REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2013

ESTONIA

Vadim Poleshchuk

State of affairs up to 1st January 2014

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

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

All reports are available on the website of the European network of legal experts in the non-discrimination field:
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TABLE OF CONTENTS

INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The Estonian national legal system is typical for continental Europe. Historically it has been influenced by German (and to a lesser degree Russian and Scandinavian) legal traditions. The main sources of normative legal rules are provisions of the Constitution, laws and by-laws (secondary legislation). Case law (court decisions) cannot be regarded as a source of normative legal rules[1] in the way legislation of general application can. However, the decisions of the Supreme (National) Court[2] do influence local legal practice to a considerable extent (they can be used as guidelines by the local legal community).

At the top of the Estonian legal system is the Constitution[3] which includes the most important legal provisions (including provisions regarding fundamental human rights and freedoms and general principles of non-discrimination). The next level consists of the laws adopted by the *Riigikogu* – the Parliament. According to Article 102 of the Constitution, all laws shall be adopted in accordance with the Constitution. The third level comprises other legal acts adopted by competent authorities on the basis of laws (e.g. decrees of the Government of the Republic). Additionally, there are normative acts of local self-government, which are valid on the respective territories: "[a]ll local issues shall be resolved and managed by local self-governments, which shall operate independently pursuant to law" (Article 154 (1)).

According to Article 123 of the Constitution, Estonia cannot enter into international treaties which are in conflict with its Constitution. Furthermore, "[i]f laws or other legislation of Estonia are in conflict with international treaties ratified by the *Riigikogu*, the provisions of the international treaty shall apply". Additionally, at a referendum held on 14 September 2003, the people of Estonia amended the Constitution with the following provision:[4] "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

[1] With the exception of decisions of the Supreme Court in issues which 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, RT I 2003, 27, 166, RT I 2004, 65, 456).
[2] Riigikohus, the court of highest instance in Estonia.
[3] Eesti Vabariigi põhiseadus, Riigi Teataja 1992, 26, 349 Riigi Teataja (hereinafter RT) – Official State Gazette.
[4] RT I 2003, 64, 429. Valid since 14 December 2003.

principles and rules of international law are an inseparable part of the Estonian legal system" (Article 3 (1)).

In Estonia justice shall be administered by the courts solely in accordance with the Constitution and the law (Article 146 of the Constitution). "The court shall not apply any law or other legislation that is in conflict with the Constitution. The Supreme Court shall 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,[5] the *Riigikogu* or a local council. Additionally, a court may initiate proceedings by delivering its judgment or ruling to the Supreme Court (Article 4 of the Law on Constitutional Review Court Procedure).[6]

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

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives or whether there are gaps in the transposition/implementation process, including issues where uncertainty remains and/or judicial interpretation is required. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview of the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

[5] Õiguskantsler.
[6] Põhiseaduslikkuse järelevalve kohtumenetluse seadus, RT I 2002, 29, 174.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

As of 1 January 2013, the total population of Estonia was 1,286,479. About 30% of all population were ethnic non-Estonians. The biggest minority groups were ethnic Russians (25.2%), Ukrainians (1.7%), Byelorussians (1.0%) and Finns (0.6%).[7] The number of racial minority members and Roma in Estonia is very small.

In the beginning of 2014 non-citizens (persons without Estonian citizenship) made up about 16% of the total population, including 7% of de facto stateless former Soviet citizens ('persons with undefined citizenship').[8] The overwhelming majority of resident non-citizens have settled in the country before 1991.

According to the 2007 study commissioned by the Ministry of Social Affairs, quite many respondents (42%) referred to personal experience of discrimination within last three years in various areas: employment (24%), education (10%), services (26%), social relations (14%), media (12%), public administration and protection of public order (12%).[9]

Before the accession of Estonia into the EU there was no specific anti-discrimination legislation. Furthermore, most of recent positive changes in this field were the result of the harmonisation of Estonian legislation with the *acquis communautaire*.

- The first specific bill prepared by the Ministry of Justice[10] was the draft Law on Equality and Equal Treatment[11] submitted to the Parliament on 21 October 2002 (bill no. 1198 SE). It was not adopted by the *Riigikogu* before the parliamentary election of March 2003.
- In 2003 it was decided to make a special body for the promotion of equal treatment, the Chancellor of Justice,[12] an ombudsman-like institution. On 11 February 2003 a number of amendments[13] to the Law on the Chancellor of Justice[14] were adopted by the Parliament, and new functions were ascribed to the institution from 1 January 2004.

[7] Statistical Department; public database at http://www.stat.ee (5.03.2014).
[8] Population registry; data published at http://estonia.eu/about-estonia/society/citizenship.html (26.04.2014).
[9] Mikko Lagerspetz, Krista Hinno, Sofia Joons, Erle Rikmann, Mari Sepp, Tanel Vallimäe. Isiku tunnuste või sotsiaalse positsiooni tõttu aset leidev ebavõrdne kohtlemine: elanike hoiakud, kogemused ja teadlikkus. Uuringuraport ("Unequal Treatment on Grounds of Individual or Social Characteristics: Attitudes, Experiences and Awareness of the Population"), Tallinn, 2007, p. 23.
[10] Justiitsministeerium.
[11] Võrdõiguslikkuse ja võrdse kohtlemise seaduse eelnõu.
[12] Õiguskantsler.
[13] RT I 2003, 23, 142.
[14] Õiguskantsleri seadus, RT I 1999, 29, 406.

- On 7 April 2004, the Parliament adopted the comprehensive Law on Gender Equality.[15] On 22 April 2004 the Estonian Parliament introduced amendments[16] to the previous Law on Employment Contracts. According to the explanatory note attached to the draft, these amendments were to implement nine Community directives (including Directives 2000/78 and 2000/43)[17] in several work-related spheres.
- The new draft Law on Equal Treatment was elaborated in 2006-2007 by the Ministry of Justice in response to the concerns raised by the European Commission in an official letter to the Estonian Government. The previous government submitted the bill to the parliament on 25 January 2007 (bill no. 1101) but it was not adopted before the national elections of 4 March 2007. However, on 24 May 2007 the new government approved a revised text of the draft Law on Equal Treatment, which was submitted to the parliament on 30 May 2007 (bill no. 67). The bill was not adopted in the course of the final voting on 7 May 2008. On 8 May 2008 the ruling collation parliamentary factions initiated a new similar bill (bill no. 262), which was not adopted in the course of the final voting on 23 October 2008. A new similar bill (bill no. 384) was submitted by the ruling collation parliamentary factions on 6 November 2008. The bill was adopted on 11 December 2008 (entered into force on 1 January 2009).

The Law on Equal Treatment[18] amended several legal acts. Thus specific anti-discrimination requirements were introduced into the previous Law on Public Service (valid until 31 March 2013).[19] The new Law on Public Service (in force since 1 April 2013)[20] does not include detailed discrimination provisions. However, public officials and persons who desire entry into the service may refer to the provisions of the Law on Equal Treatment.

The Law on Employment Contracts has also been changed. It is worth mentioning, however, that on 17 December 2008 the parliament adopted a new Law on Employment Contracts.[21] This law is valid from 1 July 2009 and it does not contain any detailed anti-discrimination provisions, only references to the Law on Equal Treatment and the Law on Gender Equality. The amendments to the previous Law on Employment Contracts and the current Law on Public Service etc entered into force the same day.

[15] Soolise võrdõiguslikkuse seadus, RT I 2004, 27, 181.
[16] RT I 2004, 37, 256.
[17] See explanatory note attached to the Draft no. 330 SE (10th Riigikogu); available at http://www.riigikogu.ee (01.05.2008).
[18] Võrdse kohtlemise seadus, RT I 2008, 56, 315.
[19] Avaliku teenistuse seadus, RT I 1995, 16, 228; RT I 1999, 7, 112.
[20] Avaliku teenistuse seadus, RT I 06.07.2012, 1.
[21] Töölepingu seadus, RT I 2009, 5, 35.

In general most provisions of the adopted Law on Equal Treatment are very similar to those of the directives. It deals with five relevant grounds (ethnic origin, race, religion or other beliefs, age, disability or sexual orientation) plus colour. Material and personal scope of the Estonian act and of the Directives are almost identical. The law introduced a new equality body in the meaning of the Directive 2000/43.

Some previous drafts of the Law on Equal Treatment provided more protection than it was required by the EU law. However, the Parliament did not support such approach. The current Law on Employment Contracts and the Law on Public Service do not provide detailed anti-discrimination rules but include references to the Law on Equal Treatment and the Law on Gender Equality. Both laws do not include additional grounds of discrimination applicable in the context of Law on Equal Treatment.

The *issues of concern* in the context of transposition of the Directives 2000/43 and 2000/78:

- Article 9 (1) of the Law on Equal Treatment permits direct discrimination on the grounds of race and ethnicity in the circumstances other than genuine and determining occupational requirements or positive action measures. This provision is hardly in line with the requirements of the Directive 2000/43.
- There are no specific provisions regarding legal standing of 'a person who has legitimate interest to check compliance with the requirements for equal treatment' (the right to act as a representative of a victim of discrimination) in the areas outside 1. discrimination disputes in private employment; 2. conciliation procedure at the Chancellor of Justice (regarding discrimination by natural persons and legal persons in private law).
- There are no provisions to guarantee that sanctions applicable to infringements of the national anti-discrimination provisions are effective, proportionate and dissuasive (in the areas outside criminal law).

0.3 Case-law

*Provide a list of any important case-law in **2012** within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3)**. Please ensure a follow-up of previous cases if these are going to higher courts. This should take the following format:*

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)
Brief summary of the key points of law and of the actual facts (no more than several sentences).

➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Name of the court: Tallinn Circuit Court[22]
Date of decision: 23 January 2013
Name of the parties: S.S. and *Transparency International*
Reference number: civil case 2-12-32-921
Brief summary: The Law on Equal Treatment bans discrimination on the grounds of ethnic origin and age upon establishment of conditions for access to employment (Article 2 (1)-(2)).

In 2011 a NGO representing in Estonia the organisation Transparency International published a vacancy notice on the internet. People with higher education (preferably in public administration, governance, law or journalism), good analytical skills, ability to work independently, very good communication and self-expression skills and very good proficiency in Estonian and English were invited to apply for a position of a project manager.

Late middle-aged S.S. who was a person of Russian ethnic origin applied for this position but failed to get through the initial round. The selected candidature was of a young person of majority ethnic origin who had recently graduated from the university. S.S. claimed ethnic and/or age discrimination in this case arguing that he was in possession of better skills and experience for the position at stake.

In his CV submitted in recruitment procedure S.S. indicated his proficiency in oral English as “good” while his written skills in this language were estimated as “average”. The successful candidate indicated his proficiency level as “very good” in both oral and written English. The main argument raised in the court by S.S. was as following: a potential employer in fact ignored all his skills but proficiency in English (arguably for discriminatory reasons, i.e. due to ethnic origin and/or age of S.S.). S.S. claimed to be very self-critical and therefore he indicated his proficiency in his CV in modest terms. In the recruitment procedure he submitted other materials which may indirectly be in evidence of his advanced proficiency in English.

The first instance court came to the conclusion that the requirements for candidates were clear and the recruiting procedure was transparent. The potential employer refused the candidature of S.S. because his proficiency in English was lower than

[22] Tallinna Ringkonnakohus.

required. The employer is not supposed to presume that data provided in CVs are incorrect. The successful candidate indicated his “very good” proficiency in English and was able to prove it in the course of an interview. He also met all other main requirements. The employer was able to prove convincingly that a requirement to speak very good English was justified for the position of a project manager. As a result there are no reasons to believe that there was any discrimination against S.S.

This decision was appealed by S.S. However, the Tallinn Circuit Court agreed with the reasoning provided by the first instance court. The court specified that S.S. failed to meet all main requirements for a vacancy position and therefore there were good reasons for a potential employer not to let him through the initial round and not to invite him for an interview. S.S. was not granted leave in the Supreme Court and the judgement of the circuit court became final.

Name of the court: Tartu Circuit Court[23]
Date of decision: 6 May 2013
Name of the parties: J.R. and Tarvastu municipality
Reference number: civil case 2-10-43528
Brief summary: According to the Law on Equal Treatment, “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...” (Article 6 (3)).

The applicant is of Russian ethnicity who has been working as a teacher of Russian as a foreign language in an Estonian-language school. In 2009 there was redistribution of classes of Russian among school teachers and it was unfavourable for the applicant (who received fewer classes). This redistribution was allegedly motivated by ethnic preferences. In April 2010 the applicant submitted a complaint to the Commissioner for Gender Equality and Equal Treatment (equality body) who found ethnic discrimination in his case (Decision no. 16 of 25 August 2010).

In September 2010 the applicant cancelled extraordinarily his current employment contract with the school with a reference to a fundamental breach of the employer’s obligation.[24] In its decision of November 2010 the Labour Disputes Committee (extrajudicial body) has confirmed that the employer disregarded a victim and violated his individual rights and all these were the result of submitting the complaint

[23] Tartu Ringkonnakohus.
[24] According to the Law on Employment Contracts, an employee may cancel an employment contract ordinarily or extraordinarily. Employees may cancel ordinarily only those contracts that entered into for an unspecified term and employment contracts entered into for the period of substitution of employee (Article 85 (1)-(2)). An employment contract may be cancelled extraordinarily only with good reason as prescribed in the Law on Employment Contracts (Article 87). Extraordinary cancellation of employment contracts by employees is specified in Article 91. Thus, employee may cancel a contract due to a fundamental breach of the employer's obligation or due to a reason arising from the employee himself/herself (e.g. state of health or family duties). In our case J.R. referred to a fundamental breach of the employer's obligation.

to the Commissioner for Gender Equality and Equal Treatment (see details below). The Committee confirmed that that employee was forced to cancel his employment contract extraordinarily due to misbehaviour of his employer. This decision was not appealed and became valid and enforceable.

In addition, in September 2010 the applicant sued the school's owner in civil court and demanded the court to recognise the breach of his individual rights (in the form of ethnic discrimination) and to order the defendant to pay compensation for pecuniary and non-pecuniary damage.

Both the first and the second instance courts agreed that there was no ethnic discrimination as regards redistribution of classes of Russian among school teachers. In other words, they did not confirm prior findings by the equality body. It was decided that these actions were justified by objective reasons rather than ethnic discrimination. However, the Tartu Circuit Court found victimisation in the context of the problems faced by the applicant after the submission of the discrimination complaint.

Thus, the Tartu Circuit Court emphasised that from the 2006/2007 school year the applicant did not receive any written warnings and did not face any negative consequences in spite of deficiencies identified in his work. However, when the school management received the applicant's request to stop discrimination (May 2010), they started to propose repeatedly that he should terminate the employment contract by agreement. There were formal written warnings made on 30 August and unreasonably soon on 9 September 2010. There was no rebuttal to the facts submitted by the plaintiff that he had faced negative consequences following his submission of the discrimination compliant (i.e. he suffered from victimisation). Furthermore, the applicant has even decided to terminate his employment contract extraordinarily.

The applicant tried to prove his moral damage as following: he submitted references that he had repeatedly visited his family doctor and psychiatrist in August and September 2010. However, the court found that these visits as such could not prove the gravity of violation of his individual rights (as it was required by Article 132 (2) of the Law of Obligations Act in the version in force until 31 December 2010). According to the court, the plaintiff also failed to prove that his health problems confirmed by relevant medical decisions are directly linked to the violation of his individual rights (discrimination). The court also took into consideration that upon dismissal the applicant had already been paid compensation to the extent of three month's average wages (as it is required in the case when an employee cancels the employment contract extraordinarily on the ground that the employer is in fundamental breach of the contract). Against this background, the court found no good reason to award any additional compensation to J.R.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

Article 11 of the Estonian Constitution stipulates that rights or freedoms may be restricted only in accordance with the Constitution, while Article 12 of the Constitution establishes an explicit ban on discrimination:

> "Everyone is equal before the law. No one shall be discriminated against on the basis of ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.
>
> The incitement of ethnic, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable".

In one of its decisions the Constitutional Review Chamber of the Supreme Court claimed that the general principle of equality is applicable to "all spheres of life".[25] As it was summarised by an Estonian scholar who studied the application of this provision by the Supreme Court, "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".[26] In other words, the material scope of the application of Article 12 of the Estonian Constitution is wider than that of the Directives (as stipulated in Article 3 (1) of both Directives).

In one of its decisions the Constitutional Review Chamber of the Supreme Court stated that public authorities cannot justify unequal treatment solely with reference to difficulties of an administrative or technical character.[27]

[25] Decision of the Constitutional Review Chamber of the Supreme Court of 6 March 2002; published in RT III 2002, 8, 74 (section 13).
[26] Katri Lõhmus, 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 (2003), p.109.
[27] Decision of the Constitutional Review Chamber of the Supreme Court of 21 January 2004; published in RT III 2004, 5, 45 (point 39).

In its 2011 decision the Supreme Court *en banc* analysed and partially reviewed its own practice regarding Article 12 (1) of the Constitution. The Court came to the conclusion that the first sentence of the Article includes general fundamental right to equality and the second sentence provides for specific equality rights (ban of discrimination). The second sentence does not provide an exhaustive list of grounds for discrimination but it might be a basis for protection against discrimination on any ground (e.g. age – see the case of H.I. in Annex 3 of this report). However, both general and specific equality rights are not absolute and they may be limited in accordance with the Constitution.[28]

In the same decision the Supreme Court *en banc* recognised that it has previously controlled the breach of equality using two types of test: 1. in some previous decisions it was analysed if the breach of equality was arbitrary (i.e. if there are no reasonable course therefore); 2. in other decisions the courts used the so-called proportionality control test. As for the latter, the conformity of the restriction to the proportionality principle is checked through the three characteristics thereof - suitability, necessity and proportionality in the narrowest sense.[29] Similar test is routinely used to check the proportionality of restrictions of other fundamental rights. The Supreme Court *en banc* decided that there are good reasons to apply the same proportionality test to the cases related to Article 12 (1) of the Constitution. It is needless to use a specific "arbitrary decisions test."[30]

To sum up, a flexible mechanism of protection against discrimination can be based on Article 12 (1) of the Constitution.

Article 9(1) of the Constitution guarantees rights and freedoms for both citizens of Estonia and foreigners on its territory. However, the Constitution also permits differential treatment of non-citizens in certain social fields, e.g. in Articles 28, 29 and 31 (see section 4.4 of this report for details).

According to Article 49 of the Constitution, "everyone has the right to preserve his or her ethnic identity" (the right to belong or not to belong to a particular ethnic group). Freedom of conscience and religion is proclaimed in Article 40.

The Constitution also provides special guarantees to the elderly and persons with disabilities: "…An Estonian citizen has the right to state assistance in the instances of old age, incapacity to work, loss of a provider, or need. The categories and extent of

[28] Decision of the Supreme Court en banc of 7 June 2011 (point 27-32) at http://www.nc.ee/?id=11&tekst=222535250&print=1 (18.03.2013).
[29] The principle of proportionality proceeds from the second sentence of Article 11 of the Constitution (restrictions of rights and freedoms "must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted").
[30] Decision of the Supreme Court en banc of 7 June 2011 (point 34-35) at http://www.nc.ee/?id=11&tekst=222535250&print=1 (18.03.2013).

assistance, and the conditions and procedure for the receipt of assistance shall be provided by law..." (Article 28 (2)).

The constitutional principle of non-discrimination is repeated in some other laws, e.g. in the Law on Cultural Autonomy of National Minorities[31] (Article 3) and the Law on Advertising[32] (Article 3 (4) 10, which bans offensive and discriminatory advertising), etc.

b) Are constitutional anti-discrimination provisions directly applicable?

Yes. Article 12 of the Constitution is directly applicable as well as other relevant constitutional provisions.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

On personal scope, there are no limitations on using the provisions of Article 12 against the state, public bodies or institutions as well as against natural and legal private persons.

[31] Vähemusrahvuse kultuuriautonoomia seadus, RT I 1993, 71, 1001.
[32] Reklaamiseadus, RT I 2008, 15, 108.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

As was mentioned above in section 1 of this report, Article 12 of the Estonian Constitution does ban discrimination on any ground.

The Penal Code[33] bans activities which publicly incite people to hatred, violence or discrimination on the basis of ethnic origin, race, colour, sex, language, origin, religion,[34] sexual orientation, political opinion or financial or social status (Article 151). Article 152 of the Code penalises 'violation of equality', which is referred to as "unlawful restriction of the rights of a human being or granting of unlawful preferences to a human being ('*inimene*') on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion or financial or social status". Additionally, Article 153 of the Code banned discrimination based on the genetic characteristics of the person, and Articles 154-155 provide for the protection of freedom of religion. Emphasis should be placed on the fact that such grounds as age and disability are not referred to in Articles 151 and 152 of the Penal Code. However, sexual orientation as a protected ground was added to the text of the Code in 2006.[35]

The purpose of the Law on Equal Treatment is to ensure the protection of persons against discrimination on the grounds of ethnic origin,[36] race, colour, religion or other beliefs, age, disability or sexual orientation (Article 1 (1)).

The current Law on Public Service (in force since 1 April 2013) does not enlist protected grounds but demands that "[t]he authorities shall have to ensure the protection against discrimination of the persons who apply to take up the service and of those who are employed in the service, follow the principle of equal treatment and promote equality" (Article 13). However, the Law on Equal Treatment and the Law on Gender Equality apply to public officials (see below).

The Law on Equal Treatment was equipped with specific Article 2 (3) which says that this law "does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified in Article 1 (1) of this law, in particular due to

[33] Karistusseadustik, RT I 2001, 61, 364, RT I 2002, 86, 504.
[34] In the Estonian context the term 'religion' ('usutunnistus') would refer to any religious belief.
[35] RT I 2006, 31, 234.
[36] In the original: rahvus (etniline kuuluvus), i.e. nationality (ethnic origin or ethnic belonging). The term 'nationality' ('rahvus') in Estonia refers to ethnic origin only. In this report we shall use only the term 'ethnic origin' to avoid misinterpretations.

family-related duties, social status, representation the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces".[37] This provision is to reflect a more inclusive approach of the Estonian Constitution and some other laws in the field of equality and non-discrimination.

The Law on Employment Contracts does not include any specific anti-discrimination requirements but explicitly refers to the Law on Gender Equality and the Law on Equal Treatment (Article 3).

The Law on Gender Equality prohibits discrimination on the ground of sex (Article 1 (2)).

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)

The national current *anti-discrimination legislation* does not include special definitions of racial or ethnic origin, religion or belief, age or sexual orientation. There is no case law to address this issue either.

i) racial or ethnic origin

No definition available.

ii) religion or belief

No definition available.

iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 Skouboe Werge and Ring, Paragraph 38, according to which the concept of 'disability' must be understood as: "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" (based on Article 1 UN Convention on the Rights of Persons with Disabilities)?

[37] These are additional grounds enlisted in the Law on Public Service (see above). However, for an unidentified reason lawmakers opted out 'marital or family status'. See also Table 1.

The Law on Equal Treatment (Article 5) stipulates a definition of 'disability' which includes: 1. terminology of the Law on Social Benefits for Disabled Persons[38] (Article 5) but without references to the necessity of personal assistance, guidance or supervision for a disabled person; 2. references to everyday (day-to-day) activities which are very similar to those provided in UK law:[39]

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

Estonian definition seems *to* be in line with *the concept of* disability worded in Joined Cases C-335/11 and C-337/11. "A *limitation which results in particular from physical, mental or psychological impairments*" *and* "a limitation ... *which* in interaction with various barriers may hinder *the* full and effective *participation of the person*" are essentially *the* same as "loss of or an abnormality in an anatomical, physiological or mental structure or function of a person" and "adverse effect on the performance" (wording used in an Estonian act). However, in the ECJ Joint cases the approach to disability as a socially constructed phenomenon is much more articulated.

In the context of the disability definition there might be concerns since Estonian legislation makes a reference to the consequences of impairment in day-to-day activities, not in professional life. This is a trace of an initial inclusive approach of the lawmakers. The first version of the draft Law on Equal treatment (then bill no. 67) was to protect against disability discrimination in all areas of social life. Later the Parliament decided to limit the protection to professional life only. However, the wording of definition of 'a disability' remained unaltered and it was used for the draft no. 384, which was finally adopted. As a result, Estonian legislation defines disability in quite inclusive terms.

iv) age

No definition available.

v) sexual orientation?

No definition available.

While the Law on Equal Treatment does not provide for definition of racial or ethnic origin, religion or belief, age or sexual orientation, some guidelines are included into the explanatory note, which was attached to the bill (see below).

[38] Puuetega inimeste sotsiaaltoetuste seadus, RT I 1999, 16, 273; RT I 2002, 39, 245.
[39] Namely, Article 1 (1) of the Disability Discrimination Act which was valid in 2008. In 2010, it was replaced by the Equality Act. However, the provisions of Article 6 (1) of the new act are almost identical with those in Article 1 (1) of the Disability Discrimination Act.

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

i) racial or ethnic origin

The explanatory note which was attached to the draft Law on Equal Treatment included the following clarifications regarding the protected grounds: [40]

- *Race ('rass')* – a group of people with certain hereditary features;
- *Ethnicity ('rahvus')* – ethnic origin; not to be mixed with *nationality/citizenship ('kodakondsus')*.

There is no mandatory registration of ethnic origin in Estonian identification documents. In fact, people are free to choose any ethnic affiliation. Estonian legislation includes only the definition of a 'national minority' which is normally understood as a 'privileged' ethnic minority group. One of the basic elements of the definition of national minority members is that they are citizens of Estonia who "differ from Estonians by their ethnic affiliation, cultural and religious idiosyncrasies, or language" (Article 1 of the Law on Cultural Autonomy of National Minorities).

At the moment in Estonia the terms 'ethnic origin' ('*etniline päritolu*') and 'nationality' ('*rahvus*') are normally used as synonyms while ethnic affiliation is understood by many policymakers and ordinary persons in primordial terms. Conversely, the term 'citizenship' ('*kodakondsus*') is ethnically neutral. According to the 2011 national census results there were representatives of more than 150 ethnic groups residing in Estonia (including Roma as a single ethnic group). However, more than 80% among all minority members were ethnic Russians.[41]

According to the data of the Population Registry,[42] in 1992 only 68% of all population were citizens of Estonia. In 2012 persons who were not citizens of Estonia (non-citizens) made up about 16% of the total population: 7% were de facto stateless former Soviet citizens ('persons with undefined citizenship') and 9% were citizens of foreign States.[43] The largest group of foreign citizens in Estonia are citizens of the Russian Federation, which are mostly former Soviet citizens who have adopted Russian citizenship after 1991 while remaining resident in Estonia.

[40] See explanatory note attached to the Draft no. 384 SE (11th Riigikogu); available at http://www.riigikogu.ee (20.03.2009).
[41] Statistical Office of Estonia; public database available at: http://www.stat.ee (30.04.2013).
[42] Rahvastikuregister.
[43] Population registry; data published at http://estonia.eu/about-estonia/society/citizenship.html (05.03.2014).

ii) religion or belief (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?

The explanatory note which was attached to the draft Law on Equal Treatment[44] included the following clarification regarding r*eligious, 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.

Atheism in Estonia is normally qualified as a non-religious belief.

iii) Disability

Estonian anti-discrimination law does define the term 'disability' (see previous section).

Recital 17 of Directive 2000/78/EC was not specifically reflected in the national legislation against discrimination.

iv) Age

The explanatory note attached to the draft Law on Equal Treatment does not include clarification for such ground as 'age' (but provides the reasons for its incorporation into the text of the draft law).

v) sexual orientation

The explanatory note attached to the draft Law on Equal Treatment does not include clarification for such ground as 'sexual orientation' (but provides the reasons for its incorporation into the text of the draft law). It is worth mentioning that the Law on Gender Equality does not refer to sexual orientation.

c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?

There are no such provisions in current or draft Estonian legislation.

2.1.2 Multiple discrimination

a) Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of

[44] See explanatory note attached to the Draft no. 384 SE (11th Riigikogu); available at http://www.riigikogu.ee (20.03.2009).

multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.
Would, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There are no detailed information about any relevant court cases and other procedures. The issue of multiple discrimination is not addressed in national legislation. There are no plans to adopt or modify legal rules to this end. Additional guidelines/requirements on national or European level might be of great importance.

The Commissioner for Gender Equality and Equal Treatment[45] (equality body) has informed that in 2011 she received 9 applications and in 2012 3 applications where multiple discrimination was at stake.[46]

b) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

There are very limited data about relevant court cases. In practice the courts may easily deal with cases where more than one ground of discrimination is at stake (see case of S.S. in section 0.3 for an example).

2.1.3 Assumed and associated discrimination

a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

National law or case law is silent about these issues.

b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

National law or case law is silent about these issues.

[45] Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik.
[46] Commissioner for Gender Equality and Equal Treatment; Written communications of 6 February 2012 and 15 January 2013.

The case C-303/06 (*Coleman*) was not mentioned in the explanatory note of the draft Law on Equal Treatment. The outcomes of the *Coleman* case have not been considered upon adoption of the Law on Equal Treatment in December 2008. The analysis of Estonian disability definition is provided in section 2.1.1.a of this report.

This definition does not *explicitly* refer to discrimination based on association with disability (disabled persons). This statement is equally valid for all other grounds. It is not clear in which way the *Coleman* case will be considered by Estonian judiciary.

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

a) How is direct discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.

As of 1 January 2009 two laws include detailed definitions of the term: the Law on Gender Equality and the Law on Equal Treatment.

According to the Law on Equal Treatment 'direct discrimination' shall be taken to occur where, on the basis of an attribute specified in Article 1 (1) of this 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)). This definition is identical with that of the Directives.

b) Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)

The Law on Equal Treatment does not specifically address this issue.

The Law on Gender Equality provides that offers of employment and training which are directed at persons of one sex only are prohibited unless a difference of treatment constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate; or in case of positive action measures (Article 8). This provision can be relevant in cases of multiple discrimination.

In 2007 certain barkeeper H. made statement to the media that he had instructed his personal not to provide services to people making orders in Russian.[47] The local NGO ENAR-Estonia addressed the Chancellor of Justice (ombudsman and equality body) with the request to warn the barkeeper about illegal and discriminatory character of his actions. The Chancellor refused to deal with this request claiming absence of competence. The Chancellor argued that in case of discrimination by

[47] "Eesti Ekspress", 23 August 2007.

private legal and natural persons he may only deal with concrete victims on the basis of Article 19 (2) of the Law on the Chancellor of Justice (conciliation procedure; see section 6.1) not with a statement in a newspaper.[48] Thus, this case was solved with the reference to purely procedural norms and it took place before the adoption of the Law on Equal Treatment with its detailed antidiscrimination provisions concerning access to services.

However, the Commissioner of Gender Equality and Equal Treatment (another equality body) reported in its 2011 annual report that she sent a memorandum to an employer who had posted an advertising inviting only women of older age groups to apply for a position of an accountant. In this memorandum the Commissioner explained that this advertising is discriminatory and violates provisions of the Constitution (Article 12), Law on Equal Treatment (Article 2 (2), Law on Gender Equality (Articles 6(2)2 and 8) and Penal Code (Article 152). The Commissioner has also warned that a victim of discrimination may demand that the person who violates the rights terminate the discrimination. S/He may also demand compensation for the damage caused and a reasonable amount of money be paid to the person as compensation for non-proprietary damage caused by the violation (Law on Equal Treatment (Article 24), Law on Gender Equality (Article 13).[49] In 2013 the Commissioner sent a similar memorandum to an employer who requested from potential workers in a job advertising "to speak Estonian as the first language".[50]

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

According to the Law on Equal Treatment (Article 9 (3)):

"The following is not deemed to be discrimination in labour relations:

1) grant of preferences on grounds of representing the interests of employees or membership in an association representing the interests of employees if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary;[51]
2) grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work".

[48] Chancellor of Justice; Written communication no. 14-1/071647/0707713 of 13 November 2007.
[49] Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku 2011. aasta tegevuse aruanne, Tallinn 2012, p. 9-10.
[50] Commissioner of Gender Equality and Equal Treatment; Written communication of 21 February 2014.
[51] In practical terms this provision was designed to protect specific status of trade union members and trade union activists/officials in employment relations.

The current Law on Equal Treatment has also introduced provisions (Article 10) regarding occupational requirements, which are almost identical with that in the Directives 2000/43 and 2000/78 (including rules established in the interests of organisations the ethos of which is based on religion or belief). These provisions are completely in line with the Directives.

The Law on Equal Treatment (and its provisions regarding genuine occupational requirement) is applicable in case of discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation.

Importantly, the Law on Equal Treatment has also established general exception in Article 9 (1):

This act shall be without prejudice to measures laid down by law which 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. These measures achieving the aim shall be proportionate to it.

This wording is seemingly based on two provisions:

- Article 2 (5) of the Directive 2000/78 (however, there are no references to 'a democratic society' but to the principle of proportionality).[52]
- 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 Law on Equal Treatment provision cannot be regarded as being in line with the Directive 2000/43, which 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 the Directive 2000/43 and Article 10 of the Law on Equal Treatment). Differential treatment in the framework of the positive action measures is another possibility (Article 5 of the Directive). No other exceptions are possible. It will be very important to monitor practical implementation of Article 9 (1) of the Law on Equal Treatment.

[52] Initial version of the draft law (bill. 67) did not permit these measures in the context of ethnic and racial discrimination. As stated in the explanatory note, this approach was based on understanding of the Directives. This initial version, however, was amended by the parliament without any public debates. This amended version was used for the drafts nos. 262 and 384 (the latter was adopted in December 2008).

This provision does not contradict, however, the Directive 2000/78 in the context of discrimination on the grounds of religion or belief, disability, age or sexual orientation. Article 9 (1) is based on exception provided in Article 2 (5) of the Directive (see section 4.8 of this report for more details).

d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

There are no specific provisions to address this issue in Estonian current or draft legislation (other than those mentioned in section 2.2.a).

2.2.1 Situation Testing

a) Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.

The national law does not specifically address the use of 'situational testing'. There is no case law on this matter either. There are no indications that foreign case law may influence the situation in Estonia in this regard.

The Code of Civil Procedure[53] provides for the following concept of evidence (Article 229):

1) "Evidence in a civil matter is any information which is in a procedural form provided by law and on the basis of which the court, pursuant to the procedure provided by law, ascertains the existence or lack of facts on which the claims and objections of the parties and other participants in the proceedings are based and other facts relevant to the just adjudication of the matter.
2) Evidence may be the testimony of a witness, statements of a party or third party, documentary evidence, physical evidence, an on-the-spot visit of inspection or an expert opinion..."

The formal interpretation of these provisions leads us to believe that situation testing could be recognised by Estonian courts.

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc).

There is no information about use of situation testing by NGOs or equality bodies.

[53] Tsiviilkohtumenetluse seadustik, RT I 2005, 26, 197; 2005, 49, 395.

c) Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

The author of this report believes that the main reason for the lack of relevant case law is not necessary reluctance but low level of awareness about such methods of proves.

d) Outline important case law within the national legal system on this issue.

No data available.

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

a) How is indirect discrimination defined in national law on discrimination? Please indicate whether the definition complies with those given in the directives.

According to the Law on Equal Treatment, indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons, on the basis 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 (Article 3 (4)). This provision is identical with those in the Directives.

b) What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?

The law does not provide much detail regarding the test which must be satisfied to justify indirect discrimination (see 2.3.a).

The Law on Equal Treatment has introduced provisions (Article 10) regarding occupational requirements, which are almost identical with that in the Directives 2000/43 and 2000/78 (including rules established in the interests of organisations the ethos of which is based on religion or belief). These provisions are completely in line with the Directives.

In the context of justification of *indirect* discrimination Article 9 (1) of the Law on Equal Treatment can also be used (see sections 2.2.c and 4.8 of this report).

c) Is this compatible with the Directives?

The relevant provisions of the Law on Equal Treatment (see section 2.3.b above) appear to be in line with the Directives.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

The Law on Equal Treatment does not stipulate how a comparison is to be made in cases of age discrimination. Similar provisions cannot be either found in the other valid or draft legislation.

e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?

The Law on Employment Contracts does not contain specific anti-discrimination provisions. However, Article 2 (3) of the Law on Equal Treatment stipulates that this act does not preclude the requirements of equal treatment in labour relations on the basis of attributes not specified in this Act, including level of language proficiency.

In Estonia language proficiency requirements may be officially established in both public and private sectors of employment (Article 23 of the Law on Language).[54] In general, they are interpreted in Estonia as officially established occupational requirements.

Provided language (language proficiency) discrimination may constitute indirect discrimination on the grounds of racial or ethnic origin, we shall check if officially established linguistic requirements can be objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary (Article 2 (2) of the Directive 2000/43).

In general the Law on Language established the standards to ensure that official linguistic requirements are justified and proportionate.

As regards the sphere of private employment,

The requirement for employees of companies, non-profit associations and foundations and for sole proprietors, as well as the members of the board of the non-profit associations with the compulsory membership to be proficient in Estonian to the level that is necessary to perform their employment duties shall be applied if it *is justified in the public interest* (Article 23 (2)) (italics added).

The Law on Language does not include justification of linguistic requirements for public officials. However, the Estonian is the only official language (*riigikeel*) in

[54] Keeleseadus, RT I, 18.03.2011, 1.

Estonia and such requirements are presumably legitimate. The law also includes standards to ensure the principle of proportionality:

Public servants and employees of state agencies and of local government authorities, as well as employees of legal persons in public law and agencies thereof, members of legal persons in public law, notaries, bailiffs, sworn translators and the employees of their bureaus shall be able to understand and use Estonian *at the level which is necessary to perform their service or employment duties*. (Article 23 (1)) (italics added).

Within the limits of its competence (as provided for in the Law on Language, Article 23 (4)) language requirements are stipulated by decrees of the Government of the Republic. Alternatively, employers are supposed to monitor language proficiency of their employees if required by valid legislation.[55]

To sum up, official Estonian language proficiency requirements are permissible in the context of the Directive 2000/43 if they meet the criteria established to justify indirect discrimination on the grounds of racial or ethnic origin. Considering specific provisions of the Law on Language, such requirements shall meet the criteria of legitimacy and proportionality. If they fail to meet these criteria, they may be regarded as discriminatory (and courts shall be ready to use legitimacy and proportionality test in individual cases).

As a positive example, the Commissioner for Gender Equality and Equal Treatment (equality body) in her 2012 opinion established a link between language and ethnicity in the context of discrimination. Furthermore, she reinforced the argument that the relevant governmental decree establishes maximum linguistic requirements in the public sphere [56] (see annex 3 of this report for details). In general, however, in the context of linguistic regulations Estonian courts often demonstrate lack of awareness of the concepts of proportionality and indirect discrimination.[57]

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?

National law does not address the issue of statistical evidence in the context of discrimination. However, there are seemingly no limits to use such evidence in court

[55] The justification tests for linguistic requirements are developed in the frame of heated debates in 1990s and early 2000s. The general understanding in Estonia is that the State has more rights to interfere in public sector than in private one.
[56] Opinion of the Commissioner for Gender Equality and Equal Treatment of 16 August 2012.
[57] Dimitry Kochenov, Vadim Poleshchuk, Aleksejs Dimitrovs, "Do Professional Linguistic Requirements Discriminate? – A Legal Analysis: Estonia and Latvia in the Spotlight", European Yearbook of Minority Issues, vol. 10, 2013.

procedure. There is no case law or any other important practical examples in this field in Estonia.

b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

Statistical evidence is not commonly used. One may argue that the main reason therefore is not necessary reluctance, but lack of awareness of legal practitioners about such methods of prove. There are no indications that foreign case law may influence the situation in Estonia in this regard.

However, Estonian law does not explicitly ban the use of statistical evidence in courts (see also the definition of evidence in civil procedure in section 2.2.1). Furthermore, the explanatory note to the draft Law on Equal Treatment refers to statistical and sociological data in the context of indirect discrimination.[58]

c) Please illustrate the most important case law in this area.

There is no case law in Estonia to address the issue at stake.

d) Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

In Estonia the rules regarding the collection of data on individuals are stipulated in the Law on Personal Data Protection adopted in 2007.[59] The issue of data protection in the anti-discrimination context has never been widely debated. One of the reasons for that is that the first comprehensive anti-discrimination norms (substantive law) were adopted as late as 2004.

Data on ethnic or racial origin, state of health and disability, religion or belief or sexual orientation are regarded as sensitive personal data by the Law on Personal Data Protection (Article 4 (2)), and quite rigid rules were stipulated for their processing The main principles of the processing of data read as follows (Article 6):

1) "the principle of legality – personal data may be collected in an honest and legal manner;

[58] See explanatory note attached to the Draft no. 384 SE (11th Riigikogu); available at http://www.riigikogu.ee (18.03.2013).
[59] Isikuandmete kaitse seadus, RT I 2007, 24, 127.

2) *the principle of purposefulness – personal data may be collected only for specified and legitimate purposes and personal data shall not be processed in a manner which fails to comply with the purposes of data processing;*
3) *the principle of minimality – personal data may be collected only to the extent which is necessary for the purposes for which they are collected;*
4) *the principle of restriction on use – personal data may be used for other purposes only with the consent of the data subject or with the permission of a competent body;*
5) *the principle of data quality – personal data shall be kept up to date and shall be complete and necessary for the given purpose of the data processing;*
6) *the principle of security – security measures to prevent the involuntary or unauthorised alteration, disclosure or destruction of personal data shall be applied in order to protect the data;*
7) *the principle of individual participation – a data subject shall be notified of data collected on him or her, access to data pertaining to the data subject shall be ensured to him or her and the data subject has the right to demand the rectification of inaccurate or misleading data".*

In its 2006 communication, the Data Protection Inspectorate stressed that the opportunities of employers are limited by both the principle of minimality and Article 30 (2) of the previous Law on Employment Contracts, which prohibits the requesting of documents which are not prescribed by law or governmental decrees. In fact, an employer may under certain circumstances possess only that information which pertains to the health or disability of his or her employee. As for educational and medical institutions, they may under certain conditions collect information on the disabilities of their students or clients. Institutions that provide communal housing services are not supposed to collect any sensitive personal data, stated the Inspectorate.[60]

The current Law on Personal Data Protection (adopted in 2007) did not change this approach. It does not elaborate on the issue when an employer seeks to collect data in the context of the fight against discrimination. The Law on Employment Contracts (2009) provides that in pre-contractual negotiations or upon preparation of an employment contract in another manner, including in a job advertisement or job interview, an employer may not ask the person applying for employment for any data with regard to which the employer does not have any legitimate interest. The absence of the employer's legitimate interest is presumed first of all in the case of questions which disproportionately concern the private life of the person applying for employment or which are not related to their suitability for the job offered (Article 11 (1)-(2)).

[60] Data Protection Inspectorate; Written communication no. 1.2-2/05/457 of 25 January 2006.

Under such circumstances it is rather difficult for employees or clients to get any statistical evidence to prove cases of indirect discrimination. Furthermore, there is no information about an attempt of any employees to collect data in order to design positive action measures. Without appropriate administrative practice we may only *presume* that the fight against discrimination could be recognised as a legitimate purpose for personal data processing. Importantly, in its 2008 communication the Data Protection Inspectorate does not question the legitimacy of intended collection of sensitive personal data by an NGO who would like to operate hotline to deal with cases of discrimination covered by the Directives 2000/43 and 2000/78.[61]

Personal data may be processed only with the permission of the data subject (Article 10 (1) of the Law on Personal Data Protection). Processing of sensitive personal data without the consent of a data subject is permitted if the personal data are processed on the basis of law, international agreement, directly applicable EC or European Commission act, for protection of the life, health or freedom of the data subject or other person in exceptional circumstances (Article 14 (1)).

Consent for the processing of personal data means a freely given specific, informed and written (in a way of exception oral) indication of the wishes of a data subject (Article 12 (1)-(2)).

Before obtaining the consent of a data subject for the processing of personal data, the processor shall notify the data subject of the name of the (chief) processor or a representative thereof and the address of the place of business of the processor (Article 12 (3)). Processors are required to register processing of sensitive personal data with the Data Protection Inspectorate (if they are not an authorised processor) (Article 27 (1)).

According to the Law on State Statistics,[62] during a compulsory census in Estonia the authorities are entitled to collect data *inter alia* on citizenship, ethnic origin, native language, religion, a situation of disability for one year or longer, place of birth, place of birth of parents, year of arrival in Estonia, etc (Article 22). The last census took place in Estonia on 31 December 2011 – 31 March 2012.

Estonia keeps a Population Register, which includes data on citizenship, place of birth, when and from where a person arrived in Estonia, etc. Additionally, the register includes references to a person's close relatives (such as parents) and therefore to their personal information. Information on ethnic origin and native language is collected with the person's consent. The register does not deal with data on religion or disability as such. However, the registry will include data stating that the person has restricted active legal capacity and has been divested of his or her active legal

[61] Data Protection Inspectorate; Written communication no. 2.1-5/08/214 of 3 April 2008.
[62] Riikliku statistika seadus, RT I 2010, 41, 241.

capacity with regard to the right to vote by a court judgment (Law on Population Register,[63] Article 21 (1) 13).

The database of the Population Register includes no information regarding sexual orientation. These data are not collected during censuses as well. Both the Law on State Statistics and the Law on Population Register provided for rigid rules of personal data protection.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Does this definition comply with those of the directives? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

The concept of harassment in Estonia is rather new and is mostly related to the process of transposition of the Directives. Since 1 May 2004 two laws have included detailed definitions of harassment: the previous Law on Employment Contracts (valid until July 2009) and the Law on Gender Equality. Even before that, the Law on the Cultural Autonomy of National Minorities prohibited actions "[t]o ridicule and to obstruct the practice of ethnic cultural traditions and religious practices and to engage in any activity, which is aimed at the forcible assimilation of national minorities (Article 3 (2))."

The Law on Equal Treatment defines harassment as 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)). This definition is fully in line with the both Directives.

This definition substituted the provision regarding harassment provided for in the previous Law on Employment Contracts which had presupposed 'subordination' or 'dependency' between a perpetrator and a victim of harassment.

Additionally, several articles of the Penal Code include provisions that could be used by victims of the most violent acts of harassment. For instance, the Penal Code makes punishable a threat to kill, to cause damage to a person's health or to cause significant damage to or destroy property (Article 120), as well as physical abuse (Article 121).

b) Is harassment prohibited as a form of discrimination?

[63] Rahvastikuregistri seadus, RT I 2000, 50, 317.

The Law on Equal Treatment defines harassment as a form of direct discrimination.

c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

No. Under circumstances of 'non-violent' harassment, a victim can also use those legal means that provide for the protection of honour and dignity in cases of insult and defamation. According to Article 25 of the Constitution, "everyone has the right to compensation for moral and material damage caused by the unlawful action of any person". The new Penal Code has decriminalised these offences. However, they are still subject to civil liability. This is to emphasise that Estonian courts recognise the right to compensation for moral damages caused by private persons and state officials alike.[64] According to the Law on Obligations,[65] the aggrieved person shall be paid a *reasonable amount of money* as compensation for non-material damage caused by breach of an individual's right (including defamation) (Article 134 (2)).

d) *What is the scope of liability for discrimination)? Specifically, can employers or (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

Estonian anti-discrimination legislation is silent about these issues.[66]

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

[64] See e.g. Decision of the Civil Law Chamber of the Supreme Court of 29 November 2000; published in RT III 2000, 29, 316.
[65] Võlaõigusseadus, RT I 2001, 81, 487; RT I 2002, 60, 374.
[66] This problem was specifically addressed only in the Law on Gender Equality. Article 6 (2) of this Law established that the activities of an employer shall also be deemed to be discriminating if "s/he fails to ensure that employees are protected from sexual harassment in the working environment".

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

2.5 Instructions to discriminate (Article 2(4))

a) Does national law (including case-law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The formal legal and grammatical interpretation of Article 12 of the Constitution leads to the conclusion that it bans instructions to discriminate on any ground. According to Article 3 (5) of the Law on Equal Treatment, an instruction to discriminate against persons on the basis of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is deemed to be discrimination.

b) Does national law go beyond the Directives' requirement? (e.g. including incitement)

In the context of criminal offences, provisions regarding accomplices (abettors) may be used. "An abettor is a person who intentionally induces another person to commit an intentional unlawful act" (Article 22 (2) of the Penal Code). According to the general rules, "a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender". These provisions can be applied in the context of Article 151 (incitement to hatred, violence or discrimination) and Article 152 (violation of equality) (see also section 2.1 of this report).

c) What is the scope of liability for discrimination? Specifically, can employers or service providers (in the case of racial or ethnic origin)(e.g. landlords, schools, hospitals) be held liable for the actions of employees giving instruction to discriminate? Can the individual who discriminated because s/he received such an instruction be held liable?

Estonian anti-discrimination legislation is silent about these issues. As it was explained above, according to the general rule, if one person engages another person in his or her economic or professional activities on a regular basis, or engages another person in the performance of his or her duties or if a person performs an act at the request of another person, the latter may be liable for any relevant damage unlawfully caused by the other person on the same basis as for damage caused by him or her (Article 1054 (1) of the Law on Obligations). However, trade unions or other professional associations cannot be normally held liable for actions of their members.

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

a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

Article 11 of the Law on Equal Treatment reads as follows:

> *"(1) Grant of preferences to disabled persons, including measures aimed at creating facilities for safeguarding or promoting their integration into the working environment, shall not constitute discrimination.*
> *(2) Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.*
> *(3) Upon determining whether the burden on the employer is disproportionate as specified in subsection 2, the financial and other costs of the employer, the size of the agency or enterprise and the possibilities to obtain public funding and funding from other sources shall also be taken into account".*

No other details or explanations are available in the text of the law. The law was not amended following ratification by Estonia (2012) of the UN Convention on the Rights of Persons with Disabilities. However, if laws or other legislation of Estonia are in conflict with international treaties ratified by the parliament, the provisions of the international treaty shall apply (Article 123 of the Constitution).

The concept of reasonable accommodation (Article 11 (2)-(3) of the Law on Equal Treatment) is identical with that in the Directives.

In what follows we are going to pay some attention to Article 11 (1) of the Law on Equal Treatment. This provision is not a novelty in the context of the Estonian law.[67] Importantly, this provision does not provide for any positive obligations of an employer. However, it permits 'special' approach to disabled workers (including positive action measures). To highlight practical importance of Article 11 (1), we shall present it in the context of other relevant legal provisions. So, according to Article 10^1 (1) of the Law on Occupational Health and Safety,[68] an employer shall create suitable working and rest conditions for disabled workers (as well as for minors).

[67] This provision has been contained in Article 10^1 (3) of the previous Law on Employment Contracts before January 2009 (i.e. before it was amended upon the adoption of the Law on Equal Treatment).
[68] Töötervishoiu ja tööohutuse seadus, RT I 1999, 60, 616.

Furthermore, "[t]he work, work equipment and workplace of a disabled worker shall be adapted to his or her physical and mental abilities" (Article 10¹ (4)). This provision includes the following clarification: "Adaptation means the making of the buildings, workrooms, workplaces or work equipment of the employer accessible and usable for disabled persons. This requirement also applies to commonly used routes and rest rooms and/or accommodation areas used by disabled workers." These changes were to transpose the requirements of point 20 of Annex I of the Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace.[69] A special working environment council[70] shall assist in the creation of suitable working conditions and work organisation for female workers, minors and disabled workers (Article 18 (6) 5 of the Law on Occupational Health and Safety).

The Law on Employment Contracts (Article 88 (1)1) provides that an employer may extraordinarily terminate an employment contract if the employee has for a long time been unable to perform their duties due to their state of health, which does not allow for the continuance of the employment relationship (decrease in capacity for work due to state of health). A decrease in capacity for work due to state of health is presumed if the employee's state of health does not allow for the performance of duties over four months. However, before cancellation of an employment contract, an employer shall offer *another job* to an employee, where possible. An employer shall offer another job to an employee, including organising, if necessary, the employee's in-service training, adapt the workplace and change the employee's working conditions, unless the changes cause disproportionately high costs for the employer and the offering of another job may, considering the circumstances, be reasonably expected (Article 88 (2)). An employer may not cancel an employment contract due to the fact that an employee does not, in the short term, cope with the performance of duties due to their state of health (Article 92 (1) 3). Judicial interpretation is required to establish a link between these provisions of the Law on Employment Contracts and the concept of reasonable accommodation as provided for in Article 11 (2)-(3) of the Law on Equal Treatment.

Article 93 of the new Law on Public Service (valid from 1 April 2013) permits to release an official from work due to decrease in the capacity for work, i.e. if the official is not capable of performing the functions for over four consecutive months or over five months within a year. However, such release from service is not allowed "if it is possible for the authority to modify the post with the consent of the official, change the service-related conditions of the official or it is possible to transfer the official, with his or her consent, to another post in the same authority in which the performance of functions is in correspondence with the capacity for work of the

[69] See explanatory note attached to the Draft no. 975 SE (10th Riigikogu); available at http://www.riigikogu.ee (01.05.2008).
[70] A working environment council is a body for co-operation between an employer and the workers' representatives which resolves occupational health and safety issues in the enterprise (Law on Occupational Health and Safety, Article 18 (1)).

official and is in compliance with his or her education, work experience, knowledge and skills".

b) *Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

The Law on Equal Treatment stipulates the definition of 'disability' (Article 5) which is used 'for the purposes of this act', i.e. also in the context of provisions regarding reasonable accommodation.

c) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

There is no such a duty provided for in national law. No amendments have been introduced in relevant acts after ratification by Estonia (2012) of the UN Convention on the Rights of Persons with Disabilities.

d) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

There are reasons to believe that Estonian lawmakers did not presume that failure to meet the duty of reasonable accommodation count as discrimination.

The provisions regarding reasonable accommodation can be found in the Law on Equal Treatment, where relevant Article 11 is titled 'Taking of measures regarding disabled persons'. There are no cross-references between definition of 'discrimination' and provisions regarding reasonable accommodation. The Law says, however, that "grant of preferences to persons with disabilities, including creating a work environment suitable for persons with special needs linked to disabilities, does not constitute discrimination" (Article 11 (1)).

e) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)*

i) race or ethnic origin

No relevant provisions.

ii) religion or belief

There are no relevant provisions in Estonian legislation.

An interesting case was solved by a quasi-judicial body – the Labour Disputes Committee in 2011. A kindergarten teacher was fired *inter alia* due to failure to celebrate Christian holidays and kids' birthdays (the teacher was a Jehovah witness). The Committee found her dismissal to be discrimination on the grounds of religion or beliefs in the meaning of the Law on Equal Treatment.[71] It might be presumed on the basis of this decision that the employer was supposed to consider (to accommodate) religion-related peculiarities of its employee while planning kindergarten's activities.

iii) age

No relevant provisions.

iv) sexual orientation

No relevant provisions.

It is worth mentioning in this context that the Law on Equal Treatment (Article 9 (3)) does not regard as discrimination in labour relations:

1) grant of preferences on grounds of representing the interests of employees or membership in an association representing the interests of employees if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary;
2) grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin

No relevant provisions.

ii) religion or belief

No relevant provisions.

iii) age

No relevant provisions.

[71] Labour Inspectorate; Written communications of 17 January 2012.

iv) sexual orientation

No relevant provisions.

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

No, it is not a common practice in Estonia.

h) Does the national law clearly provides for the shift of the burden of proof, when claiming the right to reasonable accommodation?

There are no relevant provisions in Estonian valid or draft legislation.

i) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

According to Article 3 (9) of the Law on Building,[72] "if required for the purpose of use of the construction works, the works, parts thereof which are for public use and the premises and sites thereof shall be accessible to and usable by persons with reduced mobility and by visually impaired and hearing impaired persons". The detailed requirements are established in the decree of 28 November 2002 by the Minister of Economic Affairs and Communications[73] for both public places (including infrastructure) and public buildings (e.g. administrative buildings, hospitals, educational institutions etc.). According to Article 19 of the decree, the rules regarding the accessibility of buildings for disabled people are equally applicable to existing public buildings if they are renovated.

The Law on Building does not relate to the transposition of the anti-discrimination directives.[74] Violation of its norms would be unlikely to be treated in Estonia as discrimination on the ground of disability.

The Law on Traffic[75] stipulates specific norms to organise mobility for physically disabled people and parking for vehicles servicing such people.

j) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields

[72] Ehitusseadus, RT I 2002, 47, 297.
[73] Nõuded liikumis-, nägemis- ja kuulmispuudega inimeste liikumisvõimaluste tagamiseks üldkasutatavates ehitistes, RTL 2002, 145, 2120.
[74] See explanatory note attached to Draft no. 805 SE (9th Riigikogu); available at http://www.riigikogu.ee (20.02.2013).
[75] Liiklusseadus, RT I 2010, 44, 261.

(employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

There is no general duty established in Estonian law to provide accessibility by anticipation.

According to the Law on Electronic Communications,[76] if two or more applications are received at the same time, priority, in the entry into a subscription contract for the provision of a communications service in the place of residence of a disabled person, shall be given to an application submitted by a person with a profound or severe disability in the meaning of the Law on Social Benefits for Disabled Persons or by his or her caregiver (Article 94 (5)).

k) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

The Law on Labour Market Services and Benefits [77] provides unemployed disabled people with special services, including adaptation of premises and equipment. This service might be granted on the basis of an administrative contract between the Unemployment Insurance Fund and an employer, in which the state will compensate the employer for 50-100% of the reasonable expenses that are necessary for that adaptation (Article 20). Another service, namely 'providing free use of a technical appliance necessary for work', might be offered on the basis of an administrative contract between the Unemployment Insurance Fund and an employer or a disabled person (Article 21). Two other services are communication support at the interview with a potential employer and work with the assistance of a support person (Articles 22-23). According to Article 9 (5) of the Law, all of these services will only be granted to disabled persons if they are necessary to overcome the disability-related obstacle to his or her employment, and if other employment services (e.g. information on the situation in the labour market, employment mediation, vocational training, etc) have been ineffective.

The provisions of this law 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 Law on Occupational Health and Safety (Article 10^1 (3)), an employer is required to enable, pursuant to the procedure provided by employment laws, such a worker to continue work suitable for him or her in the enterprise.

[76] Elektroonilise side seadus, RT I 2004, 87, 593.
[77] Tööturuteenuste ja -toetuste seadus, RT I 2005, 54, 430.

The Estonian law established the system of protection of disabled persons *inter alia* in the following basic areas: payment of social benefits; rehabilitation service; special conditions in the labour market; special guarantees in the field of education; special guarantees for persons with reduced mobility, visually impaired and hearing impaired persons or persons with profound or severe disability; special guarantees for those using public transport, etc.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

There are no special provisions in the law regarding sheltered or semi-sheltered accommodation/employment for disabled workers. However, the state promotes the employment of disabled persons in private sphere by paying social tax within certain limits for a worker who receives a pension for incapacity for work (Law on Social Tax,[78] Article 6 (1) 5).[79] Such work is considered as ordinary employment.

The Law on Labour Market Services and Benefits also stipulates the so-called wage allowance. For six months the state will pay within certain limits[80] 50% of a wage of a person who belongs to a group of risk (unemployed persons who were more than 12 months running registered unemployed (6 months in case of persons aged 16-24) or who were released from a prison within 12 months before registration as unemployed (Article 18)). Many disabled people may benefit from this regulation because unemployment rate among them (including long-term unemployment) is traditionally high.

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

Yes, these activities will constitute employment.

[78] Sotsiaalmaksuseadus, RT I 2000, 102, 675.
[79] These provisions are used in practice.
[80] A minimum wage established by the Government of the Republic.

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)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Three relevant national laws (the Law on Equal Treatment, the Law on Gender Equality and the Law on the Chancellor of Justice) do not include any specifications regarding the rights of EU and non-EU nationals (also stateless persons) or residential status in the anti-discrimination context.

Only Estonian citizens can be state or municipal public officials while exceptions are possible for citizens of the EU (Law on Public Service, Article 14).

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

a) Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

In Estonia there are very few relevant provisions to be found. However, it would be safe to claim that in local legal tradition only natural persons could be recognised as victims of discrimination in the context of the Directives 2000/43 and 2000/78. However, political parties, political and religious associations can theoretically be recognised as victims of discrimination due to religious, political or other belief.

As was mentioned in section 1 of this report, Article 12 of the Constitution should be observed by the state, public authorities, natural and legal private persons (and both legal and natural persons might be regarded as 'discriminators'). According to grammatical interpretation, this provision provides only natural persons with protection against discrimination. However, "[t]he rights, freedoms and duties set out in the Constitution shall extend to legal persons in so far as this is in accordance with the general aims of legal persons and with the nature of such rights, freedoms and duties" (Article 9 (2)). Thus, the constitutional provision makes it possible to grant legal persons protection against discrimination (provided there are changes in local legal theory in the future). It is worth mentioning that the Supreme Court recognised the equality before the law (the first sentence of Article 12 (1) of the Constitution) as the right belonging to both natural and legal persons.[81] There were no similar cases

[81] Decision of the Constitutional Review Chamber of the Supreme Court of 6 March 2002; published in RT III 2002, 8, 74 (point 13).

as regards prohibition of discrimination (the second sentence of Article 12 (1) of the Constitution).

Article 152 of the Penal Code bans unlawful restriction of the rights of a 'human being' or granting of unlawful preferences to a 'human being' ('*inimene*').

As for offenders, the relevant anti-discrimination provisions of the Penal Code (listed in section 2.1 of this report) are applicable solely to natural persons (with the exception of the provisions regarding incitement to hatred, Article 151).

The Chancellor of Justice is a special quasi-judicial body and a body for the promotion of equality. Everyone (formally both natural and legal persons) enjoys the right to apply to the Chancellor with complaints regarding discrimination perpetrated by both natural and legal persons (Article 19 of the Law on the Chancellor of Justice). The Chancellor is ready to deal with legal persons in case of breach of the principle of equality before the law. He may also recognise political parties, political and religious associations as victims of discrimination due to religious, political or other belief when appropriate.[82]

The Law on Equal Treatment (which was adopted to transpose Directives 2000/43 and 2000/78) uses the term 'persons' (*isikud*). Article 2 that deals with the scope of application of the law seems to refer to natural persons (unless proven otherwise by Estonian judiciary). 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'). According to the Law on Employment Contracts the employee may only be a natural person (Article 1 (1)). As for employers, they could be either legal or natural persons. If the rights of a person are violated due to discrimination, it is possible to demand from the person (*isik*) who violates the rights that discrimination be discontinued and compensation be paid for the damage caused (Article 24 (1) of the Law on Equal Treatment). In other words, both natural and legal persons are liable for dis

b) Is national law applicable to both private and public sector including public bodies?

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

3.1.3 Scope of liability

Are there any liability provisions other than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

[82] Chancellor of Justice; Written communication no. no 5-3/1002417 of 3 May 2010.

There are no liability provisions other than those mentioned under harassment and instruction to discriminate.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national anti-discrimination legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office? In case national anti-discrimination law does not do so, is discrimination in employment, self-employment and occupation dealt with in any other legislation?

Article 12 of the Constitution is applicable to all spheres of life (see section 1 of this report).

The scope of the Law on Equal Treatment as regards employment, self-employment and occupation is identical with that in the Directives.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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

Does national law on discrimination include access to employment, self-employment or occupation as described in the Directives? In case national anti-discrimination law does not do so, is discrimination regarding access to employment, self-employment and occupation dealt with in any other legislation?
Is the public sector dealt with differently to the private sector?

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is prohibited in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion (Article 2 (1) 1 and (2) 1). Public sector is not dealt with differently to the private sector.

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

Does national law on discrimination include working conditions including pay and dismissals? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

In respect of occupational pensions, how does national law on discrimination ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is prohibited in relation to entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination of employment contracts or contracts for the provision of services, release from office (Article 2 (1) 2 and (2) 2).

There are no specific discrimination-related provisions regarding occupational pensions in Estonia. The general provisions of the Law on Equal Treatment seem to be applicable in this context.

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

Does national law on discrimination include access to guidance and training as defined and formulated in the directives? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does national law on discrimination apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses? If not does any other legislation do so?

The Law on Equal Treatment is applicable in access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining,

including practical work experience (Articles 2(1)3 and 2 (2)3). Thus, the law regulates anti-discrimination issues in the area of professional training outside employment relations or as regards adult lifelong learning professional courses. All five grounds of discrimination plus colour are explicitly covered.

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

Does national law on discrimination include membership of, and involvement in workers or employers' organisations as defined and formulated in the directives? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation is prohibited in relation to membership of, and involvement in, an organisation of employees or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 2 (1) 4 and (2) 4).

Law on Trade Unions[83] stipulates that the rights of employees or persons who seek employment shall not be restricted on grounds of their membership in trade unions, on being elected representatives of trade unions or on other legal activities related to trade unions (Article 19 (2)). The prohibited restrictions of rights include any form of unequal treatment possible (Article 19 (3)).

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

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

Does national law on discrimination cover social protection, including social security and healthcare? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

[83] Ametiühingute seadus, RT I 2000, 57, 372.

The Law on Equal Treatment is applicable in the field of social protection, including social security and healthcare (Article 2 (1) 5). Only such grounds of discrimination as ethnicity, race, and colour are covered.

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

Does national law on discrimination cover social advantages? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

The Law on Equal Treatment is applicable as regards social advantages (Article 2 (1) 5). Only such grounds of discrimination as ethnicity, race, and colour are covered.

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

Does national law on discrimination cover education? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?
This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.
Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

The Law on Equal Treatment is applicable in the field of education (Article 2 (1) 6). Only such grounds of discrimination as ethnicity, race, and colour are covered.

According to Article 4 (1) of the Law on Education[84] the state and local self-government shall ensure for every person an opportunity to receive obligatory 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 obligatory 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, there could be founded schools for students with

[84] Eesti Vabariigi haridusseadus, RT I 1992, 12, 192.

special educational needs (Article 2 (4) of the Law on Basic School and Upper Secondary School).[85] The Minister of Education and Research establishes special rules enabling disabled persons to study in vocational schools (Article 32 (7) of the Law on Vocational School).[86] The Law on Adult Education[87] established certain guarantees for adults who want to continue their studies. For instance, local authorities shall provide for interested adults basic and secondary education shall facilitate the provision of professional education and shall support the provision of training to unemployed persons, persons seeking work, other socially underprivileged persons and disabled persons (Article 7).

In Estonia specific polices are employed to address the needs of disabled persons in education. The general understanding among authorities is that disabled pupils shall study in mainstream classes / schools, if possible.

In 2005 the Chancellor of Justice (ombudsman and equality body) specifically addressed the issue whether laws guarantee sufficient access to basic education for children with disabilities. As a result the Chancellor requested the Minister of Education and Research to draw the attention to a number of insufficiencies in the 'old' Law on Basic School and Upper Secondary School.[88] The situation has seemingly improved in recent years. According to the data of the Estonian Educational Information System, in 2011/2012 academic year there were 110,854 compulsory school aged pupils in Estonia and 6,530 of them were pupils with special educational needs (SEN).[89] Out of 6,530 SEN pupils 3,370 studied in segregated special schools and 1,103 in segregated special classes in mainstream schools. However, 2.057 of SEN pupils studied in fully inclusive settings. In addition there were 16,945 pupils with no official decision of SEN who received some form of SEN support in mainstream schools. [90]

The language of instruction of Estonian kindergartens and schools is Estonian or Russian. Additionally, a few students receive their school education in Finnish and English. There are no problems concerning the segregation of ethnic minorities in the Estonian school system. There are few comprehensive and reliable data concerning discrimination of minorities in educational system.

[85] Põhikooli- ja gümnaasiumiseadus, RT I 2010, 41, 240.
[86] Kutseõppeasutuse seadus, RT I 22.12.2013, 2.
[87] Täiskasvanute koolituse seadus, RT I 1993, 74, 1054; RT I 1998, 71, 1200.
[88] Annual report 2005 of the Chancellor of Justice, Tallinn, 2006, p. 65.
[89] Pupils with special educational needs are pupils whose outstanding talent, learning or behavioural difficulties, health problems, disabilities or long-term absence from studies creates the need to make changes or adaptations in the content of studies, the study processes or the learning environment (study aids, classrooms, language of communication, incl. alternative communications, specially trained teachers, support staff, etc.), or in the work plan prepared by the teacher for work with the relevant class (Article 46 (1) of the Law on Basic School and Upper Secondary School).
[90] Data published by the European Agency for Development in Special Needs Education at http://www.european-agency.org/country-information/estonia (08.03.2014).

In general, there are no legal restrictions in access to any level of education, vocational training and other forms of life-long or informal learning for immigrants and ethnic minorities.

In some areas educational opportunities of persons not proficient in Estonian can be limited (e.g. higher education). Even more complicated can be the situation of minorities proficient neither in Estonian nor in Russian (Roma children, new immigrants etc). In academic year 2011/2012 Estonia finalised a transition of Russian-language upper secondary schools to training predominately in Estonian.

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

Does national law on discrimination cover access to and supply of goods and services? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

a) Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour is prohibited in relation to access to and supply of goods and services which are available to the public (Article 2 (1) 7). The law does not provide further details. No other grounds are applicable in this regard.

Additionally, several provisions of the Law on Trading[91] and the Law on Public Transport[92] might be useful in the non-discrimination context. They were not drafted as a means to fight discrimination in access to goods and services. However, practising lawyers might refer to these provisions in the interests of victims of discrimination.

As for access to the supply of goods and services, Article 4 (2) 1 of Law on Trading makes it an offence for a trader "illegally to restrict or favour the sale of goods or services or to influence consumers through disparagement of the goods or services of other traders, through the prohibited use of a business name or in any other manner which is contrary to good trade ethics and practice". Article 30 of the same Law foresees liability (fines) for 'violation of requirements established for sale of goods or services'.

[91] Kaubandustegevuse seadus, RT I 2004, 12, 78.
[92] Ühistranspordiseadus, RT I 2000, 10, 58.

The Requirements for Carriage by Bus, Tram or Trolleybus and for Taxi Service and for Carriage of Baggage[93] (adopted by a decree of the Minister of Economy and Communications) includes an explicit ban against taxi drivers denying taxi service without good reasons, some of which are listed in Article 16 (4) of the same requirements (Article 16 (3)). Violations of these rules are punishable by fine according to Article 54² of the Law on Public Transport.

b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

The national legislation does not elaborate these issues.

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

Does national law on discrimination cover housing? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

According to the Law on Equal Treatment, discrimination of persons on the grounds of ethnic origin, race, colour is prohibited in relation to housing (Article 2 (1) 7). The law does not provide further details. No other grounds are applicable in this regard.

The problem of ethnic or racial segregation in housing does not exist in Estonia to any noticeable degree. There is no data to prove any positive or negative changes in the area in recent years.

The only ethnic minority group that seems to experience disproportionate difficulties in access to qualitative housing are Roma. However, there were no special studies of the problem and these assumptions might be based only on information provided by leaders of this community. As for other minority groups, on the basis of the 2011 national census, one may conclude that the comfort characteristics (indoor amenities available within the private space occupied only by the household) were better in dwellings of ethnic non-Estonians as compared with those of ethnic Estonians.

[93] Sõitjate bussiliiniveo, bussijuhuveo, taksoveo ja pagasiveo üldeeskiri, RTL 2004, 71, 1176.

However, the situation of minority members was more problematic as regards available dwelling space, especially in Tallinn.[94]

National legislation does not provide any requirements to guarantee or to promote the availability of housing which is accessible to people with disabilities and older people.

[94] Public database of Statistics Estonia, at http://pub.stat.ee (05.03.2014).

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The Law on Equal Treatment 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 shall 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.

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

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

Complaints concerning the activities of natural persons or legal persons in private law do not fall under the competence of the Chancellor of Justice (a special quasi-judicial institution and a body for the promotion of equal treatment) if they "concern professing and practising of faith or working as a minister of a religion in religious associations with registered articles of association" (Article 35^5(2) of the Law on the Chancellor of Justice). This rule is similar to the relevant provision of the Law on Gender Equality (Article 2 (2)).

The Law on Equal Treatment stipulates in Article 10 (2)-(3) 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 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.[95]

(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".

In 2008, one of the leading LGBT organisations of Estonia addressed the Chancellor of Justice (as a guardian of constitutionality) with a request to check if Articles 10 (2) and (3) of the Equal Treatment Act are in line with the Article 12 of the Constitution (ban of discrimination) and the Directive 2000/78. The Chancellor found them to be in compliance with these acts.[96]

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

There are no specific provisions or case law in this area in Estonia.

c) *Are religious institutions permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both? Is there any case law on this?*

There are no such cases or such opportunities established in Estonian law. Private (incl. religious) schools are not exempted from general anti-discrimination rules.

On the basis of the Convention between the Government of the Republic of Estonia and the State of the Holy See, the Catholic Church has only the right to establish and manage its *own schools*, in accordance with Canon Law and the legislation of the Republic of Estonia concerning non-state schools.[97] In other words, Estonian anti-discrimination law is fully applicable to the work in such schools. No special agreements were signed with other churches. No relevant case law exists as well.

[95] There are no provisions in Estonian law to specifically address the issue of discrimination on the grounds other than religion or belief in the context of organisations, the ethos of which is based on religion or belief.
[96] Chancellor of Justice; Written communication no. no 5-3/1000381 of 16 February 2010.
[97] Eesti Vabariigi ja Püha Tooli vaheline kokkulepe katoliku kiriku õigusliku staatuse kohta Eesti Vabariigis, RT II 1999, 7, 47, section 7.

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

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

The new Law on Public Service (in force since 1 April 2013) does not address these issues. The Law on Equal Treatment does not elaborate this issue either. Article 9 (1) of the latter law stipulated that "differences of treatment on grounds of age shall not constitute discrimination, if, within the context of law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary" (see detailed analysis in section 2.2.c).

For certain groups of public officials, maximum age limits have previously been established, e.g. 50-60 years of age for military servicemen (Article 112 of the Law on Military Defence Service);[98] 55-60 years of age for policemen (on the basis of Article 96 of the Law on Police and Border Guard);[99] 58-60 years of age for some categories of prison officials (Article 152 of the Law on Imprisonment).[100] Exceptionally, service may be prolonged. Military servicemen are entitled to special pensions under the above-mentioned Law on Military Defence Service. In Estonia some categories of workers (policemen, pilots, sailors, minors etc) may receive pensions on the grounds of the Law on Superannuated Pension[101] before reaching ordinary pensionable age.

The Minister of Defence (for military servicemen) and the Government (for policemen) shall provide for requirements concerning the state of health necessary for the performance of duties (Article 79 (5) of the Law on Military Defence Service and Article 71(4) of the Law on Police and Border Guard). According to Article 111 of the Law on Military Defence Service, a serviceman shall be released from contractual service within one month of the date of the decision of the medical committee by which "s/he was declared unfit for active service for health reasons".

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

[98] Kaitseväeteenistuse seadus, RT I 2000, 28, 167; RT I 2003, 31, 195.
[99] Politsei ja piirivalve seadus, RT I 2009, 26, 159.
[100] Vangistusseadus, RT I 2000, 58, 376, RT I 2002, 84, 492.
[101] Väljateenitud aastate pensionide seadus, RT 1992, 21, 294.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

There are no relevant provisions other that those mentioned in the previous section.

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

Estonian law does not make difference between status of a foreign citizen, a stateless person or a person with 'undefined citizenship' (mostly former Soviet citizens). Naturally, in some areas citizens of other EU countries can be in a privileged position as compared with third country nationals (e.g. access to public service).

As mentioned above, Article 12 of the Estonian Constitution establishes an explicit ban on discrimination on any ground, including nationality (citizenship). Article 11 stipulates that rights or freedoms may be restricted only in accordance with the Constitution. Article 9 (1) guarantees rights and freedoms for both citizens of Estonia and foreigners on its territory. Nevertheless, the Estonian Constitution permits a differential treatment of non-citizens in certain social fields (Articles 28, 29, 31). Still, in most cases resident aliens in Estonia enjoy the same free access to social benefits as Estonian citizens. Estonian citizens as well as aliens with any type of a residence permit are subject to the Law on Social Welfare[102] (Article 4), the Law on Social Benefits for Disabled Persons (Article 3), the Law on State Pension Insurance[103] (Article 4), the Law on State Family Benefits[104] (Article 2), the Law on Labour Market Services and Benefits (Article 3), etc.

In general, in the non-official domain, there are quite few limits on non-citizens' employment as compared with Estonian citizens. For instance, a non-citizen cannot

[102] Sotsiaalhoolekande seadus, RT I 1995, 21, 323.
[103] Riikliku pensionikindlustuse seadus, RT I 2001, 100, 648.
[104] Riiklike peretoetuste seadus, RT I 2001, 95, 587.

be a sole proprietor who provides security services, a security officer or a head of in-house guarding units (Article 22 (2) of the Law on Guard Service).[105]

According to the general rule, non-citizens cannot work as state or municipal officials (Article 14 (1) of the Law on Public Service).The law has allowed exceptions to be made for citizens of the EU member states (Article 14 (2)).

Citizens of EU Member States make up a very small percentage of the alien population of Estonia. The majority of minority members are stateless persons (including 'persons with undefined citizenship') or Russian citizens (see section 2.1.1 for further details).

There are no specific anti-discrimination principles relating to the entry into Estonia or residence in Estonia of third-country nationals and stateless people. However, it is generally accepted that constitutional anti-discrimination provisions are applicable in such cases (even including cases of entry visa applications).[106] The margin of appreciation of Estonian authorities is understood to be very broad. The Decision of the Administrative Law Chamber of the Supreme Court[107] states the following: "According to international law, a State possesses the right to decide the presence of a foreigner on its territory. The Constitution does not provide a foreigner with a basic right to live and to stay in Estonia. There will be no discrimination according to the meaning of Article 12 of the Constitution if the requirements for granting a permanent residence permit are related to membership of a particular group".

The Law on Equal Treatment does not provide protection against discrimination on the basis of citizenship (Article 1 (1)). Furthermore, the explanatory note attached to the draft law clarifies that ethnicity, ethnic origin (*rahvus*) as a protected ground shall not to be mixed with nationality/citizenship (*kodakondsus*).

The Chancellor of Justice (as an ombudsman) may deal with nationality discrimination in public domain (relevant provisions do not include any limitations – Article 19 (1) of the Law on the Chancellor of Justice).

The Law on Equal Treatment does not provide protection against discrimination on the ground on nationality (citizenship). Therefore the main Estonian equality body – the Commissioner for Gender Equality and Equal Treatment – has no mandate to deal with such cases.

[105] Turvaseadus, RT I 2003, 68, 461. An in-house guard unit is a unit of an undertaking, state authority or local government authority which guards property owned or possessed by the undertaking, state authority or local government authority (Article 18 (1)).
[106] Ministry of Foreign Affairs; Written communication of 24 May 2004 no. 27.1/653.
[107] Decision of the Administrative Law Chamber of the Supreme Court of 4 May 2001; published in RT III 2001, 16, 170.

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

There are no legal provisions that explicitly or implicitly rely on Art 3 (2) in Estonian anti-discrimination law.

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

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married?

In general, national legislation is not clear in this regard. There is no information about relevant practices of employers.

The Law on Equal Treatment does not include any detailed provisions regarding family benefits. Discrimination on the ground of sexual orientation is prohibited in relation to establishment of working conditions and remuneration (Article 2 (2) 2). It is not clear if (all) employer's benefits are covered by these provisions.

In relation to social protection, including social security and healthcare, and social advantages, the law explicitly bans discrimination of persons only on such grounds as ethnic origin, race or colour (Article 2 (1) 5). The law does not guarantee that same-sex partners have equal access to these benefits. However, it includes general provision that grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work shall not be deemed to be discrimination (Article 9 (3) 2).

As it was explained in section 1 of this report, the Estonian Constitution (Article 12) provides for equality before law and bans discrimination on any ground in all spheres regulated by law. However, this right is not absolute and it may be limited in accordance with the Constitution. We need judicial interpretation to clarify if the Constitution permits employers to pay benefits only to those employees who are married.

In Estonia the concept of a family does not cover couples of the same sex. According

to the Law on Family, [108] the right to become spouses (to found a family) is reserved to representatives of the opposite sexes (Article 1 (1)). The concept of a registered partnership does not exist in national legislation. In recent years there was official discussion (especially in the Ministry of Justice)[109] about possible introduction of this concept to national law. However, no bills have been submitted to the parliament yet.

It should be noted that a noticeable proportion of all Estonian population are now cohabiting without marriage.[110] Estonian law and practice often try to consider this recent trend which might be beneficial for both heterosexual and same-sex partners.

The Law on Employment Contracts provides for several state guaranteed special benefits to fathers and mothers without references to the concept of a family (see section 4.7.2 of this report). However, in Estonia only married persons may adopt a child jointly (Article 148 of the Law on Family).

Some local governments may impose rules or support practices which are unfavourable to same-sex couples due to restrictive interpretation of the notion of a family. At least once such local regulation was held to be illegal by the court.[111]

b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?

The issue is not specifically addressed in Estonia. See details in previous section.

As for the Law on Gender Equality, it does not regulate problems relating to discrimination on the grounds of sexual orientation.

[108] Perekonnaseadus, RT I 2009, 60, 395.
[109] In August 2011 the Ministry of Justice addressed all parliamentary parties with a request to inform about parties' attitudes to the problem of a registered partnership of same-sex partners. Ministry of Justice; Written communication no. 10.1-20/9431 of 1 August 2011.
[110] According to the 2011 census, 548,286 Estonian residents (15+) were living with a partner (and only 378,026 of them were living with a legal spouse). Statistical Office of Estonia; public database available at: http://www.stat.ee (30.04.2013).
[111] In 2009, in the rural municipality of Viimsi local authorities refused to provide special benefits to the 'family' where small children were living together with a same-sex couple. Viimsi authorities claimed that a respective local normative act (Viimsi Rural Council regulation no. 16 of 25 April 2007) provides for benefits to support poor individuals and families and big families. They refused to regard 'cohabitation' of lesbian women as a family. Viimsi authorities also ignored the legally not binding opinion of the Chancellor of Justice that a second partner in this context may be regarded as a foster parent in the meaning of the Law on Family. Chancellor of Justice; Written communication no. 5-3/0904988 of 27 August 2009. The author is aware that the case was lost by Viimsi authorities in the second instance court. However, the reasoning of the court is not known while the judgement is not publicly available.

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

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Article 9 (1) of the Law on Equal Treatment 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" (see detailed analysis in sections 2.2.c and 4.8). There are no other specific *general* exceptions to health and safety rules applying to people with disabilities.

b) Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.)?

As for dress and personal appearance, no exceptions relating to health and safety were established for ethnic or religious minorities.

At the same time legal acts may provide for rigid dress requirements in certain areas of production (e.g. the decree of the Minister of Social Affairs on the production of medicaments).[112]

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

4.7.1 Direct discrimination

Please, indicate whether national law provides an exception for age? (Does the law allow for direct discrimination on the ground of age?)
Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 *Kucukdeveci?*

Estonian legislation does not provide much detail on this issue.

The Law on Equal Treatment (Article 9 (2)) introduced provisions almost identical with that of Article 6 (1) of the Directive 2000/78 (the first sentence): "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

[112] Ravimite tootmise eeskiri, RT I 2005, 2, 4.

legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary."

In the *Mangold* case the European Court of Justice decided that Article 6 (1) of the Directive 2000/78/EC shall be interpreted as precluding a provision of national law, which authorises the conclusion of fixed-term employment contracts, without justification, with workers aged 52 and over, "unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer".[113] There are no similar restrictions in Estonian legislation. According to Article 9 (1) of the Law on Employment Contracts, "it is presumed that employment contracts are made for an unspecified period. A fixed-term employment contract may be made for up to five years if it is justified by good reasons arising from the temporary fixed-term characteristics of the work, especially a temporary increase in work volume or performance of seasonal work".

In the *Kücükdeveci* case the European Court of Justice came to the conclusion that the Directive 2000/78/EC must be interpreted as precluding national legislation, which provides that periods of employment completed by an employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal. According to the Estonian Law on Employment Contracts an employer shall give an employee advance notice of extraordinary cancellation (not less than 15 - 90 calendar days depending on the length of employment relation) (Article 97); the age of employee is irrelevant in this context.

a) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Estonian legislation does not provide much detail on this issue. The Law on Equal Treatment (Article 9 (2)) introduced provisions almost identical with that of Article 6 (1) of the Directive 2000/78 (the first sentence). Thus, qualifying requirements for the access of various age groups to several state-provided benefits may not be the same in Estonia. For instance, according to the Law on State Pension Insurance a pension of a disabled person ('pension for incapacity for work') may be received by a person with a certain record of work years. These requirements are not the same for different age groups (Article 15).

b) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits taking up the possibility provided for by article 6(2)?*

The Law on Funded Pensions[114] provides for the conditions and procedure for "the making of contributions to and payments from funded pensions with the purpose of

[113] EU/Official Journal C 36, 11/02/2006, p. 10-11.
[114] Kogumispensionide seadus, RT I 2004, 37, 252.

creating the opportunity for persons who have made contributions to a funded pension to receive additional income, besides state pension insurance, after reaching pensionable age" (Article 1). According to Article 66 (1) of the Law, persons born before 1 January 1983 are not required to make contributions to a mandatory funded pension. However, persons born in 1942-1982 are entitled to make contributions to a mandatory funded pension only if they submit a choice application[115] in 2002-2010 (the deadline was different for various age groups (Article 66 (2)).

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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

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

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

Women have the right to paid pregnancy and maternity leave (Article 59), while fathers have the right to receive up to ten working days of paid paternity leave (Articles 60). A mother or father is entitled to paid parental leave until their child reaches the age of three years (Article 62). Each calendar year a mother or father[116] has also the right to receive child leave which shall be remunerated on the basis of the official minimum wage for three working days if s/he has one or two children under 14 years of age; and for six working days if s/he has at least three children under 14 years of age or at least one child under three years of age (Article 63). Upon cancellation of an employment contract due to a lay-off, except in the cases of

[115] An application to be submitted in order to acquire units of a pension fund. Most importantly, it shall include the name of the pension fund chosen by the person (Articles 14 (1) and 15 (1) of the Law on Funded Pensions). This application is necessary to join the system of funded pensions.
[116] Biological mothers or fathers and people equated to them by law.

the bankruptcy, the employees raising children under three years of age have the preferential right of keeping their job (Article 89 (5)).

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

According to Articles 10 (1)) and 10^1 (1) of the Law on Occupational Health and Safety, an employer shall create suitable working and rest conditions for disabled workers, pregnant women, women who are breastfeeding, and minors. See sections 2.6.a for details.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

According to the Law on Employment Contracts a minor could be an employee only under certain circumstances which may vary for different age groups (Article 7). A minimum age requirement for higher and senior officials is 21; other officials shall be aged 18 or older (Article 14 of the Law on Public Service).

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). Additionally there may also be maximum age requirements (e.g. for military servicemen, policemen and prison officers; see section 4.3 for details). For safety reasons there have also been established upper age limits (65) for pilots of commercial airlines.[117]

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 Law on the Office of Public Prosecutor).[118]

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire

[117] Lennundusspetsialistide vanusele ja kvalifikatsioonile, nende koolitusele ja eksamineerimisele esitatavad nõuded ning lennundusspetsialistidele lennunduslubade väljaandmise ja välisriikides väljaantud lennunduslubade tunnustamise eeskiri, Teede- ja Sideministri 21.12.2001 määrus nr 125, Article 5 .
[118] Prokuratuuriseadus, RT I 1998, 41/42, 625; RT I 2004, 66, 457.

from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

The Law on State Pension Insurance (Article 7) stipulates (for both men and women) that persons who have attained 63 years of age[119] and whose pension qualifying period earned in Estonia is 15 years have the right to receive an old-age pension. The same article provides a transition period for women born between 1944 and 1952. Old-age pensions with favourable conditions can be received by people with a certain type of disability, people who have raised disabled children or three or four children (Article 10).

A person who receives a state old-age pension may work and collect his or her pension. However, the survivor's pension and national pension[120] shall not be normally paid to people who are employed (Article 43 (1) of the Law on State Pension Insurance). Additionally, an early-retirement pension[121] will not be paid to a working pensioner before s/he has attained pensionable age (Article 43 (1^1)).

b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

The Law on Funded Pensions provides for the conditions and procedure for "the making of contributions to and payments from funded pensions with the purpose of creating the opportunity for persons who have made contributions to a funded pension to receive additional income, besides state pension insurance, after reaching *pensionable age*" (Article 1) (italics added).

[119] 65 years from 1 January 2017; a transition period was established for those born in 1953-1960. RT I 2010, 18, 97.
[120] A national pension is paid to a person of pensionable age, a disabled person etc with an insufficient pension qualifying period (Law on State Pension Insurance, Article 22 (1)).
[121] "A person who has worked for the pension qualifying period … for grant of an old-age pension has the right to receive an early-retirement pension up to three years before attaining the pensionable age" (Law on State Pension Insurance, Article 9 (1)).

In general, payments from funded pension arrangements shall not be influenced by an individual's wish to work longer.

c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

A state-imposed mandatory retirement age is stipulated only for some categories of military and law-enforcement officials (see section 4.3 for details) as well as for some specific professions, e.g. judges (Article 48 of the Law on Courts).[122]

d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

The national law does not explicitly permit retirement age to be set by contract, collective bargaining or unilaterally (although this does not apply to some categories of public officials - see e.g. section 4.3 for details). Furthermore, such arrangements would nowadays probably be recognised as discriminatory (see comments under 4.7.4 e).

e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?*

In general the Law on Equal Treatment, the Law on Employment Contracts and the Law on Public Service provide the same protection against dismissal for workers irrespective of their age (and this applies to both men and women).

Until recently it was possible to dismiss workers and to release officials from service solely due to age s/he attained. The relevant provisions of the previous Law on Employment Contracts (private employment) were abolished by the Parliament on 8 February 2006.[123] The current Law on Employment Contracts does not permit dismissal exclusively on the ground of age.

[122] Kohtute seadus, RT I 2002, 64, 390.

[123] Published: RT I 2006, 10, 64. This was a reaction to a report of the Chancellor of Justice (an ombudsman-like institution and equality body) that had been submitted to the Parliament. The Chancellor requested to review the related provisions of the Law on Employment Contracts. In his report the Chancellor claimed that the provisions of the Law on Employment Contracts might conflict with the non-discrimination principle of the Constitution and EU law and that there were seemingly no good reasons to justify such unequal treatment of older workers. Report of the Chancellor of Justice published at http://www.oiguskantsler.ee (05.03.2014).

As for public officials, in October 2007[124] the Supreme Court held that Article 120 of the old Law on Public Service (redundancy of public officials on the ground of age) and related provisions violated Article 12 (1) of the Constitution, which provides for equality before the law and bans discrimination on any ground. The case in the Constitutional Review Chamber of the Supreme Court was initiated by the Tallinn Administrative Court who refused to recognise as constitutional Article 120 of the Law on Public Service (it was a case of two officials released from service due to age on the basis of this provision). The Tallinn Administrative Court and the Chancellor of Justice (ombudsman and equality body) in their opinion to the Supreme Court argued that Article 120 violates *inter alia* the Directive 2000/78/EC.

In its decision the Supreme Court did not refer to the Directive but to its own previous decision that the prohibition to treat equal persons unequally would be violated if two persons, groups of persons or situations were treated arbitrarily unequally. An unequal treatment can be regarded as arbitrary if there is no reasonable cause therefore. If there is a reasonable and appropriate cause, unequal treatment in legislation is justified. However, in this particular case unequal treatment is neither reasonable nor justified and evidently arbitrary.[125]

The new Law on Public Service does not permit redundancy of public officials on the ground of age.

f) Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011] regarding compulsory retirement.

The national legislation is in line with the CJEU case-law listed above. In Estonia there are no provisions or regulations similar to those at stake in these cases.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

[124] Decision of the Civil Law Chamber of the Supreme Court of 1 October 2007; published RT III 2007, 34, 274.
[125] See for more details: Vadim Poleshchuk, "Older Age, Employment and Equality in Legislation: A "Progressive" Estonian Approach?", The Equal Rights Review, vol. 12 (2014), at http://www.equalrightstrust.org/ertdocumentbank/vadim.pdf (26.04.2014).

No such rules can be found in the Law on Employment Contracts or the Law on Public Service. An employer shall consider equal treatment principles in case of staff redundancy (Article 89 (4) of the Law on Employment Contracts).

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

Compensation paid by employer in cases of redundancy of public officials (Article 90 (1) of the Law on Public Service) and ordinary employees (Article 100 of the Law on Employment Contracts) is the same in all cases (one month). However, insurance benefits in case of lay-offs by the Unemployment Insurance Fund (if any) will be dependent on the length of work or service.

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

Article 9 (1) of the Law on Equal Treatment 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 provision is hardly in line with the Directive 2000/43. 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 the Directive and Article 10 of the Law on Equal Treatment). Other exceptions are possible only in the frame of positive action measures (Article 5 of the Directive; see also analysis in section 2.2.c).

This provision does not contradict, however, the Directive 2000/78 (Article 2 (5)) in the context of discrimination on the grounds of religion or belief, disability, age or sexual orientation. While 'democratic society' is not mentioned in Article 9 (1) of the Law on Equal Treatment, it included the principle of proportionality.

Any limitations of fundamental rights are normally interpreted in Estonia in conjunction with the directly applicable Article 11 of the Constitution.

It provides for restrictions of human rights (including non-discrimination) in accordance with Constitution (i.e. on the basis of laws adopted by the parliament)[126] and only if "necessary in a democratic society" and "do not distort the nature of the rights and freedoms".

The 'Article 11 test' has been established by the Supreme Court. As a result, the Estonian judiciary is supposed to regard any possible restriction of a fundamental right through prism of 'suitability, necessity and proportionality':[127]

"30. […] The principle of proportionality proceeds from the second sentence of Article 11 of the Constitution. The Supreme Court *en banc* shall review the conformity of the restriction to the proportionality principle through the three characteristics thereof - suitability, necessity and proportionality in the narrowest sense. If a measure is manifestly unsuitable, it is needless to review the necessity and proportionality of it in the narrowest sense. If a measure is suitable but is not necessary, there is no need to check the proportionality of the measure in the strict sense. A measure that fosters the achievement of a goal is suitable. For the purposes of suitability a measure, which in no way fosters the achievement of a goal, is indisputably disproportionate. The requirement of suitability is meant to protect a person against unnecessary interference of public power. A measure is necessary if it is not possible to achieve a goal by some other measure which is less burdensome on a person but which is at least as effective as the former. In order to decide on the proportionality of a measure in the narrowest sense the extent and intensity of interference with a fundamental right on the one hand and the importance of the aim on the other hand have to be weighed..."

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

The Law on Equal Treatment bans the unequal treatment of full-time and part-time employees and people working on the basis of permanent and temporary employment contracts. However, differential treatment is possible if it justified by objective reasons under laws and collective agreements. The Law also provides for some guarantees for employees who perform duties by way of temporary agency work (conditions of occupational health and safety, working and rest time and remuneration for work, use of the benefits of the user undertaking)[128] (Articles 11^1).

[126] "The Constitution restrictions on fundamental rights and freedoms may be imposed only by legislative acts having the force of parliamentary Acts. Constitution provides for no other possibilities for imposing restrictions on fundamental rights and freedoms". Decision of the Supreme Court *en banc* of 11 October 2001; published in RT III 2001, 26, 280.
[127] Decision of the Supreme Court en banc of 13 March 2003; published in RTIII 2003, 10, 95.
[128] For instance, food coupons, etc.

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

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic

The Law on Equal Treatment (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 shall be in proportion to the objective being sought. No other clarifications can be found in the text of the law.

On the basis of the Law on Occupational Health and Safety, an employer shall create suitable working and rest conditions for disabled workers, pregnant women, women who are breastfeeding, and minors (Articles 10(1)) and 10[1](1) (see also section 2.6 for details).

b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted., classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored.
Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

The issues of equal opportunity of disabled people in various spheres of life are touched upon in the *General Concept of Disability Policy of the Republic of Estonia "Standard Rules to Create Equal Opportunities for Disabled People"*[129] which was approved by the Government of the Republic on 16 May 1995. The Estonian State promotes the employment of disabled people *inter alia* by paying social tax for a worker who receives a pension for incapacity for work (see section 2.7 for details). This can be treated as a positive action.

There are no quotas for the access of disabled persons, various age groups or ethnic minorities to the labour market. However, there is a number of labour market services aimed specifically at disabled people in accordance with the Law on Labour Market Services and Benefits (see section 2.6 for details).

The first comprehensive *Basics of Estonian Elderly Policy* were adopted in 1999.[130] One of the policy objectives was worded as following: to treat as unethical age

[129] Eesti Vabariigi invapoliitika üldkontseptsioon "Puuetega inimestele võrdsete võimaluste loomise standardreeglid".
[130] Eesti vanuripoliitika alused, 28 September 1999.

discrimination, to promote political and social participation of older people in social life. In the chapter *Working and Managing*, there was specifically emphasised that "older workers (pre-retirement age) shall have the opportunity to participate in advanced training and retraining, as well as the opportunity to get benefits from the employer on equal footing with other younger employees. Working conditions and environment, as well as planning of the work shall consider older people opinion in order to avoid work accidents and occupational diseases". In practice, however, employment of older people is promoted with the use of general labour market measures.

For ethnic non-Estonians poor knowledge of Estonian is a real obstacle for employment or (life-long) learning, especially for older generations. From late 1990s the main policy documents to deal with ethnic non-Estonians were society integration programs. According to the official approach, the integration of ethnic and national minorities and immigrants can be facilitated mostly through Estonian language training and Russian-language school reform. In 2008, the government approved a new program *Estonian Integration Strategy 2008-2013*.[131] In the Strategy 'equal opportunities' are placed among the main principles of the policy document.

Various Estonian language training initiatives are organised by publicly funded Integration and Migration Foundation "Our People". In 2011 the Foundation launched the new *Promotion of Language Training Program 2011-2013*[132] with the aim "to promote equal opportunities of all Estonian residents to receive education and to manage on the labour market irrespective of the first language". The program was co-funded by the European Social Found. [133]

There is no information about positive action measures specifically for Roma, religious minorities or LGBT people.

[131] Eesti lõimumiskava 2008-2013.
[132] Keeleõppe arendamise programm 2011-2013.
[133] Information of the Integration and Migration Foundation "Our People", at http://www.meis.ee/keeleoppe-arendamise-programm-2011-2013 (18.03.2013).

6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

In general, a victim of discrimination may address quasi-judicial institutions or courts for the protection of his or her rights.

Article 23 of the Law on Equal Treatment stipulates that discrimination disputes shall be resolved by court and labour disputes committees.[134] Additionally, conciliation procedures may be conducted by the Chancellor of Justice (discrimination in private domain). In this context a decision of courts, a labour dispute committee or agreement between parties in a conciliation procedure is legally binding (see below).

The Chancellor of Justice (public domain) and Commissioner for Gender Equality and Equal Treatment (public and private domain) are entitled to conduct ombudsman-like procedures which results are not legally binding (see below).

1. Non-judicial institutions

A. Chancellor of Justice

In the context of the implementation of the Directives, the Estonian Chancellor of Justice was provided in 2003 with new rights and was given an obligation to deal with discrimination in both the private and public domains. An overview of the structure and functions of this office is given in section 7 of this report.

According to Article 19 of the Law on the Chancellor of Justice,

1) “Everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by way of filing a petition to request verification whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties … adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration.

[134] Töövaidluste komisjonid.

2) Everyone has the right of recourse to the Chancellor of Justice for the conduct of a conciliation procedure if s/he finds that a natural person or a legal person under private law has discriminated against him or her on the basis of:

a) sex
b) race
c) ethnic origin
d) colour
e) language
f) origin
g) religion or religious beliefs
h) political or other opinion
i) property or social status
j) age
k) disability
l) sexual orientation, or
m) other attributes specified by law".

Complaints (petitions) mentioned in section 1 of Article 19 may include information about discrimination. There are very few limitations regarding material scope.

According to Article 25 of the Law on the Chancellor of Justice, the latter shall refuse to review a petition if its resolution does not fall within his or her competence. Furthermore, no court judgment, ruling on termination of the misdemeanour proceedings or judicial proceedings or decisions of quasi-judicial bodies in misdemeanour proceedings shall have entered into force in the matter of the petition, and at the time of filing the petition the matter shall not be subject to judicial proceedings, offence proceedings or mandatory pre-trial complaint proceedings. The Chancellor may *inter alia* refuse to review a petition if it is clearly unfounded; it is filed after one year as of the date when the person became aware or should have become aware of the violation of his or her rights; the person has the possibility to file a challenge[135] or resort to other legal remedies or if the person failed to exercise such opportunity; challenge proceedings or other non-obligatory pre-trial proceedings are conducted.

During proceedings in a matter, the Chancellor of Justice shall establish the facts relevant to the matter and, if necessary, collect evidence on his or her own initiative for such purpose. Additionally s/he may obtain the opinion of specialists in relevant issues (Article 21 of the Law on the Chancellor of Justice).

[135] Challenging proceedings are provided in the Law on Administrative Procedure (Haldusmenetluse seadus, RT I 2001, 58, 354). According to Article 71 (1), "a person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge".

The Chancellor shall have unrestricted access to documents, other materials and areas which are in the possession of the agencies under investigation, and to the parties to the conciliation proceedings (Article 27 (1)). S/He also has the right to collect information and explanations from the agencies under investigation and the parties to the conciliation proceedings. These agencies, the parties of the proceedings and other persons and agencies shall communicate such information and explanations as required under the terms prescribed by the Chancellor of Justice (Articles 28 and 29). According to Article 30, in the course of proceedings the Chancellor may "take testimonies from persons concerning whom there is information that they know facts relevant to the matter and are capable of providing truthful testimonies concerning such facts".

a. Chancellor of Justice: discrimination by *public* institutions

According to the Law on the Chancellor of Justice, in the case of *discrimination by public institutions*, a procedure can be initiated on the basis of a victim's application or at the Chancellor's own initiative (Article 34 (1)). The Chancellor has the right to apply for commencement of disciplinary proceedings against officials who obstruct the activities of the Chancellor or his or her adviser (Article 35 (2)). Proceedings are completed when the Chancellor of Justice formulates his or her position, assessing whether the activities of the agency under investigation are legal and in compliance with the principles of sound administration (Article 35^1(1)). The Chancellor may provide criticism and suggestions and express his or her opinion in other ways, or make proposals for the elimination of the violation (Article 35^1(2)). Such an opinion of the Chancellor of Justice is not of a legally binding nature. However, the law foresees a mechanism to ensure the fulfilment of the Chancellor's suggestion and proposals:

> "Article 35^2. Insurance of compliance with proposal of Chancellor of Justice
> 1) An agency who receives a suggestion or proposal from the Chancellor of Justice shall inform the Chancellor of Justice, within the term set by him or her, of the details of compliance with the suggestion or proposal.
> 2) The Chancellor of Justice has the right to make inquiries concerning compliance with his or her suggestions and proposals. An agency who receives an inquiry shall answer without delay.
> 3) Upon non-compliance with a suggestion or proposal of the Chancellor of Justice or failure to answer an inquiry of the Chancellor of Justice by an agency, the Chancellor of Justice may report such fact to the authority which exercises supervision over the agency, to the Government of the Republic or to the *Riigikogu*.
> 4) The Chancellor of Justice may inform the public of his or her suggestions or proposals, and compliance or failure to comply therewith".

There are other competencies of the Chancellor of Justice which can be relevant in discrimination context. Thus, everyone has the right of recourse to the Chancellor to review the conformity of an act or other legislation of general application with the Constitution or the law (Article 15).

b. Chancellor of Justice: Discrimination by *natural persons and legal persons in private law*

Cases of *discrimination by natural persons and legal persons in private law* can be solved through a special conciliation procedure. The aim of this procedure is to reach an agreement between a victim and a person suspected of discrimination. The conciliation procedure can be initiated only on the basis of a victim's application (Article 35[5]). However, an alleged discriminator is not obliged to participate in it (Article 35[11] (1)). Provisions regarding a shift in the burden of proof are not applicable in this procedure (see section 6.3 for details).

In a conciliation procedure, the Chancellor shall set the time and place for holding a session and shall notify the petitioner and respondent thereof (Article 35[9] (2)). The role of the Chancellor at the session is of crucial importance:

> "Article 35[12]. Proposal to resolve dispute and enter into agreement
> 1) The Chancellor of Justice shall make a proposal to resolve the dispute and enter into an agreement, and shall communicate such proposal to the parties to the conciliation proceedings at the end of a session, or shall set a term during the session within which s/he will communicate the proposal to the petitioner and respondent.
> 2) In the proposal, the Chancellor of Justice shall present his or her substantiated opinion on the discrimination allegations formed by him or her in the course of the proceedings based on the evidence obtained and the established facts. In the proposal, the Chancellor of Justice may suggest that the respondent perform appropriate acts, and take measures for payment of compensation and restitution of the petitioner's rights. The Chancellor of Justice may propose that the respondent compensates for the reasonable expenses which the petitioner has borne or that the respondent bears the costs of the services of specialists, interpreters, translators or witnesses".

A person who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative (Article 23(2)).

The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff (Article 35[14]). If a conciliation procedure fails, a victim may address the court for the protection of his or her rights (Article 35[15]).

The Chancellor of Justice may refuse to review a complaint if it submitted after four months in the case of discrimination by a natural person or a legal person in private law (Article 35[6]). According to the law in any case the Chancellor will not deal with complaints if they concern 1) the professing or practising of faith or working as a minister of a religion in religious associations with registered articles of association;

2) relations in family or private life; 3) the exercising of the right of succession (Article 35^5(2)).[136]

The Chancellor of Justice is a quasi-judicial impartial institution and s/he shall not provide independent assistance to victims of discrimination in pursuing their complaints about discrimination (in practice, however, the Chancellor's Office will inform an applicant about his or her rights). According to Article 25 (4) of the Law on the Chancellor of Justice, the Chancellor may also forward petitions for adjudication to a relevant supervisory body, where this is expedient for the protection of the rights of the petitioner.

No state fee is to be paid in cases of recourse to the Chancellor of Justice.

B. Labour Dispute Committees

In Estonia individual labour disputes are solved by labour dispute resolution bodies, namely labour dispute committees and courts (Article 4 (1) of the Law on Resolution of Individual Labour Disputes).[137] The labour dispute committees are established within the local labour branches of the Labour Inspectorate (Article 11 (1)).

The parties have recourse to a labour dispute resolution body for resolution of labour disputes within four months after the date following the date on which they became aware or should have become aware of the violation of their rights; 30 days to dispute the justification for termination of an employment contract; three years as regards wage claims (Article 6 of the Law on Resolution of Individual Labour Disputes).

Estonian scholars argued that initially the procedure of the labour dispute committees could not be used by persons applying for employment because this institution is competent to deal solely with disputes between employers and employees.[138] The recently adopted Law on Equal Treatment solved this problem by including into the definition of 'an employee' also those applying for employment (Article 4). Furthermore, Article 2 of the Law on Resolution of Individual Labour Disputes was

[136] The explanatory note attached to the draft law explained that these exceptions were the result of "historical development and social traditions. For instance, in some religions only males are entitled to work as a minister; the state shall not change these traditions and habits by force. It is also unreasonable if someone addresses the Chancellor of Justice in order to contest a grandfather's will by which a larger part of his property goes to sons, not to daughters. The state's interference into these relations cannot be justified". See explanatory note attached to the Draft no. 1265 SE (9th Riigikogu); available at http://www.riigikogu.ee (20.02.2013).
[137] Individuaalse töövaidluse lahendamise seadus, RT I 1996, 3, 57.
[138] Gaabriel Tavits, Muudatused töölepinguliste suhete õiguslikus reguleerimises: kaitse otsinguil Euroopa Liidu abiga (Changes in the Legal Regulation of Relations on the Basis of an Employment Contract: In Quest of Protection with the Assistance of the European Union), Juridica no.8, vol. 12 (2004), p.557.

also amended from 1 July 2009 to cover disputes arising from preparation of employment contracts.

The labour dispute committees follow a procedure established in the Law on Resolution of Individual Labour Disputes (and the Code of Civil Procedure). Their decisions shall be based on law and shall be substantiated (Article 22 (2) of the Law on Resolution of Individual Labour Disputes). 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 24 (1)). According to Article 25 of the Law,

1) "A decision of a labour dispute committee enters into force after expiry of the term for recourse to a court if no party files a statement of claim to a county court…
2) A decision of a labour dispute committee which has entered into force is binding on the parties…"

Furthermore, such a decision is enforceable by bailiff (Article 26 (2)).

Recourse to labour dispute committees is exempt from state fees (Article 9 (1)). The commissions do not deal with financial claims which exceed the amount of 10,000 EUR (Article 4 (1-1) (civil courts will be dealing with bigger claims).

C. Commissioner for Gender Equality and Equal Treatment

The Law on Equal Treatment foresees creation of the position of the Commissioner for Gender Equality and Equal Treatment (hereinafter the Commissioner). In fact, the authorities decided to widen the competence of the Commissioner for Gender Equality, a specialised body introduced by the Law on Gender Equality: Thus, the commissioner now deals with other grounds of discrimination and has some new responsibilities (see below).

The Commissioner shall provide opinions to persons who have submitted applications concerning possible cases of discrimination and, if necessary, persons[139] who have a legitimate interest in monitoring compliance with the requirements for equal treatment (Article 17 (1)). The purpose of an opinion is to provide an assessment which, in conjunction with the Law on Equal Treatment, international agreements binding on Estonia and other legislation, allows for an assessment of whether the principle of equal treatment has been violated in a particular legal relationship (Article 17 (2)). An opinion shall be provided within two months after filing of an application (Article 17 (2)).

Article 17 (4) of the Law on Equal Treatment guarantees the Commissioner's right to obtain information from all persons who may possess information which is necessary

[139] In this context the Estonian term 'a person' ('isik') shall refer to both natural and legal persons.

to ascertain the facts relating to a possible case of discrimination in the context of drafting an opinion. From October 2009 this provision was amended[140] with the following guarantee: the Commissioner may receive information concerning the wages calculated, paid or payable to an employee or information concerning the employee's wage conditions and other benefits.[141] In case of opinion delivered on his/her own initiative or with the consent of the applicant, the Commissioner shall communicate the opinion to the person responsible for respect of equality principle for knowledge or recommendation[142] (Article 17 (6)). An opinion shall be provided within two months after submission of an application (Article 17 (5)).

Anyway, the above-mentioned procedure is *not* regarded as a "resolution of disputes concerning discrimination" (Article 23). A Commissioner's opinion is not legally binding.

As it was mentioned above, the Law on Equal Treatment bans discrimination on all five respective grounds plus colour (Article 1 (1)).

An overview of proposed functions of the Commissioner is given in section 7 of this report. Suffice it to mention that both the Commissioner and the Chancellor of Justice have a mandate to deal with complaints of discrimination victims. However, specific tasks are assigned to the commissioner such as to advise and to provide *assistance* to people pursuing their complaints about discrimination or to publish specific *reports* regarding equal treatment (Article 16 of the Law on Equal Treatment).

2. Courts

A victim of discrimination can use criminal procedures (if s/he suffered from crimes stipulated by the Penal Code), administrative court procedures (complaints against the action of an official or state/municipal institution) or civil procedures (e.g. labour disputes in private domain; the issue of non-pecuniary damage).

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

b) Are these binding or non-binding?

As it was mentioned above decisions and recommendations of Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment are not legally

[140] RT I 2009, 48, 323.
[141] A similar guarantee has previously been included in the Law on Wages (Article 8 (3-1)). However, this act was repealed from 1 July 2009.
[142] These can be natural as well as public and private legal persons.

binding. The only exception is the agreement in conciliation procedure approved by the Chancellor of Justice (in case of discrimination in private domain).

Surely, decisions of courts and labour disputes committees are legally binding if entered in force.

c) What is the time limit within which a procedure must be initiated?

According to the general rule the parties have recourse to a labour dispute resolution body for resolution of labour disputes within four months after the date following the date on which they became aware or should have become aware of the violation of their rights; 30 days to dispute the justification for termination of an employment contract; 3 years in case of claims regarding wages (Article 6 of the Law on Resolution of Individual Labour Disputes). However, a claim provided for compensation of damage for discrimination and/or for discontinuing of discrimination expires within one year as of the date when the injured party becomes aware or should have become aware of the damage caused (Article 25 of the Law on Equal Treatment).

The Chancellor of Justice may refuse an application for conciliation procedure when it is filed later than four months as of the date on which the person became aware or should have become aware of the alleged discrimination. In the case of discrimination by public institutions the Chancellor may refuse to review the complaint after one year as of the date when the person became aware or should have become aware of the violation of his or her rights(Articles 25 (3)3 and Article 35[6]).

d) Can a person bring a case after the employment relationship has ended?

Yes (see previous section).

e) In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

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

As it was shown above, the *margin of appreciation* of the Chancellor of Justice is very broad. The Chancellor is almost free to decide if s/he wants to deal with any discrimination related complaint. In practice victims of discrimination may be advised to address the Commissioner for Gender Equality and Equal Treatment or other institutions. For instance, in 2011 the Chancellor of Justice received a conciliation related application from a person who had allegedly been discriminated on the

grounds of origin and colour in access to a café. The Chancellor recommended a victim to use more effective legal remedies and to sue the café owner in civil court.[143]

While there are no major problems with access to the Commissioner for Gender Equality and Equal Treatment, this body used to suffer from lack of funding and personnel. However, in 2013 the situation has radically improved (at least temporary) thanks to the EEA and Norway Grants.[144]

As for judicial and quasi-judicial procedure, in Estonia State *legal aid* is granted on the basis of the Law on State Legal Aid[145] to insolvent natural or legal persons in connection with proceedings in an Estonian court or administrative authority.

In Estonia about 1/5 of the population does not speak Estonian (most of those speak Russian)[146] while Estonian is the only *official language* of court procedure. Nevertheless, exceptions to this rule are possible (Article 5 of the Law on Courts). According to Article 10 (2) of the Code of Criminal Procedure, the assistance of a translator or interpreter shall be ensured for the participants in court proceedings and for those parties who are not proficient in Estonian.

Article 34 (1) of the Code of Civil Procedure stipulates that if a participant in a proceeding is not proficient in Estonian and s/he *does not have a representative*, "the court shall involve, if possible, an interpreter or translator in the proceeding at the request of such participant in the proceeding or at the court's own initiative. An interpreter or translator need not be involved if the statements of the participant in the proceeding can be understood by the court and the other participants in the proceeding". If the court is not able to immediately involve an interpreter or translator, it shall make a ruling whereby the participant in the proceeding needing the assistance of an interpreter or translator is required to find an interpreter, translator or a representative proficient in Estonian for himself or herself.

Failure to comply with the demand of the court does not prevent the court from adjudicating the matter. If the plaintiff fails to comply with the demand of the court, the court may refuse to hear the action (Article 34 (2)). Similar rules are valid for administrative court procedures on the basis of Article 82 (1)-(2) of the Code of Administrative Court Procedure.[147]

[143] Chancellor of Justice; Written communication no 5-3/1200127 of 1 February 2012.
[144] 700 thousand EUR were allocated to capacity building of the office and the Commissioner (for the period up to December 2015). As a result the number of staff members at the Commissioner's office has increased from two to eight. Anu Laas, Estonia, in European Gender Equality Law Review no. 2 (2013), p. 50.
[145] Riigi õigusabi seadus, RT I 2004, 56, 403.
[146] 2011 Population and Housing Census, database of Statistics Estonia, available at: http://pub.stat.ee.
[147] Halduskohtumenetluse seadustik, RT I, 23.02.2011, 3.

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

To a certain extent, language-related problems may be solved through the Law on State Legal Aid. Applications for state legal aid shall be submitted in Estonian (EU citizens and residents of EU countries can do it also in English) (Article 12 (5)).

In 2008 the Supreme Court reemphasised the requirements regarding the language of application (a Russian-speaker unsuccessfully contested this requirement with the reference to Article 11 of the Universal Declaration of Human Rights).[148]

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

Public buildings (including courts) are normally wheelchair accessible (see also information about the Law on Building in section 2.6). Additionally, the Law on Traffic establishes a legal framework for the organisation of road mobility for physically disabled people and parking for vehicles used by them; special rights for physically disabled drivers and drivers of vehicles servicing physically disabled or blind people.

f) Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

In 2009, the Chancellor started two conciliation procedures related to alleged discrimination (including one procedure related to alleged discrimination on the grounds of ethnicity). In 2010, there was one application regarding alleged discrimination on the ground of pregnancy.

[148] Ruling of the Criminal Law Chamber of the Supreme Court of 29 April 2008; published in RT III 2008, 18, 122; case no. 3-1-1-24-08.

In 2011 there were two applications. None of these applications resulted in a final agreement. In 2012 and 2013 there were no conciliation procedures conducted by the Chancellor of Justice.[149]

In 2006, labour disputes commissions received altogether seven complaints with demands related to the issue of discrimination, in 2007 – 7 and in 2008 – 6, in 2009 – 13, in 2010 – 9, in 2011 – 13, in 2012 – 23, and in 2013 - 17.[150]

In 2009, the Commissioner for Gender Equality and Equal Treatment received 161 applications and out of them 49 were classified as "possible cases of discrimination", in 2010 – 288 applications (47), in 2011 – 358 (90), in 2012 – 392 (69).[151] In 2013 there were 403 applications including 116 about "possible cases of discrimination" (and 60 of them were related to gender discrimination).[152] No further details are available so far.

g) Are discrimination cases registered as such by national courts? (by ground? Field?) Are these data available to the public?

These statistics are not collected by national courts or other institutions.

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

Please list the ways in which associations may engage in judicial or other procedures

a) Are associations entitled to act on behalf of victims of discrimination? (to represent a person, company, organisation in court)

Special provisions regarding legal standing of associations in discrimination context can be found only in the Law on Individual Labour Disputes[153] and the Law on the Chancellor of Justice:

[149] Chancellor of Justice; Written communications no 5-3/1000381 of 16 February 2010, no 5-3/0904988 of 27 August 2009, no 5-3/1100239 of 7 February 2011, no 5-3/1004232 of 26 July 2010, no 5-3/1200127 of 1 February 2012, no. 5-3/1300180 of 4 February 2013, and no. 5-3/1400234 of 7 February 2014.
[150] Labour Inspectorate; Written communications of 9 January 2007, no. 1-05/17675-1 of 26 September 2006, no. 1-05/234-1 of 18 January 2008, no. 1-05/4213-1 of 18 August 2008, no. 1-05/234-1 of 11 February 2009, no. 1-10/1157-1 of 17 August 2009, no. 1-05/94-1 of 16 February 2010, no. 1-05/669-1 of 15 July 2010, no. 6-4.1/46-1 of 24 January 2011, of 17 January 2012, of 16 January 2013, and of 31 January 2014.
[151] Commissioner for Gender Equality and Equal Treatment; Written communications of 9 April 2010, no. 3-1/030 of 4 March 2011, of 27 January 2012, and of 15 January 2013.
[152] Commissioner for Gender Equality and Equal Treatment; Written communication of 21 February 2013.
[153] Individuaalse töövaidluse lahendamise seadus, RT I 1996, 3, 57.

1. According to the Law on Individual Labour Disputes (Article 14 (2[1])), upon resolution of discrimination disputes, a person (meaning both a legal and a natural person) who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative. The added value of this provision is the *guaranteed* recognition in this capacity of persons working for human rights NGOs or other relevant organisations/institutions. Furthermore, at the moment in the areas covered by this report trade unions have a guaranteed right (Article 17 (7) of the Law on Trade Unions) to represent and defend their members in individual labour disputes in a civil court and labour dispute committees, normally with worker's proxy (Article 16 (2)).

2. In conciliation proceedings for resolution of discrimination disputes (private domain) at the Chancellor of Justice, a person (meaning both a legal and a natural person) who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative (Article 23 (2)).[154]

There are no other specific provisions. However, in civil and administrative court procedures association's staff members or representatives may make use of Article 228 of the Code of Civil Court Procedure: A participant in a proceeding may use an advisor who may appear in court together with the participant in the proceeding and provide explanations (but an adviser cannot perform procedural acts or file petitions).

According to the Directives associations may engage, *either* on behalf *or* in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directives. *Estonian law is not in compliance with the Directives if we use the strictest interpretation of the respective provisions* (i.e. that both engagement on behalf and in support of the complainant shall be explicitly guaranteed for certain legal persons in any relevant procedures):

1. One may argue that the "institute of advisors" meets the minimal requirements of the Directives as regards engagement *in support* of the complainant. It should be noted, however, that considering peculiarities of Estonian procedural law, the right to be an advisor can be realised by staff members of respective associations rather than by associations themselves (see below).

2. As for engagement *on behalf* of the victim, this right (for both natural and legal persons) is explicitly guaranteed only in the procedures indicated above.

According to the Law on Equal Treatment, the Commissioner for Gender Equality and Equal Treatment shall provide opinions to persons who have submitted applications concerning possible cases of discrimination and, *if necessary*, persons

[154] In general, a petitioner shall file a petition with the Chancellor of Justice in person or through an authorised representative (Article 23 (1) of the Law on the Chancellor of Justice).

(meaning both natural and legal persons) who have a legitimate interest in monitoring compliance with the requirements for equal treatment (Article 17 (1)). However, submission of these applications is *not* regarded as resolution of discrimination disputes.

In penal, civil and administrative court the workers of associations and other entities with a legitimate interest may be legal representatives of one or more victims of discrimination if they meet the general criteria (first of all legal education).[155] However, these are general procedural provisions.

b) Are associations entitled to act in support of victims of discrimination? (to join already existing proceedings)

There are no specific provisions in discrimination context to regulate these issues in Estonia. Engagement in support or on behalf of the victim (even at later stage, i.e. joining existing proceedings) is regulated by general procedural rules (see information in section 6.2.a above).

c) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).

The Estonian legislation provides no details on conditions for associations to engage in proceedings. It is not clear who are persons "who have legitimate interest to check compliance with the requirements for equal treatment". At the moment there are no established rules or practice to clarify which natural or legal persons are to be recognised as such. For instance, it is known that a pro-minority human rights NGO Legal Information Centre for Human Rights has been recognised by both equality bodies as an association that has a legitimate interest.

d) What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?

The Estonian legislation provides no details on persons "who have legitimate interest to check compliance with the requirements for equal treatment".

[155] Code of Criminal Procedure (Article 41 (4)), Code of Civil Procedure (Article 218).

As regards advisors in civil and administrative court procedures, s/he will be a natural person. According to the Code of Civil Procedure (Article 34 (5)), an advisor shall not use an interpreter in court procedure, i.e. s/he shall speak fluent Estonian. No expenses of an advisor shall be reimbursed by a court decision determining the division of procedural expenses (Article 175 (2)).

Article 45 (2) of the Code of Civil Procedure, the court may prohibit a representative or adviser of a participant in a proceeding from making statements in the proceedings if the representative or adviser is not able to act in accordance with the requirements in court or, in the course of the court proceeding, has shown himself or herself as dishonest, incompetent or irresponsible. The same rule is applicable to authorised representatives in administrative court procedure (Article 32 (4)) of the Code of Administrative Court Procedure).

e) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

According to the amended Law on Individual Labour Disputes (Article 14 (2^1)), upon resolution of discrimination disputes, a person[156] who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative. In practice, the proxy is issued to a concrete employee of a trade union/association or to a lawyer who is working for a trade union/association.

In general, a petitioner shall file a petition with the Chancellor of Justice in person or through an authorised representative (Article 23 (1) of the Law on the Chancellor of Justice). However, in conciliation proceedings for resolution of discrimination disputes (private domain), a person who has legitimate interest to check compliance with the requirements for equal treatment may also act as a representative (Article 23 (2)). The Chancellor would recognise even independent complaints filed by NGOs in the interests of a victim. In legal sense applications without explicit authorisation of a victim will be regarded as application with deficiencies. The conciliation process will be stopped if a victim fails to give his or her consent to the procedure.[157]

As regards the status of an advisor or a representative in court procedures, there are no special rules established for discrimination cases. That means that an explicit consent of a victim or its legal representative (e.g. in case of people under guardianship) is required.

[156] At the moment there are no established rules or practice to report which natural or legal persons shall be recognised as those having legitimate interest to check compliance with the requirements for equal treatment.
[157] Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009.

f) Is action by all associations discretionary or do some associations have a legal duty to act under certain circumstances? Please describe.

In Estonia no associations have a legal duty to act under certain circumstances.

g) What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.

As described above, in resolution of discrimination-related individual labour disputes (both quasi-judicial and judicial civil procedures) and in conciliation proceedings for resolution of discrimination disputes (private domain) at the Chancellor of Justice both natural and legal persons with legitimate interest to check compliance with the requirements for equal treatment may also act as a representative.

In civil and administrative court procedures association's staff members or representatives may act as advisors of a victim provided they speak fluent Estonian. From the procedural point of view advisors are individuals acting in the interests of a participant in the proceedings.

Association's staff members or representatives may act as representatives of a victim in civil, administrative or penal procedures if they meet general criteria (see above).

h) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.

No specific remedies are available to associations.

i) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

There are no special rules on the shifting burden of proof where associations are engaged in proceedings.

*j) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Actio popularis are not possible in Estonia.

*k) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please*

describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.

Class actions are not possible in Estonia.

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

Before 1 May 2004 Estonian legislation did not use the concept of a shift in the burden of proof. Nowadays, relevant provisions can be found in the Law on Equal Treatment and the Law on Gender Equality.

The Law on Equal Treatment states the following:

"Article 8. Shared burden of proof"

(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[158] or criminal proceedings."

As it was mentioned above, the Law on Equal Treatment bans discrimination on all five respective grounds plus colour (Article 1 (1)).

As mentioned in section 6.1, an alleged discriminator may refuse to participate in a conciliation procedure at the Chancellor of Justice's Office. According to the Law on Equal Treatment this principle will not be applicable to conciliation procedures (one of the possible reasons of this decision is that a conciliation procedure is voluntary).

[158] Jurisdiction of administrative courts is 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).

There is no comprehensive information about application by courts of the provisions regarding a shift of burden (see in annex 3 an example of a case where related issues were at stake).

The Law on Equal Treatment has introduced a new obligation: An alleged discriminator shall give within 15 days relevant written explanations in response to a written request supplied by a person who finds that s/he has been a victim of discrimination (Article 7). No penalty is foreseen for breach of this obligation.

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

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

The Law on Equal Treatment stipulates that discrimination shall also be taken to occur where one person is treated less favourably than others or negative consequences follow because s/he has submitted a complaint regarding discrimination or has supported a person who has submitted such complaint (Article 3 (6)). Provisions on "shared burden of proof" (see above section 6.3) shall apply in case of victimisation (because victimisation is defined as a form of discrimination).

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

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

There is no developed practice of implementing the new anti-discrimination provisions by courts or quasi-judicial institutions (see Annex 3 for details). In this section we can only give some information regarding general principles established under Estonian legislation.

The Law on Equal Treatment provided for the right of an injured party to demand compensation for damage and termination of discrimination. Furthermore, a victim may demand a 'reasonable amount of money' be paid as compensation for non-pecuniary damage caused by the violation (Article 24 (1)-(2)). "Upon determination of the amount of compensation, a court shall take into account, inter alia, the scope, duration and nature of the discrimination" (Article 24 (3)). However, persons applying for employment or service with whom the employer refused to enter into an employment contract or a contract for the provision of services or who were not appointed or elected to office on the basis of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation shall not demand to be entitled to entry into the employment contract or contract for the provision of services or appointment or election to office (Article 24 (4)).

According to Article 152 (1) of the Penal Code (violation of equality), "[u]nlawful restriction of the rights of a human being (*inimene*) or granting of unlawful preferences to a human being on the basis of his or her ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention". The same act, if committed at least twice, or "significant damage is thereby caused to the rights or interests of another person protected by law or to public interests", is punishable by a pecuniary punishment or up to one year of imprisonment (Article 152 (2)).

In 2002 – 2013 the police authorities did not commence procedures on the grounds of Article 152 of the Penal Code.[159]

We have already mentioned that Article 25 of the Constitution provides for the right to compensation for moral and material damage caused by the unlawful action of any person. Until recently, court judgments regarding the payment of moral compensation were rare in Estonia. There is a degree of consensus in the local legal community that moral compensation is to be paid only in exceptional cases and that this compensation shall not be very large. For instance, in 2000 the Civil Law Chamber of the Supreme Court obliged the state to pay compensation for moral damages caused by the unlawful actions of a public official. These damages were recognised as being approximately equal to the average monthly salary "taking into consideration the level of prosperity in society."[160]

The obligation to pay compensation (supposedly including compensation for moral damage) may be included in the final agreement of a conciliation procedure (Article 35[12] (2) of the Law on the Chancellor of Justice). We await further implementation of this provision in future. Additionally, it is not so obvious how the Chancellor of Justice shall deal with the issue of compensation in cases of discrimination by public authorities.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

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

[159] Police Board; Written communications no. PA2-1.11.2/3177 of 18 July 2006 and no. PA_2.1-20.2/5648 of 12 January 2007; Ministry of Justice; Written Communications no. 8-2-04/10613 of 24 October 2007, of 21 January 2008 (e-mail), no. 7.1-5/1862 of 10 February 2009, no 7.1-5/369 of 25 January 2010, of 7 February 2011 (e-mail), no. 1.6-10/25960-1 of 5 March 2012, of 31 January 2013, and of 7 February 2014; Police and Border Guard Board; Written communication no. 1.6-10/7512-1 of 11 February 2013.

[160] Decision of the Civil Law Chamber of the Supreme Court of 29 November 2000; published in RT III 2000, 29, 316.

As for ordinary employment, if a court or labour dispute committee establishes that cancellation of an employment contract is void due to the absence of a legal basis or the non-conformity with law or nullified due to a conflict with the principle of good faith, it shall be deemed that the employment contract has not been terminated upon cancellation. However, at the request of the employer or the employee, the employment contract shall be terminated as of the time when it would have been terminated in the event of the validity of the cancellation (this rule cannot be applied in case of employer's request if, at the time of the cancellation, the employee is pregnant or the employee is entitled to pregnancy or maternity leave or has been chosen as the employees' representative, unless it is reasonably impossible when considering mutual interests) (Article 107 of the Law on Employment Contracts). If an employment contract is terminated in this way, an employer shall pay employee compensation to the extent of three months' average wages of the employee. However, the court or labour dispute committee *may* change the amount of the compensation, considering the circumstances of cancellation and the interests of both parties (Article 109 (1)).

In other words, the court or labour dispute committee may award higher compensation in case of discrimination. However, we shall wait for case-law to get judicial interpretation of this provision.

If a court or labour dispute committee establishes that cancellation of an employment contract is void but the employment relationship continues (i.e. when the contract is not terminated at the request of the employer or the employee), an employee has the right to demand compensation of damage, in particular wages not received. The part obtained by way of different use of the employee's labour force may be deducted from the compensation (Article 108).

To sum up, there are no strict upper limits in case of void cancellation of an employment contract. However, the new law includes no specific provision regarding discrimination related disputes similar to those in previous Law on Employment Contracts.

c) Is there any information available concerning:

i) *the average amount of compensation awarded to victims*

ii) *the extent to which the available sanctions have been shown to be - or are likely to be effective, proportionate and dissuasive, as required by the Directives?*

Without cases having been heard in the Supreme Court or at the Chancellor of Justice the author cannot provide the average amount of compensation available to victims or make any assessments as regards their effectiveness, proportionality or dissuasiveness.

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

There are two specialised bodies in Estonia for the promotion of equal treatment: the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment.[161] In explanatory note attached to relevant bills one can find direct references to the Directive 2000/43.

b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

The Chancellor of Justice is appointed by the Parliament, on the proposal of the President of the Republic, for a term of seven years (Article 140 (1) of the Constitution). In directing his or her office, the Chancellor of Justice has the same rights which are granted by law to a minister in directing a ministry (Article 141 (1)). The Chancellor is independent in his or her decision-making, and the Office has a budget of its own (fixed in the annual state budget). This body comes under the control of the State Audit Office,[162] which is an independent state body exercising economic control (on the basis of Article 7 (1) of the Law on the State Audit Office).[163]

According to Law on Equal Treatment, the Commissioner for Gender Equality and Equal Treatment is an *independently acting* expert appointed for five-year period by

[161] Initially there were no plans to make the Chancellor of Justice an equality body. It happened so in 2003 being a compromise between various stakeholders (see section 0.2). However, the Chancellor himself and his staff were not so interested in new functions. In 2006, the Chancellor openly recognised unwillingness to be the main (and in some areas the only) equality body in Estonia, which is responsible for anti-discrimination policies (see below). A separate body to deal with gender equality was reformed; from January 2009 it became the Commissioner for Gender Equality and Equal Treatment. The size of the Commissioner's staff and budget cannot be compared with that of the Chancellor of Justice.

[162] Riigikontroll.

[163] Riigikontrolli seadus, RT I 2002, 21, 117.

the Minister of Social Affairs. His or her activities, supported by the office, are funded by the state budget. The statute of the office is adopted by the Government of the Republic (Article 15).

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.

There are certain duties of the *Chancellor of Justice* regarding the fight against discrimination in Estonian society (Article 35[16] of the Law on the Chancellor of Justice):

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

As an ombudsman institution the Chancellor may deal with discrimination in public domain on any ground and in virtually all spheres of legal regulation.

In case of conciliation procedure (discrimination in private domain), there are certain limits as regards grounds and material scope (see section 6.1 of the report). However, all five relevant grounds are explicitly covered.

According to the Law on Equal Treatment, the *Commissioner for Gender Equality and Equal Treatment* shall (Article 16):

1) monitor compliance with the requirements of this Act and the Law on Gender Equality (see Table 1 of this report for full list of respective grounds);
2) *advise and assist persons* upon submission of complaints regarding discrimination;
3) provide opinions concerning possible cases of discrimination on the basis of the applications submitted by persons or on his or her own initiative on the basis of the obtained information;
4) analyse the effect of Acts on persons divided on the basis of the attributes specified in Article 1 (1) of the Law on Equal Treatment (i.e. race, ethnic origin,

colour, religion or other beliefs, age, disability, sexual orientation) and on the situation of men and women in society;
5) make proposals to the Government of the Republic, government agencies, local governments and their agencies for amendments to legislation;
6) advise and inform the Government of the Republic, government agencies and local government agencies on issues relating to the implementation of the Law on Equal Treatment and the Law on Gender Equality;
7) *publish reports* on implementation of the principle of gender equality and equal treatment;
8) cooperate with other persons and agencies to promote equal treatment and gender equality;
9) take measures to promote equal treatment and gender equality.

Procedures available to the Commissioner for Gender Equality and Equal Treatment are described in section 6.1 of this report.

In a comparative context we can summarise the main tasks of two equality bodies as follows (Articles 19 and 35[16] of the Law on the Chancellor of Justice and Article 16 of the Law on Equal Treatment):

First, victims of discrimination in the public domain are able to address one of these institutions. The Chancellor and the Commissioner may conduct an ombudsman-style procedure and issue a legally non-binding decision[164] (Commissioner) or recommendation (Chancellor).

Second, victims of discrimination in the private domain may address the Chancellor with the request to start a conciliation procedure. If succeeded, the procedure will end up with legally binding decision. Alternatively, the Commissioner may be addressed to conduct an ombudsman-style procedure. His or her decision will not be binding in legal terms.

Third, only the Commissioner has an explicit duty to advice and provide assistance to people pursuing their complaints about discrimination.

Fourth, both the Chancellor and the Commissioner shall analyse the effect of the implementation of legislation to the condition of the members of the society and to make proposals to governmental bodies for amendments to legislation. However, only the Commissioner is responsible for drafting of specific reports dedicated to discrimination issues.[165]

[164] "With the consent of the applicant, the Commissioner shall communicate the opinion to the person suspected of discrimination for knowledge or recommendation" (Article 17 (6) of the Law on Equal Treatment).
[165] The law does not provide any details as who will be the addressee of these reports.

Fifth, both institutions are obliged to promote equal treatment, to inform about relevant principles and to enhance cooperation in the field. The activities of the Commissioner are mostly limited to the scope of application of the Law on Equal Treatment and the Law on Gender Equality. The relevant competence of the Chancellor is based on Article 12 of the Constitution and therefore they have few limits as regards material scope and grounds of discrimination.[166] See also section 1.a of the report.

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

As it was mentioned in previous section of the report, the *Chancellor of Justice* is explicitly authorised to issue recommendations on discrimination issues but not to conduct relevant surveys nor to publish reports (Article 35[16] of the Law on the Chancellor of Justice). In practice, however, as an independent official who shall review the legislation (Article 139 of the Constitution), the Chancellor prepares general annual reports on Estonian legislation and produces smaller reports (opinions) with legal analysis, *inter alia*, on discrimination issues.

The Chancellor is not obliged to grant legal aid or other assistance to a victim of discrimination. However, in practice a victim will be provided with basic information on his or her rights if s/he approaches the Chancellor of Justice's Office with a written or oral request/complaint.[167]

As for the *Commissioner for Gender Equality and Equal Treatment*, s/he has an explicit duty to advice and to provide assistance to people pursuing their complaints about discrimination. S/he is also responsible for drafting of specific reports dedicated to discrimination issues (Article 16 of the Law on Equal Treatment).

As it was mentioned above, the Commissioner is obliged to monitor compliance with the requirements of the Law on Equal Treatment and the Law on Gender Equality; and to analyse the effect of the laws on persons divided on the basis of sex and on the basis of the attributes specifically mentioned in the Law on Equal Treatment (ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation) (Article 16 of the latter law). According to the statute,[168] the Commissioner is entitled to order surveys as well as conduct analysis of relevant EU and national law and practice and their effect (Article 9). Information about his or her

[166] The Office of the Chancellor of Justice argues that their competence to deal with discrimination is quite wide while it is based on Article 12 of the Constitution (Chancellor of Justice; Written communication no. 5-3/0901065 of 2 March 2009). As it was mentioned above, Article 12 of the Estonian Constitution bans discrimination on any ground.
[167] Chancellor of Justice; Written communication no. 5-3/0600912 of 1 February 2006.
[168] Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku ning kantselei põhimäärus, Vabariigi Valitsuse 10.06.2010 määrus nr 71, RT I 2010, 33, 170.

activities and information obtained about implementation of the principles of gender equality and equal treatment shall be published in an annual report (Article 12).

e) Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).

The Chancellor of Justice is a constitutional body, which is the best guarantee for its existence. However, the functions of the Chancellor as an ombudsman and equality body are specified in a law, not in the Constitution. As a result these functions could potentially be withdrawn by the Parliament.

The Law on Equal Treatment introduced the position of the Commissioner for Gender Equality and Equal Treatment who is to monitor the implementation of the Law on Gender Equality (sexual discrimination) and the Law on Equal Treatment (discrimination on the grounds of ethnicity, race, colour, religion or belief, age, disability or sexual orientation).

One of the possible reasons for that decision seems to be openly recognised unwillingness of the previous Chancellor of Justice to be the main (and in some areas the only) equality body in Estonia, which is responsible for anti-discrimination policies. For some reasons the Chancellor believed that it could undermine his independence provided for in the Constitution, especially his independence vis-à-vis the European Commission.[169]

We have no good reasons to doubt independence of the Commissioner for Gender Equality and Equal Treatment. The Law on Equal Treatment says that the Commissioner is an independent expert appointed by the Minister of Social Affairs for five years. Her activities, supported by the office, are funded by the state budget. The statute of the office was adopted by the Government of the Republic (Article 15). In practice, the staff of the Commissioner is relatively small, however, its number has risen from two to eight thanks to the EEA and Norway Grants (the grant was allocated to capacity building for the period up to December 2015). Under the new conditions it became easier to organise studies or in-depth analysis or to fund large-scale awareness raising activities. Thus, in December 2013 the Commissioner's Office published a report "Creation of Employment Opportunities for Disabled People in Ministries" which included an overview of the results of a questionnaire study conducted in Estonian ministries as well as recommendations for employers in both public and private sectors.[170]

[169] Chancellor of Justice; Written communication no. 5-3/0608246 of 13 December 2006.
[170] Puuetega inimestele töötamise võimaluste loomine ministeeriumides. Ministeeriumide küsitluse tulemused ja soovitused tööandjatele. Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku kantselei, Tallinn, 2013, available on: http://www.svv.ee (05.03.2014).

f) Does the body *(or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The *Chancellor of Justice* is a non-judicial impartial institution and it shall not provide independent assistance (other than as mentioned above) to victims of discrimination in pursuing their *court* complaints about discrimination. His or her advisors are not supposed to bring discrimination-related legal actions or complaints to courts or to intervene in court proceedings. The Supreme Court asks for opinion of the Chancellor of Justice in landmark cases.

However, the Chancellor may use his or her right to file a request with the Supreme Court to review the constitutionality of legislation of general application (including discrimination-related cases). This opportunity is scrutinised in Article 6 of the Law on Constitutional Review Court Procedure. Additionally, "[e]veryone has the right of recourse to the Chancellor to review the conformity of a law or other legislation of general application with the Constitution or the law" (Article 15 of the Law on the Chancellor of Justice).

As for the *Commissioner for Gender Equality and Equal Treatment*, the Law on Equal Treatment (Article 16) foresees his or her duty to advice and provide assistance to people pursuing their complaints about discrimination. However, this is neither right nor obligation of the Commissioner to bring discrimination complaints or to intervene in legal cases concerning discrimination.

g) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions).

The *Chancellor of Justice* is a quasi-judicial body and may deal with cases of alleged discrimination by a *natural person or a legal person in private law* (on the basis of sex, race, ethnic origin, colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation or other grounds specified by law) (see section 6.1. of this report for details).

According to Article 23 of the Law on the Chancellor of Justice, a petitioner shall file a complaint in person or through an authorised representative. "In conciliation proceedings for the resolution of discrimination disputes, a person who has a legitimate interest in checking compliance with the requirements for equal treatment may also act as a representative". A petitioner has the right to file a complaint orally. As mentioned in section 6.1, the Chancellor cannot initiate the so-called conciliation procedure (discrimination by private natural or legal persons) without an application from a victim. However, this is possible in cases of discrimination by public bodies and institutions.

The agreement between parties in a conciliation procedure is obligatory and enforceable by bailiff (Article 35[14]). If conciliation proceedings are terminated or the Chancellor of Justice has stated failure to reach an agreement, the petitioner has, within thirty days as of the receipt of the notice, the right of recourse to a court or to an authority conducting pre-trial proceedings as provided by law for the protection of his or her rights. An agreement approved by the Chancellor of Justice shall be final and cannot be contested in court, except if the Chancellor of Justice has materially violated a provision of conciliation procedure and such violation affects or may affect the content of the agreement (Article 35[15](1)-(2)). In 2004-2013 there were no conciliation procedures where final agreements were made.

As regards *public domain* the Chancellor of Justice may deal with complaints regarding discrimination on any ground as an *ombudsman*. S/he formulates his or her position, assessing whether the activities of the agency under investigation are legal and in compliance with the principles of sound administration (Article 35[1](1)). The Chancellor may provide criticism and suggestions and express his or her opinion in other ways, or make proposals for the elimination of the violation (Article 35[1](2)). Such an opinion of the Chancellor of Justice is not of legally binding nature.

According to the approach of Estonian legislation the *Commissioner for Gender Equality and Equal Treatment* is not dealing with "resolution of disputes concerning discrimination" (Article 23 of the Law on Equal Treatment). Anyway, the commissioner's opinion concerning possible cases of discrimination on the basis of the applications submitted by persons or on his or her own initiative is not legally binding.

Independent status of equality bodies is guaranteed by respective laws.

In the Estonian context the status of the Chancellor of Justice is unique. As a constitutionality control body it is an institution which existence and independence are provided for in the Constitution (Article 139).

As it was mentioned above, the Chancellor shall be appointed to office by the *Riigikogu*, on the proposal of the President of the Republic, for a term of seven years. S/He may be removed from office only by a court judgment (Article 140). The Chancellor, in directing his or her office, has the same rights which are granted by law to a minister in directing a ministry (Article 141). 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 Riigikogu (Article 145).

The position of the Commissioner for Gender Equality and Equal Treatment and obligations of the Chancellor of Justice as an equality body are provided in laws. The Commissioner shall be appointed by the Minister of Social Affairs for five years. His or her activities, supported by the office, are funded by the state budget. The statute of the office is to be adopted by the Government of the Republic (Article 15).

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

h) Does the body register the number of complaints and decisions? (by ground, field, type of discrimination, etc.?) Are these data available to the public?

Both the Chancellor of Justice and the Commissioner for gender Equality and Equal treatment register the number of complaints and decisions (at least by ground and field) and these data are available to the public (see section 6.1.f above).

i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

The issue of Roma has not been prioritised by the Estonian equality bodies.

8 IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The problem of the fight against discrimination has only recently been recognised by Estonian officials. The changes that have been made were mostly prompted by the necessity to implement Directives 2000/43 and 2000/78 and the directives on gender equality.

The Office of the Chancellor of Justice, the Commissioner for Gender Equality and Equal Treatment, representatives of the Ministry of Justice, the Ministry of Social Affairs and some other institutions have repeatedly demonstrated their willingness to distribute relevant information in written form and on specific occasions (seminars, workshops etc). In 2012-2013 very active in the field was the Commissioner for Gender Equality and Equal Treatment.

In 2013 the Ministry of Social Affairs continued to support the project *Diversity Enriches* which is managed by the Tallinn Law School at Tallinn University of Technology. The project is co-financed by the European Union (PROGRESS 2007-2013), the Ministry and the Tallinn University of Technology. In 2013 the project paid special attention to the activities related to awareness raising in the field of equality and non-discrimination.[171] Impact assessment analysis was conducted in the frame of the project in order to study how the principles of equality were promoted by Estonian officials. The analysis proved that the Law on Equal Treatment has insufficiently influenced activities of the ministries; the awareness level of many public officials shall be increased.[172]

b) 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) and

The Office of the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment deem it necessary to promote dialogue with the third sector in this field. This is fully in line with the law that regulates their relevant activities (see

[171] More information on the site of the project *Diversity Enriches,* http://www.erinevusrikastab.ee (05.03.2014).
[172] See for details: Liin Eik, Jon Ender, Pille Hillep, Kalli Kulla, Riin Pärnamets, Võrdse kohtlemise edendamise kohustuse teadlikkus ja rakendamine ministeeriumides, Tellija: TTÜ Õiguse Instituut, [2014], http://issuu.com/erinevusrikastab/docs/v__rdse_kohtlemise_edendamise_kohus (15.03.2014).

section 7 of this report for details). This dialog is also promoted by state and municipal institutions, especially in the frames of society integration activities.

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

The most successful work in this area concerns the promotion of the rights of employees with disabilities and older people. Thus, in recent years several seminars, awards, competitions and other initiatives have been organised by public authorities in co-operation with NGOs representing people with disabilities and employers' associations, e.g. the Estonian Employers' Confederation. In 2012-2013 in the frames of the project *Diversity Enriches* (see above) there were activities aimed at promotion of diversity at enterprises through diversity agreements and action plans.

In 2012-2014, 31 companies and organizations have signed the Estonian Diversity Charter, i.e. they agreed to follow the principles of diversity and equal treatment in the context of their human resources policy.

d) *to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?*

The issues related to Roma were not prioritised. However, one of the studies conducted in the frame of the Year of Equal Opportunities was dedicated to the situation of Roma women.[173] One study on Roma is planned in the frames of the project *Diversity Enriches* (see above).

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

a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

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

The provisions of the Estonian Constitution are directly applicable and the basic principle of equal treatment is provided for in Article 12.

[173] Margaret Tali, Kersti Kollom, Mari-Liis Velberg. Naised Eesti mustlaskogukondades: Uurimuse aruanne, Tallinn, 2007, p. 58.

According to the common rule in relation to undertaking transactions (including treaties of any kind) as stipulated in Articles 86 and 87 of the Law on General Principles of the Civil Code,[174] a transaction which 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 Law on Employment Contracts stipulates that cancellation of an employment contract without legal basis or in conflict with legal norms is void (Article 104 (1)).

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

According to Article 4 (2) of the Law on Collective Agreements,[175] the terms and conditions of a collective agreement which are 'less favourable to employees than those prescribed in a Law or other legislation' are invalid unless exceptions are permitted by a Law.

b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?

We are not aware of any regulations or rules which are manifestly contrary to the principle of equality and still in force in Estonia.

[174] Tsiviilseadustiku üldosa seadus, RT I 2002, 35, 216.
[175] Kollektiivlepingu seadus, RT I 1993, 20, 353.

9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

The main bodies to deal with non-discrimination-related issues are the Commissioner for Gender Equality and Equal Treatment and the Chancellor of Justice. The functions and tasks of these institutions were described in section 7.

According to the Law on Government of the Republic,[176] it is within the area of government of Ministry of Social Affairs to promote equal treatment as well as equality of men and women, including co-ordination of activities in this field, and the preparation of corresponding draft legislation (Article 67 (1)). However, each ministry shall, within their area of government, monitor compliance with the requirements of the Law on Equal Treatment and shall cooperate with other persons and agencies upon promotion of the principle of equal treatment (Article 14 of the Law on Equal Treatment).

In practical sense that means that the Ministry of Culture is dealing with the issues related to discrimination on the grounds of racial and ethnic origin (within society integration policies), the Ministry for the Interior[177] is dealing with discrimination on the ground of religion or belief, and the Ministry of Social Affairs in addition to general coordination of all relevant anti-discrimination work is concentrated on the issues related to the grounds of age, disability, sexual orientation and sex.[178]

As yet, there is no anti-discrimination Action Plan in Estonia.

[176] Vabariigi Valitsuse seadus, RT I 1995, 94, 1628.
[177] The area of government of the Ministry for the Interior includes the management of issues relating to churches and congregations.
[178] Ministry of Social Affairs; Written communication no. 1.2-3/1884 of 9 April 2012.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Estonia **Date: 1 January 2014**

Title of Legislation (including amending legislation)	Date of adoption: Day/ month/ year	Date of entry in force from: Day/ month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Title of the law: Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) Abbreviation: --- Date of adoption: 28 June 1992 Latest amendments: 13 April 2011 Entry into force: 3 July 1992	28 June 1992	3 July 1992	unlimited ("ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or other grounds")	Administrative	Not specified	Equality before the law; prohibition of discrimination
Title of the law: Law on Equal Treatment (*Võrdse kohtlemise seadus*) Abbreviation: LET	11 December 2008	1 January 2009	ethnic origin, race, colour, religion or other beliefs, age, disability or	Civil/administrative	Identical with Directives 2000/43 and 2000/78 for respective grounds.	Definitions of direct and indirect discrimination, harassment, provisions regarding

Title of Legislation (including amending legislation)	Date of adoption: Day/ month/ year	Date of entry in force from: Day/ month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Date of adoption: 11 December 2008 Latest amendments: 13 June 2012 Entry into force: 1 January 2009			sexual orientation.			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

Title of Legislation (including amending legislation)	Date of adoption: Day/ month/ year	Date of entry in force from: Day/ month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
						'specialised bodies' (a Commissioner for Gender Equality and Equal Treatment).
Title of the law: Law on Amendments to the Law on the Legal Chancellor and Related Laws (*Õiguskantsleri seaduse muutmise ja sellega seotud seaduste muutmise seadus)* Abbreviation: --- Date of adoption: 11 February 2003 Latest amendments: no Entry into force:	11 February 2003	1 January 2004	Not specified (public sector); sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law (private sector)	Administrative (with elements of civil)	Not specified (public domain); 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	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

Title of Legislation (including amending legislation)	Date of adoption: Day/ month/ year	Date of entry in force from: Day/ month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
1 January 2004					private life; 3) the exercising of the right of succession (private domain)	body for the promotion of equality
Title of the law: Penal Code (*Karistusseadustik*) Abbreviation: --- Date of adoption: 6 June 2001 Latest amendments: 5 December 2012 Entry into force: 1 September 2002	6 June 2001	1 Sept. 2002	Ethnic origin, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status (incitement and discrimination), genetic risks (discrimination)	Criminal	Not specified; acts of incitement should be public	Prohibition of incitement and discrimination ("incitement to hatred, violence or discrimination" and "unlawful restriction of rights or granting of unlawful preferences")
Title of the law: Law on Gender Equality (*Soolise võrdõiguslikkuse*	7 April 2004	1 May 2004	Sex	Administrative/ Civil	All spheres of public life (excluding professing and practising faith or working as a	Prohibition of direct and indirect discrimination, harassment, instruction to

Title of Legislation (including amending legislation)	Date of adoption: Day/ month/ year	Date of entry in force from: Day/ month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
seadus) Abbreviation: --- Date of adoption: 7 April 2004 Latest amendments: 13 June 2012 Entry into force: 1 May 2004					minister of religion in a registered religious association and relations in family or private life)	discriminate, changes regarding burden of proof, victimisation etc; responsibilities of public and private actors regarding the implementation of gender mainstreaming strategy.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of Country: Estonia **Date: 1 January 2014**

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14 May 1993	16 April 1996	No	Yes	Yes
Protocol 12, ECHR	4 Nov. 2000	No	---	---	---
Revised European Social Charter	4 May 1998	11 Sep. 2000	No; however, it is worth mentioning that Estonia decided not to be bound by Article 26 (the right to dignity at work)	Additional Protocol to the European Social Charter Providing for a System of Collective Complaints - no	Yes
International Covenant on Civil and Political Rights	Irrelevant (accession)	21 Oct 1991 (accession)	No	Yes	Yes
Framework Convention for the Protection of National Minorities	2 Feb. 1995	6 Jan. 1997	No; however, according to the Estonian declaration only Estonian citizens may be recognised as national minority members	---	Yes (in the case of self-executing norms)

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
International Convention on Economic, Social and Cultural Rights	Irrelevant (accession)	21 Oct 1991 (accession)	No	---	Yes
Convention on the Elimination of All Forms of Racial Discrimination	Irrelevant (accession)	21 Oct 1991 (accession)	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	Irrelevant (accession)	21 Oct 1991 (accession)	No	No	Yes
ILO Convention No. 111 on Discrimination	Irrelevant	8 June 2005	No	---	Yes
Convention on the Rights of the Child	Irrelevant (accession)	21 Oct 1991 (accession)	No	---	Yes
Convention on the Rights of Persons with Disabilities	25 Sep 2007	30 May 2012	No	Yes	Yes

ANNEX 3: PREVIOUS CASE-LAW

Case of older public officials

Name of the court: Supreme Court[179]
Date of decision: 1 October 2007
Name of the parties: Petition of the Tallinn Administrative Court[180]
Reference number: case no. 3-4-1-14-07
Address of the web-page: http://www.riigikohus.ee/?id=850
Brief summary: Article 120 of the Law on Public Service made it possible to release public officials from service solely due to the age s/he attained. By its decision the Supreme Court claimed that this article and the related provisions violate Article 12 (1) of the Constitution, which provides for equality before the law and bans discrimination on any ground.

The procedure in the Constitutional Review Chamber of the Supreme Court was initiated by the Tallinn Administrative Court who refused to recognise as constitutional Article 120 of the Law on Public Service (it was a case of two public officials released from service due to age on the basis of this provision). The Tallinn Administrative Court and the Chancellor of Justice (ombudsman and equality body) in their opinion to the Supreme Court argued that Article 120 violates *inter alia* the Directive 2000/78.

Case of prison doctors

Name of the court: Tallinn District Court
Date of decision: 30 November 2009
Name of the parties: T.V. and Tallinn Prison[181]
Reference number: administrative case 3-08-2604
Address of the web-page:
https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/main.html
Brief summary: A former prison doctor filed a complaint claiming *inter alia* (indirect) ethnic discrimination on the ground of language as her level of proficiency affected her remuneration in 2006 and 2007. Her salary consisted of mandatory basic wages and additional payment (in conformity with the standard practice in Estonia).

The prison administration grants additional payment provided that the employee can demonstrate all of the following skills at least at an intermediary level: professional competence, professional skills, Estonian language proficiency and computer literacy. In the present case, the complainant did not receive additional payment because her language proficiency was alleged to be below standard. The claimant argued that other employees of minority origin were in the same unfavourable

[179] Riigikohus.
[180] Tallinna Halduskohus.
[181] Tallinna Vangla.

situation as compared with medical staff members of ethnic Estonian origin. Prison doctors are public officials. In 2006 and 2007 there were no specific anti-discrimination provisions in the Law on Public Service. In addition to general ban of discrimination in the Constitution (Article 12), Article 5 of then valid Law on Wages prohibited to increase or reduce wages on the grounds of an employee's native language. The claimant also referred to Directive 2000/43/EC on Racial Equality.

The Tallinn District Court did not find discrimination of the former prison doctor as compared with other doctors of majority ethnic origin. The latter group could normally get higher salary due to better command of the official language not because Estonian is their native language. Medical staff members of minority origin might receive additional payment as well. According to the court, Directive 2000/43/EC is irrelevant as far as it deals with ethnic and racial discrimination and not language. In case of public officials, Estonian language proficiency requirements are based on valid legislation and they do not constitute ethnic discrimination. The court argued that "ethnic origin cannot be altered but a person can develop better language proficiency".

Case of T. T.

Name of the court: Supreme Court
Date of decision: 17 May 2010
Name of the parties: T.T. and Tax and Customs Board[182]
Reference number: administrative case 3-08-2604
Address of the web-page: http://www.nc.ee/?id=11&tekst=RK/3-3-1-13-10
Brief summary: Certain public official T. T. applied to participate in the Program Customs 2013 (Decision no 624/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing an action programme for customs in the Community). However, the Chief Director of the Tax and Custom Board refused to authorise his business travel necessary to go to Finland for a working visit in the frame of the program. T. T. filed a complaint with the court claiming discrimination on the grounds of active trade union participation. The Law on Equal Treatment has been adopted to transpose the Directives 2000/43 and 2000/78. According to Article 36-1 (2) of the Law on Public Service, it is also "prohibited to discriminate against a public official or a person applying for public service on grounds of […] representation the interests of public officials or membership in an organisation of public officials. Upon discrimination on the basis of any specified attribute, the Law on Equal Treatment or the Law on Gender Equality applies".

The Supreme Court did not establish discrimination in this case. The Court, *inter alia*, argued that:

[182] Maksu- ja Tolliamet.

1. participation in the program Customs 2013 is not a guaranteed right of a public official; however it is covered by the provisions of the Law on Equal Treatment prohibiting discrimination in "access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience";
2. the shift in the burden of proof is possible only if there are facts on the basis of which it can be presumed that discrimination has occurred; these facts have not been provided in this case;
3. a state administrative agency may refuse to authorise a business travel abroad of a public official claiming that this trip is not expedient and is not related to official's (everyday) service duties; in general these are objective justifications to prove that there is no violation of the principle of equal treatment (on any ground) as regards a business travel abroad.

Case of H. I.

Name of the court: Supreme Court
Date of decision: 7 June 2011
Name of the parties: H.I. and Estonian Health Insurance Fund[183]
Reference number: administrative case 3-4-1-12-10
Address of the web-page: http://www.nc.ee/?id=11&tekst=222535250&print=1
Brief summary of the key points of law and of the actual facts:
The case concerned working 67 years old H. I. who was also an old age pensioner. According to Article 5 (2) 1 of the Law on Health Insurance,[184] persons who work on the basis of a contract of employment and for whom the employer is required to pay social tax are insured persons. Article 57 (5) says that an insured person has the right to receive sickness benefit for not more than a total of 250 calendar days per calendar year. However, insured persons who are at least 65 years of age have the right to receive sickness benefit in the event of an illness and injury for up to 60 consecutive calendar days for one illness but not for more than a total of 90 calendar days per calendar year (Article 57 (6)).

Due to these provisions H. I. did not receive his sickness benefit in full and filed a complaint with the court. A constitutionality control procedure was initiated by a second instance court.

The Supreme Court *en banc* (i.e. a chamber comprised of all justices of the Supreme Court) came to the conclusion that special provisions regarding sickness benefits for people aged 65 and older violated Article 12 (1) of the Constitution (equality before law; ban of discrimination). The limitations at stake were recognised as suitable and necessary but not proportionate. Article 57 (6) of the Law on Health Insurance was

[183] Eesti Haigekassa.
[184] Ravikindlustuse seadus, RT I, 10.06.2011, 8.

claimed unconstitutional as regards limitations for people who are at least 65 years of age.

In this case the Supreme Court used the proportionality test, which was elaborated in its own practice. The principle of proportionality proceeds from the second sentence of Article 11 of the Constitution (restrictions of rights and freedoms "must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted"). The Supreme Court reviewed the conformity of the restriction to the proportionality principle through the three characteristics thereof - suitability, necessity and proportionality in the narrowest sense.

The Court rejected the argument that the limitations at stake were established in the interests of health protection of people aged 65 and over (because they in no way fostered the achievement of a goal). However, the goal to save health insurance financial means was recognized as both suitable and necessary (because it was not possible to achieve it by some other measures which were less burdensome on a person but which were at least as effective as the former). The Court argued that in order to decide on the proportionality of a measure in the narrowest sense the extent and intensity of interference with a fundamental right on the one hand and the importance of the aim on the other hand had to be weighed. The Court came to conclusion that setting limits for those 65 years of age and older was intensive interference with a fundamental right provided in Article 12 (1) of the Constitution (equality before law; ban of discrimination). In the context of proportionality the age limits in question were held to be unjustified, discriminatory and therefore unconstitutional. Furthermore the argument that people of this age group might receive old age pensions was dismissed as inappropriate.

Case of E.B.

Name of the court: Harju County Court[185]
Date of decision: 23 December 2011
Name of the parties: E.B. and EEAS
Reference number: civil case 2-11-15080
Address of the web-page:
https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/main.html
Brief summary: Law on Equal Treatment (Article 3 (6)) treats as a form of discrimination a situation where one person is treated less favourably than others or negative consequences follow because s/he has filed a complaint regarding discrimination or has supported a person who has filed such complaint. Law on Gender Equality (Article 5 (1^1)) classifies as a form of discrimination adverse treatment of a person, as well as causing negative consequences for the person due to the fact that s/he has relied on the rights and obligations provided for in the law or

[185] Harju Maakohus.

has supported another person upon the protection of his or her rights provided for in this law. In other words both acts ban victimization.

Certain E.B. handed the chief manager a letter signed "Workers of hall A". The letter accused a production manager of an enterprise of sexual and ethnic harassment, humiliating and rude behavior, and violation of workers' rights and interests and of neglecting of production problems. E.B. was not an author of this letter but she edited and translated it into English. The employer decided that the letter is ill-founded and defamatory by nature. The employer also argued that E.B. distributed this letter among other staff members and provoked tensions at the enterprise. The employer has extraordinarily terminated an employment contract with E.B. on the grounds of Article 88 (1) 5 of the Law on Employment Contract (it permits to fire a worker for a theft, fraud or an act bringing about the loss of the employer's trust in the employee).

E.B. claimed that termination of her employment contract was illegal and void. Furthermore, she claimed to suffer from victimization banned by the Law on Gender Equality and Law on Equal Treatment: She suffered adverse treatment because she has submitted a complaint regarding discrimination and/or has supported other people who have submitted such complaint. E.B. also claimed that she would have been protected against victimization even if the letter had not included correct and/or detailed information about discrimination.

The court agreed that the termination of employment contract was illegal and void while there were no good reasons therefore. A person shall not face such negative consequences due to the fact that s/he has forwarded a complaint to the management. It was not proven in the court that E.B. distributed defamatory statements among other staff members. The witness in the court has also confirmed that the production manager made offensive remarks to other workers in terms of ethnicity and gender. Therefore E.B. might believe that the letter included correct information. However, the letter at stake cannot be regarded as a discrimination complaint while it does not include any facts or references to any concrete incidents. E.B. also failed to provide similar information in the court and to report whose complaints she supported. E.B. should present *prima facie* discrimination case (the same standards as in the provisions on shift in the burden of proof) in order to enjoy protection against victimization. While the letter cannot be regarded as a discrimination complaint, there was no victimization of E.B.

Case of X

Name of the body: Commissioner for Gender Equality and Equal Treatment
Date of decision: 16 August 2012
Name of the parties: X. and Ministry of Foreign Affairs
Reference number: ---
Address of the web-page:
http://www.svv.ee/failid/16.08.2012_arvamus_anonymiseeritud.pdf

Brief summary: According to the Law on Language Estonian public officials (public servants) shall be able to understand and use Estonian at the level which is necessary to perform their service or employment duties. The mandatory levels of language proficiency are established based on the language proficiency levels defined by the Common European Framework of Reference for Languages compiled by the Council of Europe (Article 23(1), (3)). Persons who have acquired education in Estonian on one of the education levels need not pass the Estonian language proficiency examination (Article 26 (3)). The Law on Equal Treatment bans ethnic discrimination in recruitment procedures (Article 2). The Law on Public Service (1995) specifically referred to "a level of language proficiency" and "ethnicity" as to protected grounds in the context of discrimination (Article 36-1(2)). However, this provision had to be read in conjunction with the rule stipulated in Article 36-1(3) that unequal treatment on the basis of language proficiency was permitted if provided for in the Law on Public Service or the Law on Language.

The proficiency requirements are subdivided into three broad levels: Basic User: A1 and A2; Independent User: B1 and B2; Proficient User: C1 and C2. The requirements for proficiency in and use of the Estonian language for public officials are established by the Regulation of the Government of the Republic no.84 of 20 June 2011. Thus, the C2 level, which is near-native proficiency, is not officially required in Estonia and it is not possible to pass respective official examination. The C1 level is envisaged for most public officials, including all senior public officials (Section 9).

In 2011 certain X. applied for a position in the Ministry of Foreign Affairs where one of the requirements was a "very good knowledge of the Estonian language". The applicant with a typical non-Estonian name has previously studied in Estonian in a higher education institution. In his CV he indicated Russian as his first language and chose C1 as a level of proficiency in Estonian. He failed to get through the initial round due to alleged insufficiency of his Estonian. The Ministry informed that they expected applicants to speak Estonian at C2 level.

X. filed an application with the Commissioner for Gender Equality and Equal Treatment (equality body). According to the Law on Equal Treatment, the Commissioner shall provide (legally not binding) opinions to persons who have submitted applications concerning possible cases of discrimination (Article 17 (1)). The Commissioner came to the conclusion that the Ministry of Foreign Affairs has discriminated X. due to his ethnicity.

First, the Commissioner claimed that ethnic origin and mother tongue are closely interconnected. She also presumed that X. was treated less favourably as compared with native speakers of Estonian due to existing prejudices regarding ethnic non-Estonians' proficiency in the official language.

Second, the requirements of the Ministry of Foreign Affairs (Estonian at C2 level) exceeded the officially established maximum requirement for public officials. The Ministry did not use a chance to check the actual proficiency level of X. The Estonian

language proficiency of native speakers of foreign languages shall be controlled on equal footing with that of native Estonian-speakers, i.e. without special attention paid to native speakers of other languages. The Ministry failed to provide arguments to justify unequal treatment of ethnic Estonians and non-Estonians in recruitment procedure.

Third, the Ministry as a large public institution shall be a model for others in terms of recruitment and shall respect the principles of equal treatment when chooses the modes of recruitment and deals with training of HR officers.