprisonment Act (*Vangistusseadus*), 14 June 2000, RT I 2000, 58, 376.

<sup>69</sup> Amendments published: RT I, 06.07. 2018, 3.

<sup>70</sup> Police and Border Guard Act (*Politsei ja piirivalve seadus*), 6 May 2009, RT I 2009, 26, 159.

<sup>71</sup> Public Service Act (*Avaliku teenistuse seadus*), 13 June 2012, RT I, 06.07.2012, 1.

discrimination based on language and citizenship.<sup>72</sup> The Equal Treatment Act includes language skills as a protected ground regarding discrimination in employment. There is no plan to implement this recommendation regarding the ground of citizenship.

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

In Estonia, the terms 'ethnic origin' (*etniline päritolu*) and 'nationality' (*rahvus*) are often used as synonyms. Conversely, the term 'citizenship' (*kodakondsus*) is ethnically neutral. In the Equal Treatment Act, nationality (as in citizenship) is not a protected ground. There have been no court decisions where differential treatment on the ground of citizenship has been seen to constitute ethnic discrimination.

The Gender Equality and Equal Treatment Commissioner has argued that there is a close link between the grounds of mother tongue and ethnic origin.<sup>73</sup> The Commissioner found it very likely that a request, imposed by a public employer on a candidate with a non-Estonian mother tongue to prove their Estonian language skills beyond what was required by the law, was imposed due to the candidate's ethnic background. This amounted to direct discrimination on the ground of ethnic background.

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

In Estonia, there are no exceptions in relation to disability and health and safety at work as allowed under Article 7(2) of Directive 2000/78.

General exceptions in relation to health and safety at work 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.

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<sup>72</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, 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, Section 13.

<sup>73</sup> The opinion of the Gender Equality and Equal Treatment Commissioner from 16 August 2012, p. 7.1.3.



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

In this landmark court case about the differential treatment of working old-age pensioners when accessing sickness benefits compared to younger persons, the Supreme Court used a proportionality test and delivered a judgment that neither the worse-than-average state of health of the elderly nor the receipt of an old-age pension nor the health insurance fund's need to save money could justify the unequal treatment on the ground of age in relation to the receipt of sickness benefit. Finally, the Supreme Court *en banc* declared that the relevant provision of the Health Insurance Act was unconstitutional and invalid.

c) Permitted differences of treatment based on age

In Estonia, national law permits differences of treatment based on age if they are provided in the law and their legitimate aim is related to employment policy, labour market, vocational training or social security. 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>74</sup>

d) Fixing of ages for admission to occupational pension schemes

In Estonia, national law does stipulate on occupational pension schemes regarding ages for admission to the scheme (possibility provided for by Article 6(2)). According to Article 53(2<sup>2</sup>) of the Funded Pensions Act, an employer may not set a requirement for making contributions or payment of insurance premiums that the length of service of an employee, public servant or a member of the management or control body exceed three years or their minimum age is over 21 years.

Estonian law does not regulate the use of age criteria in actuarial calculations regarding occupational pension schemes.

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

In Estonia, there are some conditions set by law for younger workers in order to promote their vocational integration. There are also special conditions set by law for older workers or which relate to requirements of professional experience or seniority.

The Equal Treatment Act (Article 9(2)) introduced provisions that are rather similar to those of Article 6(1) of Directive 2000/78 (first sentence).<sup>75</sup>

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<sup>74</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(2).

<sup>75</sup> Article 6(1), Directive 2000/78 provides for an exception 'objectively and reasonably justified by a legitimate aim including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.' The Estonian text includes 'different treatment provided in law' instead of the adjective 'legitimate' in front of 'employment policy' and added 'social security services' 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 Labour Market Services and Benefits Act<sup>76</sup> Article 18(2), the wage subsidy may be paid by the state to an employer who employs a person who is 16–24 years of age and has been registered as unemployed for at least six consecutive months. The same Act allows the Estonian Unemployment Insurance Fund to give special attention to 'risk groups' such as unemployed people aged 16-24, unemployed people with disability, unemployed people who, prior to their registration as unemployed, have been caring for a person with disabilities, and unemployed people aged 55 years up to the pensionable age when preparing an individual action plan for the unemployed person (Article 10(5)).

#### 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 requires the person to be at least 21 years old to work as a prosecutor).<sup>77</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. People do not have to apply for the old-age pension as soon as they attain the pensionable age. If they retire later, their monthly old-age pension will be bigger. Also, 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>78</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 children with disabilities or three or more children (Article 10).

If an individual wishes to work beyond state pension age and receive a pension it is allowed (with rare exceptions, such as in the case of the earned years pension if the pension recipient continues to work on the position for which the pension has been appointed). Thus, a person who receives a state old-age pension may work and collect their pension. However, the survivor's pension and national pension (a type of pension created for people who do not have the right to receive old-age pension)<sup>79</sup> will not normally be paid to people who are employed (Article 43(1) of the State Pension Insurance Act).

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<sup>76</sup> Labour Market Services and Benefits Act (*Tööturuteenuste ja -toetuste seadus*), 28 September 2005, RT I 2005, 54, 430. Translation in English: <https://www.rigikateataja.ee/en/eli/510032022003/consolide>.

<sup>77</sup> Prosecutor's Office Act (*Prokuratuuriseadus*), 22 April 1998, RT I 1998, 41/42, 625.

<sup>78</sup> A transition period (a lower age requirement) was established for those born in 1953-1960. RT I 2010, 18, 97.

<sup>79</sup> A national pension is paid to a person of pensionable age, a person with a disability etc. with an insufficient pension qualifying period (State Pension Insurance Act, Article 22(1)).

b) Occupational pension schemes

In the Estonian context an occupational pension fund is a voluntary pension fund where only an employer specified in the conditions of such a pension fund can make contributions for the employees thereof, persons specified in Section 2(3) of the Public Service Act and officials and for the members of the management and control body thereof for the purposes of Section 9 of the Income Tax Act.

Payments from a voluntary pension fund will be made to a policyholder pursuant to the rules of the pension fund, but not before the policyholder has five years until attaining the pensionable age established in the State Pension Insurance Act (Article 63(2) of the Funded Pensions Act). Consequently, in Estonia, there is no standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred.

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, who must retire when reaching 67 years of age (Article 48 of the Courts Act).<sup>80</sup>

d) Retirement ages imposed by employers

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

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.

#### 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).

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<sup>80</sup> Courts Act (*Kohtute seadus*), 19 June 2002, RT I 2002, 64, 390.

<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.

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).

**4.7 Further exceptions necessary in a democratic society: 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 Directive 2000/78.

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

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

This wording is seemingly based on two provisions:

- Article 2(5) of Directive 2000/78 (however, there are no references to 'a democratic society' but to the principle of proportionality).<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. Although the Equal Treatment Act does not specify that the exception does not apply to race and ethnicity, the explanatory note of the Equal Treatment Act does.

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, another exception to the prohibition of discrimination provided in national law is provided in Article 9(3) in the Equal Treatment Act, which allows labour relations agreements to grant preferences to people caring for adult children with disabilities.

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<sup>82</sup> The initial version of the draft law (Bill. No. 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 disadvantaged groups, such as young people not in education, employment or training (NEET), linguistic minorities, and persons with disabilities. 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 persons with disabilities

In Estonia, national law does not provide for quotas for the employment of persons 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, *administrative court* procedures (e.g. complaints against the action of an official or state/municipal institution, including conflicts between a public officials and their 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 procedural 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)) and they are legally binding. 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.

- Quasi-judicial procedure of the equality body

The Gender Equality and Equal Treatment Commissioner provides opinions concerning alleged cases of discrimination based on the applications filed by persons or on the Commissioner's own initiative on the basis of the information obtained. Cases may relate to the public and private sectors. In order to provide an opinion, the Commissioner has the right to obtain information from all persons who possess information that is necessary to ascertain the facts relating to a case of discrimination, and demand written explanations concerning an alleged case of discrimination (Article 17(4) of the Equal Treatment Act). The right to obtain information includes also information concerning the remuneration, the conditions for remuneration and other benefits. The opinion of the Commissioner is legally non-binding.

- Conciliation

Conciliation procedures may be conducted by the Chancellor of Justice in relation to discrimination disputes between private actors if both parties to the

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

dispute agree to conciliate. If the conciliation procedure fails, a victim may seek the protection of their rights in court. Participation in a conciliation procedure is *not* compulsory before lodging the lawsuit before the court.

An agreement between parties in a conciliation procedure is legally binding.

- Ombudsman-like procedures

The Chancellor of Justice (in the public sector) is entitled to conduct ombudsman-like procedures, the results of which are not legally binding (see below).

- Challenge proceedings

A person who finds that their rights are violated or their 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 in question (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 they want to deal with any discrimination-related complaint. There is no guaranteed access to their procedures for a *bona fide* complainant. In practice, victims of discrimination may be advised by the Chancellor to address the Gender Equality and Equal Treatment Commissioner or other institutions.

– 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 the natural or legal persons involved in proceedings in an Estonian court or administrative authority.

In Estonia, about 40 % of the non-Estonian population speak Estonian (active command of Estonian language including the answers 'fluent speaker', 'I understand, speak and write it');<sup>86</sup> 8 % of the non-Estonian population does not speak Estonian at all. Estonian as the official language may influence access to courts for these people, but there are no studies that would suggest that this is a problem in Estonia. According to Article 10(2) of the Code of Criminal Procedure, the assistance of a translator or interpreter must be ensured for participants in court proceedings and for those parties who are not proficient in Estonian.

In civil court procedure, where a party to proceedings is not proficient in the Estonian language and does not have a representative in the proceedings, the court, where this is possible, enlists the assistance of an interpreter or translator on a motion of the party or of its own motion (Article 34(1) of the Code of Civil Procedure). Representatives and

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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> Kivistik, K. (2021), 'Eesti elanike keeleoskus ja -kasutus, inimestevahelised kontaktid, sallivus ning Eesti keele väärtustamine', (Estonian residents' language skills and use, interpersonal contacts, tolerance and appreciation of the Estonian language), in [Eesti Ühiskonna Lõimumismonitooring 2020](#). SA Poliitikauuringute Keskus Praxis, Balti Uuringute Instituut, Tallinna Ülikool, Tartu Ülikool, Turu-uuringute As.

advisors of a participant in a procedure are not entitled to use translators/interpreters (Article 34(5) of the Code of Civil Procedure).

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(6)). According to the 2016 amendments (Article 12(7)),<sup>87</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 persons with disabilities, there is no research data available about how widespread the use of sign language in courts is. 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 they are unable to speak or they are deaf and unable to speak, the course of the proceeding must be communicated to them 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.

c) Number of discrimination cases brought to justice

In Estonia, no specific statistics on the number of cases related to discrimination brought to justice are available. However, all the court decisions are accessible via public online database with a search function.<sup>88</sup> 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 minority 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 2022 the Labour Dispute Committee statistics suggests that there were 15 discrimination complaints lodged across all committees in Estonia.<sup>89</sup> Content analysis of the case briefs shows that in reality only 3 of those complaints contained a discrimination claim with a reference to at least one protected ground: gender (1), language/ethnic origin (1) and religion (1).<sup>90</sup>

– Equality bodies

Between September 2020 and August 2021 there were no conciliation procedures carried out by the Chancellor of Justice.<sup>91</sup> Between September 2021 and August 2022 there was 1 conciliation procedure and 18 claims of discrimination on following grounds: disability (6), nationality (3), race (3), age (2), political or other belief (1), language (1), EU citizenship (1) and other ground (1).<sup>92</sup> The data suggests that none of these claims concerned multiple discrimination.

The number of complaints filed with the Gender Equality and Equal Treatment Commissioner rapidly increased between 2010 and 2015 and then stabilised.

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<sup>87</sup> RT I 28.12.2016, 14.

<sup>88</sup> Available at: [https://www.riigiteataja.ee/kohtulahendid/koik\\_menetlused.html](https://www.riigiteataja.ee/kohtulahendid/koik_menetlused.html).

<sup>89</sup> The annual statistics provided by the Labour Inspectorate at: <https://www.ti.ee/media/1055/download>.

<sup>90</sup> The statistics may be provided via the search engine of the database, which includes all the claims where there is any mention of the words 'unequal' or 'discrimination,' even if no claim of discrimination is made. The same issue is present in previous years' statistics of the Labour Inspectorate.

<sup>91</sup> See: <https://www.oiguskantsler.ee/ylevaade2021/vordne-kohtlemine>.

<sup>92</sup> Chancellor of Justice (2022), *Annual report 2021/2022*, 'Equal treatment', available at: <https://www.oiguskantsler.ee/ylevaade2022/vordne-kohtlemine>.



In 2021, 239 complaints were received by the Commissioner's Office concerning the following grounds: gender (102), belief (22), disability (19), ethnic origin (15), age (13), religion (7), social status (7), language skills (3), sexual orientation (2), temporary agency work (2).<sup>93</sup> In 2022, 217 complaints were received concerning the following grounds: gender (66), disability (26), nationality (22), age (8), citizenship (8), language (5), belief (5), race or colour of skin (4), sexual orientation (3), social status (3), military service (2), religion (1).<sup>94</sup> The Commissioner's Office provided no data regarding complaints of multiple discrimination.

d) Registration of national court decisions on discrimination cases

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

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

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

In Estonia, associations and organisations are entitled to act on behalf of victims of discrimination. Organisations that have a legitimate interest in monitoring compliance with the requirements for equal treatment can act on behalf of victims of discrimination in proceedings of the Gender Equality and Equal Treatment Commissioner. The Equal Treatment Act stipulates that these organisations can file an application to the Commissioner for the Commissioner's opinion on whether discrimination has occurred.

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>95</sup>

The explanatory note to the Equal Treatment Act provides an insight into the legislature's intention regarding the legal standing of associations before the courts.<sup>96</sup> The note ties the capacity to act on behalf of the victim with the provision in the Code of Civil Procedure that allows the parties to the dispute to include an adviser in the proceedings. An adviser may appear in the trial or hearing together with the party to proceedings and provide explanations. An adviser cannot perform procedural operations or file petitions (Article 228). There is no data on whether this provision has been applied in any court case. 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 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.

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<sup>93</sup> Office of the Gender Equality and Equal Treatment Commissioner, Written communication of 29 March 2022. Note that a number of complaints concerned no identifiable ground.

<sup>94</sup> Office of the Gender Equality and Equal Treatment Commissioner, Written communication of 14 March 2023. Note that a number of complaints concerned no identifiable ground and/or were out of the scope of the mandate.

<sup>95</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).

<sup>96</sup> See explanatory note attached to draft No. 384 SE (11th Riigikogu); available at: <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/cc5e0cc0-2620-3f44-e381-071e238b4195/V%C3%B5rdse%20kohtlemise%20seadus>.

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 the 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 a 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 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>97</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.

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<sup>97</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.

### **6.3 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 of skin (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 the 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.

There are no court judgments that have further interpreted the shift of the burden of proof in the area of employment or occupation as it is stated in the law.

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

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

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

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

Protection against victimisation provided in the Equal Treatment Act will be limited only by the material scope of this law. Thus, protection against victimisation in cases 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 provides for the right of an injured party to demand compensation for damage and for the discrimination to end. There is no possibility to demand that a victim of a discriminatory recruitment process be given the job they applied for. 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)). Compensation may be awarded only in the processes before the labour dispute committee or before the court (civil as well as administrative): '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.

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

### 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.

The Estonian judiciary is traditionally cautious as regards awarding compensation for non-pecuniary damage. In labour law, judges and labour dispute committees make use of rather detailed provisions of labour law regarding compensation in labour disputes regardless of whether a claim of discrimination is involved or not. In equality law, however, lack of tradition as well as detailed guidance regarding compensation results in judges avoiding awarding generous compensation in discrimination disputes. Finally, the level of awareness of discrimination issues in Estonian society is low and there have been only a small number of discrimination court cases. As a result, case law that interprets anti-discrimination laws is scarce.

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

### **7.1 Bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive (Directive 2000/43)**

There are two bodies for the promotion of equal treatment in Estonia: the Gender Equality and Equal Treatment Commissioner and the Chancellor of Justice. The services of both are available for all with no costs. No public accessibility audits are available concerning the accessibility of the premises of the equality bodies to people with special mobility needs. The Committee on the Rights of Persons with Disabilities has expressed its concern over lack of information about the accessibility of the premises of the Office of the Chancellor of Justice as the independent mechanism appointed to monitor the implementation of the UN CRPD.<sup>98</sup> Neither of the bodies has representation outside of the capital. However, the complaints may be submitted via online channels, in writing and, in case of the Equality Commissioner, complaints have also been received via phone.

### **7.2 Political, economic and social context of the designated bodies**

For many years the Gender Equality and Equal Treatment Commissioner worked in a challenging political context, with insufficient financial means to carry out the mandate. In 2009 when the Equal Treatment Act entered into force and the mandate of the Commissioner was widened, no additional resources were allocated to the body. In addition, the Commissioner continues to be in precarious position since there are regular discussions initiated by various politicians or policy makers about abolishing it as an independent Government agency and giving its tasks to some other public body.<sup>99</sup>

In 2015 the media widely covered the selection process of the current Commissioner and strong arguments were made to suggest that the Minister of Social Affairs, who has a legal obligation to formally appoint the Commissioner, interfered in the selection process to ensure the appointment of a fellow politician from his party.<sup>100</sup> In 2022 special efforts were made by the Ministry of Social Affairs to ensure that the public competition for the position of Commissioner would be transparent and fair.

### **7.3 Institutional architecture**

In Estonia, one of the designated bodies was established to transpose Article 13 (the Commissioner) and the other is part of a body with multiple mandates (the Chancellor).

First, for all practical purposes, the leading equality body is the Gender Equality and Equal Treatment Commissioner - 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).

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>101</sup> were adopted on 11 February 2003). The Chancellor also deals

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<sup>98</sup> UNCRPD (2021) *Concluding observations on the initial report of Estonia*, p 64 (b), at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/102/71/PDF/G2110271.pdf?OpenElement>.

<sup>99</sup> Most recently this was voiced in 2022 by a top level executive of the Ministry of Social Affairs when preparing the public competition for recruitment of the new Commissioner.

<sup>100</sup> Velder, S. (2015), *Eesti Ekspress*, at: <https://ekspress.delfi.ee/artikkel/72507531/vordoigusvoliniku-valimine-skandaali-tagamaa-28-vaikest-neeprit>.

<sup>101</sup> Chancellor of Justice Act (*Õiguskantsleri seadus*), 25 February 1999, RT I 1999, 29, 406.

with protection of the rights of children and young people (ombudsman for children), persons with disabilities,<sup>102</sup> prevention of ill-treatment,<sup>103</sup> etc. Since 2019 the Chancellor is also the national human rights institution.

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. Such procedures result in non-binding opinions by the Chancellor. 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 gender, 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 visible to the general public.

#### **7.4 Status of the designated bodies – general independence and resources**

##### a) Status of the bodies

###### The Gender Equality and Equal Treatment Commissioner

- Separate or other legal status or personality

According to the Equal Treatment Act, the Gender Equality and Equal Treatment Commissioner is an *independent* and impartial expert appointed for a five-year period by the Minister of Social Affairs. The office of the Commissioner is governed under statute enacted by the Government of the Republic. The office of the Commissioner is a legal personality similar to any other governmental body.

- Selection of governing body

The Equality Commissioner is the chief executive of their office. The Equality Commissioner has no other governing bodies.

The Commissioner is appointed to office by the minister in charge of the equality policy sector for five years.

- Sources of funding

The Commissioner's activities, supported by the office, are funded by the state budget. 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, and the State Budget Act for each year designates the budget of the Commissioner below which the Ministry of Social Affairs cannot go when allocating funds for the Commissioner.

- Powers to recruit and manage staff

The Commissioner is free to decide on office structure and recruitment (Article 15).

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<sup>102</sup> Based on Article 33(2) of the Convention on Rights of Persons with Disabilities.

<sup>103</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.

- Accountability

No legal provisions beside the rules applied to the Ministry of Social Affairs and the entire public service in Estonia exist regarding the financial accountability of the Commissioner.<sup>104</sup> In practice the Commissioner presents an annual report of activity to the Parliament's constitutional committee. The committee may ask questions regarding the Commissioner's activities but has no power to hold the Commissioner accountable over misconduct.

The Chancellor of Justice

- Separate or other legal status or personality

The Chancellor of Justice is a constitutional institution, meaning that it was founded by the Constitution and therefore enjoys special status and independence from the Government.

- Selection of governing body

The Chancellor 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). The Office of the Chancellor has an administrative director responsible for managing the daily work of the office. According to the Statute of the Chancellor of Justice Office there is an executive board members, the of which are *ex officio* the Chancellor, the deputies of the Chancellor, the director, heads of departments, the head of the legal service, the chief communication officer, the external communications officer and the development officer.

- Sources of funding

The Chancellor is independent in their decision-making, and the office has a budget of its own (fixed in the annual state budget).

- Powers to recruit and manage staff

The Chancellor is free to decide on office structure and recruitment.

- Accountability

The Chancellor 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).

The Chancellor presents an annual report on their activity to the Parliament.

b) Independence of the bodies

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

Independence of the Chancellor of Justice is guaranteed by its exceptional autonomous status provided in the Constitution (see section 7.4.a above).

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<sup>104</sup> However, the Commissioner must publish on the website an annual overview of their activities and the activities of their office (Estonia, Statute of the Gender Equality and Equal Treatment Commissioner (*Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku ning kantselei põhimäärus*), Article 12(1), RT I 2010, 33, 170).

In terms of independence it is important to note that during their term of office, both the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner 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 their personal investments and the interest and dividends received therefrom and income received from the disposal of their 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. However, the independence of the Commissioner can be compromised in the context where the power of appointment lies with the minister and the law provides no requirements as to the expertise or qualifications of the Commissioner.

c) Resources

The Chancellor of Justice

- The annual budget of the body

The Chancellor of Justice has an annual budget of EUR 3 378 000.

- The share of the annual budget dedicated to the equality body mandate

There is no share of the annual budget dedicated to the equality body mandate.

- The total number of staff of the body

The total number of staff of the Chancellor of Justice is 46 public servants (currently 39 filled positions) and nine employees in supporting functions.

- The number of staff dedicated to the equality body mandate

There is no staff nor unit dedicated to the equality body mandate because, in the words of the Chancellor of Justice's written communication, 'all the public servants working at the Office of the Chancellor of Justice engage with issues of equality'.<sup>105</sup>

In the opinion of the author of this report this means that there is no expert on equal treatment in charge of the equality mandate and no priority is given to any subject related to equality in this equality body, which is also demonstrated in the numbers of complaints, opinions and conciliation procedures of the Chancellor of Justice over the years. At the same time the Chancellor of Justice is much better funded and has a bigger office than the Equality Commissioner.

The Gender Equality and Equal Treatment Commissioner

- The annual budget of the body

The Gender Equality and Equal Treatment Commissioner has an annual budget of EUR 527 237.

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<sup>105</sup> The Chancellor of Justice, written communication, 6 April 2023.



- The share of the annual budget dedicated to the equality body mandate

Since the Commissioner has only the equality body mandate, all the resources are used for this task.<sup>106</sup>

- The total number of staff of the body

There are eight positions (of which seven are currently filled).

- The number of staff dedicated to the equality body mandate

Since the Commissioner has only the equality body mandate, the entire staff is dedicated to this mandate.

The Equality Commissioner has too few employees to efficiently fulfil the wide mandate (all the grounds under EU law, including gender) as the equality body. The same opinion has been expressed over the years multiple times by several Estonian advocacy organisations<sup>107</sup> and international human rights bodies such as ECRI<sup>108</sup> and the Commissioner for Human Rights of the Council of Europe.<sup>109</sup> The budget has increased over the years but is still considered too small considering the scope of the mandate.

## 7.5 Grounds covered by the designated bodies

The Gender Equality and Equal Treatment Commissioner deals with discrimination on the grounds of gender, pregnancy, childbirth, parenting, family-related duties, and other circumstances related to gender in all areas of life. These grounds are stipulated in the Gender Equality Act. In addition, the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation are covered within the material scope similar to Directives 2000/43 and 2000/78 for the respective grounds.<sup>110</sup> The Equal Treatment Act provides an additional list of grounds stating that it does not preclude the requirements of equal treatment in labour relations in relation to any other ground, in particular due to family-related duties, social status, representation of the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces. There have been Commissioners who have taken the view that they may investigate a case regarding a protected ground from the additional list.

The Chancellor of Justice deals with unspecified grounds – in fact, any ground – of discrimination in the public sector, through ombudsman-like procedures.<sup>111</sup> Furthermore, the Chancellor deals with conciliation in the private sector in cases of discrimination on the grounds of gender, 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.

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<sup>106</sup> The Gender Equality and Equal Treatment Commissioner, written communication, 3 April 2023.

<sup>107</sup> Most recently by the Equal Treatment Network (Võrdse kohtlemise võrgustik) (2021) *Ühisaruanne Eesti kolmanda üldise korralise ülevaatuse (UPR) jaoks* (Joint report for the third general periodic review (UPR) of Estonia), <https://humanrights.ee/app/uploads/2020/12/UPR-EST-uus.pdf>.

<sup>108</sup> ECRI (2015) *Report on Estonia (5th monitoring cycle)*, 16 June 2015: <https://rm.coe.int/fifth-report-on-estonia-estonian-translation-/16808b56f2>.

<sup>109</sup> Commissioner of Human Rights (2018) Report of Ms Dunja Mijatović on the visit to Estonia, Council of Europe, <https://rm.coe.int/euroopa-noukogu-inimoiquste-voliniku-dunja-mijatovici-raport-11-15-juu/16808de6a3>.

<sup>110</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>111</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.

## 7.6 Competences of the designated bodies – and their independent exercise

### a) Independent assistance to victims

In Estonia, only the Gender Equality and Equal Treatment Commissioner 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 their advisers deal with legal counselling in situ.

As for the Chancellor of Justice, they normally inform applicants (victims) about their rights and avenues of redress (being an ombudsman).

### b) Independent surveys and reports

In Estonia, only the Gender Equality and Equal Treatment Commissioner has the competence to conduct independent surveys and publish independent reports (Article 16 of the Equal Treatment Act). The Commissioner previously commissioned a study on the situation of LGBTQ people in Estonia<sup>112</sup> and a study to measure equality across various equality strands and areas of life.<sup>113</sup> There are more studies regarding gender equality.

The Chancellor of Justice Act, Article 35<sup>16</sup> provides that the Chancellor must inform the Riigikogu, the Government of the Republic and governmental agencies, and the public about the application of the principle of equal treatment, and promote co-operation.

There is no public data on whether the bodies engage in strategic planning.

### c) Recommendations

In Estonia, both designated bodies - the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner - have the competence to issue recommendations.<sup>114</sup>

Both the Chancellor of Justice and the Commissioner are entitled to make proposals to governmental bodies for amendments to legislation or on how to improve the implementation of equality law.

### d) Prevention, promotion and awareness-raising

The Gender Equality and Equal Treatment Commissioner and the Chancellor of Justice are obliged to inform official bodies (e.g. ministries, city councils) about the principles of equality and equal treatment with the view to promote equality in legislation and governing.<sup>115</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 an ad hoc basis.

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<sup>112</sup> Aavik, K., Roosalu, T., Kazjulja, M., Mere, L., Kaal, K., Raudsepp, M. (2016) *LGBTQ inimeste igapäevane toimetulek ja strateegilised valikud Eesti ühiskonnas* (Daily coping strategies of LGBTQ people in Estonia), Gender Equality and Equal Treatment Commissioner, Tallinn, [https://volinik.ee/wp-content/uploads/2020/01/LGBT\\_uuringuraport\\_LOPLIK\\_veeb.pdf](https://volinik.ee/wp-content/uploads/2020/01/LGBT_uuringuraport_LOPLIK_veeb.pdf).

<sup>113</sup> Lees, K., Vahaste-Pruul, S., Sammul, M., Humal, K., Lamesoo, K., Veemaa, J., Kann, A., Espenberg, K., & Varblane, U. (2016) *Kellel on Eestis hea, kellel parem? Võrdõiguslikkuse mõõtmise mudel* (Who does well in Estonia and who does better? Equality measurement model), Gender Equality and Equal Treatment Commissioner, [https://kompetentsikeskus.sm.ee/wp-content/uploads/2018/01/mudel\\_final.pdf](https://kompetentsikeskus.sm.ee/wp-content/uploads/2018/01/mudel_final.pdf).

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

<sup>115</sup> Chancellor of Justice Act 1999, Article 35<sup>16</sup> and Equal Treatment Act 2008, Article 16.

The Equal Treatment Act lists taking measures to promote equal treatment and gender equality as part of the mandate of the Commissioner. According to the Act, the Equality Commissioner is expected to cooperate with other persons and entities to promote gender equality and equal treatment. The website of the Equality Commissioner suggests various publications, tools, training material and other awareness-raising activities to prevent discrimination. The Equality Commissioners have also regularly appeared at conferences and other similar events organised by the civil society organisations.

e) Other competences

Both bodies have a duty to analyse the effect of laws on the situation of persons with the protected characteristics. The Equal Treatment Act provides this in relation to the Commissioner in Article 16(4), and Article 35<sup>16</sup> of the Chancellor of Justice Act stipulates that the Chancellor promotes equality and equal treatment by analysing the impact of legal acts with respect to the position of various members of the society,

### 7.7 Legal standing of the designated 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*.

### 7.8 Dispute resolution

a) Quasi-judicial functions

The Gender Equality and Equal Treatment Commissioner cannot issue binding enforceable decisions. The Chancellor of Justice can issue binding enforceable decisions only in the conciliation procedure. They can both issue non-binding opinions. The non-binding opinions by the Chancellor of Justice can only be issued in cases where the discrimination has occurred in the public sector (in the ombudsman-like procedure).

In Estonia, both the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner are quasi-judicial institutions.

The Chancellor cannot initiate the conciliation procedure without an application from a victim (Article 35<sup>5</sup>). An alleged discriminator is not obliged to participate in the procedure (Article 35<sup>11</sup> (1)). Not only is the conciliation procedure voluntary for the parties, but the proposal to resolve the dispute by the Chancellor of Justice must also be approved by both parties and only then can the approved agreement between the parties become mandatory for the parties. Once the agreement is mandatory it can be enforced by a bailiff (Article 35<sup>14</sup>). It may also include an obligation to pay compensation (Article 35<sup>12</sup>). If a conciliation procedure fails, a victim may address the court for the protection of their 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. As of 31 August 2022, the Chancellor of Justice has conducted one conciliation procedure in 2021, the agreement of which was never approved,<sup>116</sup> and in 2022, there was also one conciliation procedure with no data whether the agreement was approved. There were no conciliation procedures between 2012 and

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<sup>116</sup> Chancellor of Justice; written communication of 13 December 2021.

2015, or between 2018 and 2020.<sup>117</sup> The procedure can hardly be considered to be an efficient legal instrument.

The Gender Equality and Equal Treatment Commissioner is a *quasi*-judicial institution as the Commissioner investigates a case, has the right to obtain information from all persons who may possess information that is necessary to ascertain the facts relating to a case of discrimination, demand written explanations concerning facts relating to an alleged case of discrimination and the filing of documents or copies thereof within the term set by the Commissioner (Article 17 of the Equal Treatment Act). Nevertheless, the Commissioner drafts legally non-binding opinions concerning possible cases of discrimination on the basis of the complaints submitted by persons or on the Commissioner's own initiative (Article 17 of the Equal Treatment Act). The victim may attach the opinion to their court file to inform the court of the assessment of the complaint by the Commissioner.

i) Power to impose sanctions

The bodies cannot impose sanctions.

ii) Nature and level of sanctions that can be imposed

The bodies cannot impose sanctions.

iii) Possibility to appeal

There is no possibility to appeal the non-binding opinions by the Equality Commissioner.

Once the agreement by the Chancellor of Justice in the conciliation procedure is mandatory it can be enforced by a bailiff (Article 35<sup>14</sup>). An agreement approved by the Chancellor of Justice is final and cannot be contested in court, except where the Chancellor materially violates a provision of the conciliation proceedings and the violation may affect the content of the agreement (Article 35<sup>15</sup>).

iv) Enforcement of binding decisions

The Chancellor of Justice has published no data on whether even one conciliation procedure has been concluded with a mandatory agreement, hence there is no data regarding their enforcement.

v) Implementation of non-binding opinions

The Equality Commissioner cannot issue binding decisions. There is no data on whether the non-binding opinions are well respected. However, several of the Commissioner's opinions have received a lot of media attention over the years and influenced awareness of the public of equality matters. There is no data on how the Commissioner tracks the enforcement of their opinions.

The activity reports of the Chancellor do not include data on whether the non-binding opinions of the Chancellor are enforced.

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<sup>117</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#16>; 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.

b) Amicable settlements

The Chancellor of Justice may carry out a conciliation procedure (see above for details). Outside of this function the bodies have no competence to offer the parties to a discrimination case the possibility to seek an amicable resolution.

### 7.9 Procedural safeguards

The Equality Commissioner may refuse to provide an opinion if the Commissioner has previously provided an opinion regarding the same matter or when on the same basis and regarding the same matter, judicial proceedings have been commenced, a court judgment has entered into force, proceedings have been initiated at a labour dispute committee, a decision of a labour dispute committee has entered into force, a petition has been filed with the Chancellor of Justice, or a conciliation procedure of the Chancellor of Justice for the resolution of a discrimination dispute is pending or the Chancellor of Justice has approved an agreement in a conciliation procedure (Article 18 of the Equal Treatment Act).

Since the Commissioner cannot settle disputes amicably, they provide their legal counselling services primarily to the victims with no special procedural safeguards in place. However, in the procedure of forming an opinion on whether discrimination has occurred, the Commissioner must keep in mind the equality of arms of both parties by ensuring that the defendant provides any evidence to prove that they abide by the law.

The Chancellor of Justice reviews the application only if no court judgments, court orders on termination of misdemeanour proceedings or judicial proceedings or decisions of bodies conducting extra-judicial proceedings in misdemeanour proceedings have entered into force in the matter of the application. At the time of filing the application, the matter may not be subject to court proceedings, offence proceedings or mandatory pre-trial complaint proceedings (Article 25(2) of the Chancellor of Justice Act).

### 7.10 Data collection by the designated bodies

a) Registration 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). This data is available to the public (often on request). However, the data is not always complete and entirely comparable from year to year.

The number of complaints filed with the Gender Equality and Equal Treatment Commissioner is relatively large. In 2020, there were 319 complaints, in 2021 there were 239 complaints and in 2022 there were 217 complaints.<sup>118</sup>

In 2022, 217 complaints were received concerning the following grounds: gender (66), disability (26), nationality (22), age (8), citizenship (8), language (5), belief (5), race or colour of skin (4), sexual orientation (3), social status (3), military service (2), and religion (1).<sup>119</sup>

Between September 2020 and August 2021 there were no conciliation procedures of the Chancellor of Justice.<sup>120</sup> Between September 2021 and August 2022 there was 1 conciliation procedure and 18 applications of discrimination on following grounds: disability

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<sup>118</sup> Gender Equality and Equal Treatment Commissioner, written communication of 14 March 2023.

<sup>119</sup> Office of the Gender Equality and Equal Treatment Commissioner, written communication of 14 March 2023. Note that a number of complaints concerned no identifiable ground and/or were out of the scope of the mandate.

<sup>120</sup> Chancellor of Justice (2021), *Annual report 2020/2021*, 'Equal treatment', at: <https://www.oiguskantsler.ee/ylevaade2021/vordne-kohtlemine>.

(6), nationality (3), race (3), age (2), political or other belief (1), language (1), EU citizenship (1) and other ground (1).<sup>121</sup> The applications claiming discrimination by the public sector may result in a legally non-binding opinion by the Chancellor. The Chancellor of Justice is quite free to choose the cases where such an opinion is issued.

b) Equality data collection

In Estonia, the Equality Commissioner collects general equality data and orders studies on ad hoc basis. All such studies and reports are published online. For example, in 2014-2015 the Equality Commissioner developed an equality measurement methodology using survey data and statistics to measure equality across many fields of life and across several grounds.<sup>122</sup>

### **7.11 Roma and Travellers**

There is no public data on the number of complaints made by Roma people to equality bodies. The Chancellor of Justice has previously issued opinions on situations regarding Roma children.

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<sup>121</sup> Chancellor of Justice (2022), *Annual report 2021/2022*, 'Equal treatment', at: <https://www.oiguskantsler.ee/ylevaade2022/vordne-kohtlemine>.  
<https://www.oiguskantsler.ee/ylevaade2022/vordne-kohtlemine>.

<sup>122</sup> The report of the research project in Estonian at: [https://volinik.ee/wp-content/uploads/2020/01/kellel\\_on\\_eestis\\_hea.pdf](https://volinik.ee/wp-content/uploads/2020/01/kellel_on_eestis_hea.pdf).

## **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 2022, Estonian authorities continued to support various activities, including seminars and media publications,<sup>123</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 Ministry of Social Affairs has regularly funded NGOs whose main area of activity is to promote human rights and equal treatment (such as the Estonian LGBT Association) through strategic partnership contracts. In 2022 an open call was organised to find organisations who would promote equal treatment and gender equality.<sup>124</sup>

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. The main reason for the councils is the Chancellor's role as the national human rights institution (NHRI) and the monitoring body for the UN CRPD. Members were elected to the councils in a public competition.

The Gender Equality and Equal Treatment Commissioner promotes dialogue with the third sector. This dialogue has also been promoted by state and municipal institutions, especially in the context of a national system of third sector inclusion in legislative processes.

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

- d) Addressing the situation of Roma and Travellers

The Ministry of Culture curates the activities of the Cultural Council of National Minorities and the roundtable of the East-Viru County National Cultural Associations, which are comprised of the representatives of national minority organisations, including the Roma associations. In addition, a separate Roma Integration Council was set up in 2016 to support Roma integration.<sup>125</sup>

### **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).

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<sup>123</sup> See e.g. the Gender Equality and Equal Treatment Commissioner, at: <https://volinik.ee/meedia>.

<sup>124</sup> More data on the open call is available at: <https://www.sm.ee/strateegilise-partnerluse-rahaline-toetamine>.

<sup>125</sup> The members of the Council can be found at: <https://www.kul.ee/kultuuriline-mitmekesisus-ja-loimumine/rahvusvahemused-ja-rahvuskasaslased/romade-loimumise-noukoda>.

There are several legal avenues in place to ensure that any law, regulation or administrative provision that is contrary to the principle of equal treatment will be declared unconstitutional or simply not applied before courts of law. According to the Constitution (Article 152) the court may not apply a law that is contrary to the Constitution, including the constitutional principle of non-discrimination stipulated in Article 12. The checking by the Supreme Court of the constitutionality of a legal norm may be initiated by several bodies, including the Chancellor of Justice and the Parliament.

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

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 applied in 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>126</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 any agreement that would harm the employee by overriding the rights and obligations of the Employment Contracts Act is void (Article 2)).

Employers in the public as well as private sector must ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in line with the Equal Treatment Act (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>127</sup> the terms and conditions of a collective agreement that are 'less favourable to employees than those prescribed' by the Collective Agreements Act or any other law are invalid unless exceptions are permitted by the law.

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>126</sup> General Principles of the Civil Code Act (*Tsiviilseadustiku üldosa seadus*), 27 March 2002, RT I 2002, 35, 216.

<sup>127</sup> Collective Agreements Act (*Kollektiivlepingu seadus*), 14 April 1993, RT I 1993, 20, 353.



## 9 COORDINATION AT NATIONAL LEVEL

According to the Government of the Republic Act,<sup>128</sup> the responsibility of the Ministry of Social Affairs<sup>129</sup> is to promote equal treatment as well as gender equality, including coordination of activities in this field, and the preparation of the corresponding draft legislation (Article 67(1)).<sup>130</sup>

The Cohesion Policy Funds Equality Competence Centre (*Ühtekuuluvuspoliitika fondide võrdõiguslikkuse kompetentsikeskus*)<sup>131</sup> is responsible for the guidance and training of the institutions who use structural funds to improve their awareness on gender equality and equal treatment, including equal treatment on the ground of race. The Centre offers equality-related support for public sector officials who develop and implement measures in relation to EU structural funds.

Other ministries also play a role in designing equal treatment policies. The Ministry of Culture is responsible for integration policies and cultural diversity, including promoting the rights of minority ethnic groups. Integration policy activities are implemented by the Integration Foundation (INSA).

The main development plan in this policy area is the Cohesive Estonia Strategy 2030 (*Sidusa Eesti arengukava*).<sup>132</sup> The strategy addresses the integration of the Russian-speaking minority and aims to empower the members of the Roma community and increase their social cohesiveness. Racial equality is not part of this strategy.

The main strategy that includes measures and actions to promote equal treatment of various minority groups is the Welfare Development Plan.<sup>133</sup> The development plan includes issues of racial equality, rights of people with disabilities and is relevant for LGBTQI equality. The development plan is carried out through various programmes. Racial and LGBT+ equality as well as disability-rights related themes are further described in the gender equality and equal treatment programme.<sup>134</sup> Civil society representatives were involved in the design of the plan and are currently some of the implementers of the plan.

The Ministry of the Interior has a department responsible for policies around religious institutions and is deemed to have a say on equality policies of religious minorities.<sup>135</sup>

<sup>128</sup> Government of the Republic Act (*Vabariigi Valitsuse seadus*), 13 December 1995, RT I 1995, 94, 1628.

<sup>129</sup> *Sotsiaalministeerium* (Ministry of Social Affairs) <https://www.sm.ee/en>.

<sup>130</sup> In June 2023, after the cut-off date of this report, the equality policies department of the Ministry of Social Affairs was moved to the Ministry of Economic Affairs and Communications. More details at: <https://www.mkm.ee/ministeerium-uudised-ja-kontakt/ministeerium-ja-ministrid/ministeeriumi-tutvustus-ja-struktuur#vordsuspoliitika-osa>.

<sup>131</sup> The web page of the competence centre: <https://kompetentsikeskus.sm.ee/meist/>.

<sup>132</sup> Cohesive Estonia Strategy 2030 (*Sidusa Eesti arengukava*), available in English at: <https://www.kul.ee/en/media/3969/download>.

<sup>133</sup> All the documents related to the development plan in Estonian and in English available at: <https://sm.ee/heaolu-arengukava-2023-2030#heaolu-arengukava-20>.

<sup>134</sup> Available in Estonian at: <https://sm.ee/arengukavad-ja-tooplaanid#arengukavade-program>.

<sup>135</sup> *Siseministeerium* (Ministry of the Interior) The area of government of the Ministry of the Interior includes the management of issues relating to churches and congregations. More information at: <https://www.siseministeerium.ee/tegevusvaldkonnad/sidus-uhiskond/usulised-uhendus>.

## 10 CURRENT BEST PRACTICES

The Equality Policies Unit of the Government coordinates the strategic partnership with NGOs to support and finance NGOs that promote equal treatment and/or gender equality. In 2022 it continued to do so by engaging in new contracts with NGOs. In general, over the years the equality policies unit has had very good direct contacts and engagement with the NGOs and advocacy organisations.

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>136</sup>

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 2022 when the number of signatories surpassed 178.

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. However, the new Gender Equality and Equal Treatment Commissioner, Mr Christian Veske, is planning a project on AI and equality issues.<sup>137</sup>

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<sup>136</sup> Human Rights Centre, <https://humanrights.ee/en/topics-main/mitmekesisus-ja-kaasatus/diversity-day/>.

<sup>137</sup> As reported on Facebook (31 May 2023, after the cut-off date for this report) at the event of the Commissioner's meeting with the Prime Minister Ms Kaja Kallas: <https://www.facebook.com/Vordsetevoimalustevolinik/>.

## 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 4.7 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 procedure of the Gender Equality and Equal Treatment Commissioner and 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 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 Equal Treatment Act, which has a different scope for different protected grounds is likely contrary to the spirit of the Constitution, which does not feature a different scope of protection for different grounds. This was first pointed out by the Chancellor of Justice during the legislative process of the Equal Treatment Act in 2008. There have been attempts to unify the scope for all five grounds, which have proved unsuccessful. In 2021 the Government drafted a new bill that would have removed the hierarchy of grounds of discrimination if adopted.<sup>138</sup> The bill was not adopted.
- The awareness level of policy makers, legal practitioners and the general public about principles of equality and non-discrimination remains low.
- There are hardly any studies available from the previous six years which assess the implementation and impact of equality law in Estonia.
- In 2022, the number of discrimination disputes before the courts and the labour dispute committees remained very low. Courts often prefer to dismiss the discrimination-related arguments of the parties involved and to solve cases with references to other provisions better known to them. The number of cases is low due to various reasons that have not been studied in Estonia. One of the reasons may be fear of stigmatisation and victimisation, especially when the victim litigates against their current employer. The courts tend to use a high threshold for proving any civil claim including in discrimination claims. Furthermore, the remedies available as well as the court practice regarding immaterial damages does not encourage victims to file a complaint since there is little to gain from court proceedings.
- The Gender Equality and Equal Treatment Commissioner, the equality body which receives the bulk of individual complaints of discrimination in Estonia, continues to be in precarious position since there are regular discussions initiated by various politicians or policy makers over abolishing it as an independent government agency and giving its tasks to some other public body. Regardless of this precarity the new

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<sup>138</sup> For more information in English, see: European network of legal experts in gender equality and non-discrimination (2022), ‘Removal of hierarchy of grounds of discrimination’, Estonia: flash report, 7 February 2022, available at: <https://www.equalitylaw.eu/downloads/5599-estonia-removal-of-hierarchy-of-grounds-of-discrimination-110-kb>.

Commissioner Mr Christian Veske, who was appointed in 2022,<sup>139</sup> is a known expert on equality policies and is not affiliated with any political parties unlike the previous Commissioner who chose to leave office in 2022 before the end of her second term.<sup>140</sup>

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<sup>139</sup> ERR (2022) 'Christian Veske appointed Estonia's new Gender Equality and Equal Treatment Commissioner', 30 November 2022, available in English at: <https://news.err.ee/1608805567/christian-veske-estonia-s-new-gender-equality-equal-treatment-commissioner>.

<sup>140</sup> ERR (2022) 'The state will start to look for a new commissioner in the coming days' 4 October 2022, available in Estonian at: <https://www.err.ee/1608737923/riik-hakkab- uut-vordsete-voimaluste-volinikku-otsima-lahipaevil>.

## 12 LATEST DEVELOPMENTS IN 2022

### 12.1 Legislative amendments

There have been no legislative amendments to the equality law in 2022.

### 12.2 Case law

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

**Name of the court:** Supreme Court

**Date of decision:** 15 March 2022

**Name of the parties:** *XX vs Tartu Vangla*

**Reference number:** No. 5-19-29.

**Link:** <https://www.riigikohus.ee/et/lahendid?asjaNr=5-19-29/38>

**Brief summary:**

In 2017 a former guard of Tartu Prison challenged his dismissal, which was initiated because his level of auditory acuity did not meet the minimum standards of sound perception prescribed by Regulation No. 12.<sup>141</sup> The second-instance court found Regulation No. 12 relating to the auditory acuity requirements to be contrary to the general principle of equal treatment enshrined in the Constitution (Article 12) and initiated the procedure for reviewing the constitutionality of those provisions before the Riigikohus (Supreme Court).

The Supreme Court when discussing the case decided to stay the proceedings and referred the following question to the Court of Justice of the European Union for a preliminary ruling: 'Should Article 2(2), read in combination with Article 4(1), of [Directive 2000/78] be interpreted as precluding provisions of national law which provide that impaired hearing below the prescribed standard constitutes an absolute impediment to work as a prison officer and that the use of corrective aids to assess compliance with the requirements is not permitted?'

The CJEU found that the minimum standards of sound perception for prison officers may be regarded as a 'genuine and determining occupational requirement' within the meaning of Article 4(1). The Court took the view that Article 2(2)(a), Article 4(1) and Article 5 of Directive 2000/78 preclude national legislation that imposes an absolute bar on the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures. The Estonian Supreme Court was to assess whether Regulation No. 12 has imposed a requirement that goes beyond what is necessary to attain the objectives pursued by it.

The Supreme Court gave the judgment on 15 March 2022, and declared unconstitutional and invalid the provisions of Regulation No. 12 that impose an absolute bar on the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception, without allowing it to be ascertained whether that officer is capable of fulfilling their duties, where appropriate after the adoption of reasonable accommodation measures. According to the Supreme Court, it cannot be ruled out that 'the continuation of the applicant's service would have been possible in addition to the possibility of using the hearing aid thanks to other appropriate measures' such as 'if the prison could have considered making changes to the applicant's duties, or reduced the number of duties requiring direct contact with prisoners, etc.' (p. 81).

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<sup>141</sup> *Vanglateenistuse ametniku tervisenõuded ja tervisekontrolli kord ning tervisetõendi sisu ja vormi nõuded* (Health requirements and health check-up procedures for prison service officers, as well as requirements for the content and form of the health certificate), RT I, 23 January 2013, 3: <https://www.riigiteataja.ee/akt/131122022018>.

The claimant was awarded EUR 3 000 for legal costs.

**ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS**

**Country:** Estonia  
**Date:** 1 January 2023

<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 Discrimination	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>
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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