

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

ESTONIA, Situation as of 1 December 2004

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: ESTONIA	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes.	No.	Yes.	Yes.
Norms concerning racism	Yes Art. 12 Const.	No.	Yes	Yes.
Relevant jurisprudence	Yes	No case-law found on this subject.	No case-law found on this subject.	No case-law found on this subject.

EXPLANATORY NOTE

ESTONIA / GENERAL OVERVIEW

Estonia is an independent and sovereign democratic republic based on liberty, justice and law wherein the supreme power of state is vested in the people. The Constitution of the Estonia was adopted on 28 June 1992. Estonia is politically a unitary state wherein administrative division shall be provided by law. Near 35 percent of the population of the Estonia have non-Estonian nationality. Most of them are Russians who lived in Estonia at the moment of the dissolution of the Soviet Union. Therefore the main aim of the Estonian legislator was to protect in first line the Estonian identity and national minorities in the second. For instance, knowledge of the Estonian language is one of requirements for the acquisition of Estonian citizenship.

Generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. 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 (§123.2 of the Constitution).

Estonia is a signatory of the International Convention on the Elimination of All Forms of Racial Discriminations and a number of other international instruments in the field.

Although a constitutional court does not exist in Estonia, a special institution, Legal Chancellor appointed by the Parliament, have been established in order to review the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws. He is given the right to propose to the National Court to declare the legislation invalid, if he considers the legislation to be in conflict with the Constitution or a Law. He is also has been granted powers of Ombudsman.

Pursuant to Article 11 of the 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.

Art. 15 of the Constitution stipulates that everyone has the right to appeal before the court in case of breach of rights and freedoms.

Constitutional Law: Estonia

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 12 Equality before the law.	All persons are equal before the law. No person may be discriminated against on the basis of nationality, race, colour, gender, language, origin, religion, political or other beliefs, financial or social status, or other reasons.	1. Judgment of the constitutional review chamber of the National Court from 21.1.2004 No. 3-4-1-7-03 2. Judgment of the constitutional review chamber of the National Court from 10.12.2003 No.3-3-1-47-03	

		3. Judgment of the constitutional review chamber of the National Court from 16.9.2003 No. 3-4-1-6-03	
		4. Judgment of the constitutional review chamber of the Supreme Court from 17.3.2003 No. 3-3-10-02	
Art. 12 Prohibition of racial discrimination.	The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall equally be prohibited and punishable by law.		
Art. 40 Freedom of conscience religion and thought.	Everyone may freely belong to churches and religious societies	Decision of the constitutional review chamber of the National Court from 10.5.1996 No. 3-4-1-1-96	In the application to the court Art. 11 have also been mentioned, but the Court took decision on the other basis, inter alia Art.48
Art. 49 Right to preserve ethnic identity.	Every person shall have the right to preserve his or her ethnic identity.		
Art. 50 Right to establish institutions of self-government.	Ethnic minorities shall have the right, in the interest of their national culture, to establish institutions of self-government in	Decision of the constitutional review	

	accordance with conditions and procedures established by the Law on Cultural Autonomy for Ethnic Minorities.	chamber of the National Court from 11.8.1993 No. III-4/A-2		
Art. 51 Activities of state and local authorities and the languages of the ethnic minorities.	In localities where at least half of the permanent residents belong to an ethnic minority, all persons shall have the right to receive answers from state and local government authorities and their officials in the language of that ethnic minority.			
Art. 52 Languages of ethnic minorities in the internal communication of local government authorities.	In localities where the language of the majority of the population is other than Estonian, local government authorities may use the language of the majority of the permanent residents of that locality for internal communication, to the extent and in accordance with procedures established by law. The use of foreign languages, including the languages of ethnic minorities, by state authorities and in court pretrial proceedings shall be established by law.			

Criminal Law: Estonia

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Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Crimes against humanity	Criminal Code (2001) Art. 89	Systematic or large-scale deprivation or restriction of human rights and freedoms, instigated or directed by a state, organisation or group, or killing, torture, rape, causing health	Up to 20 years' imprisonment or life imprisonment		

		damage, forced displacement, expulsion, subjection to prostitution,			
Genocide	Criminal Code (2001) Art. 90		10 to 20 years' imprisonment or life imprisonment		
Enslaving	Criminal code (2001) Art. 133		Up to five years' imprisonment.		
Incitement to social hatred	Criminal Code (2001) Art. 151	incite to hatred or violence on the basis of nationality, race, colour, sex, language, origin, religion, political opinion, financial or social status	Up to three years' imprisonment		
Violation of equality	Criminal Code (2001) Art. 152	Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, political opinion	Up to one year's imprisonment		
Violation of freedom of religion	Criminal Code (2001)		pecuniary punishment or up to one		

	Art. 154		year's imprisonment
Compelling person to join or retain membership of religious association	Criminal Code (2001) Art. 155		pecuniary punishment or up to one year's imprisonment
Terrorism	Criminal Code (2001) Art. 237.1	Acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed for political or religious causes	Up to long life imprisonment

EXPLANATORY NOTE

ESTONIA/ CRIMINAL LAW

New Criminal Code adopted on June 6, 2001 entered into force on 1 September 2002 contains many innovations in the field. Besides violation of equality and incitement to social hatred, which already was punished in the legislation of 1992, the new code provides punishment for other, new crimes such as crimes against humanity, genocide, enslaving, violation of freedom of religion etc.

Civil and Administrative Law: Estonia

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Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Employment Contracts Act (1992) § 10. Illegal preferences and restriction of rights	It is illegal to allow or give preferences, or to restrict rights on the grounds of the sex, nationality, colour, race, native language,	A penalty payment can be also imposed by the Labour Inspectorate.		Art. 145 of the Act establish a State Supervision over compliance with the requirements this Act and legislation established on the basis thereof.

	social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the armed forces of employees or employers		
Wages Act (1994) §5 Unlawful reduction or increase in wages	Prohibition of increase or reduction of wages on the grounds of an employee's sex, nationality, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the Defence Forces.		See above
Law on Cultural Autonomy of Ethnic Minorities (1993)	Regulates the cultural and educational issues of the national minorities. However the definition of national minority is limited. Only Estonian citizens can be considered as national minority. The non Estonian citizens living in Estonia remain		Three categories of educational institutions of ethnic minorities were created: comprehensive schools, Sunday schools and other schools.

	outside of the scope of application of the Law.	
Law on Language (1995)	Determination of the scope of Use of Estonian and other languages. State language is Estonian. Minority languages can be used in private and in public.	Foreign languages and languages of national minorities could be used inter alia with restrictions in in State Institutions, Local Governments and Cultural Autonomy Bodies of a National Minority.