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ESTONIA*

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Article 1. Right to natural resources

1. The general legislative background has been described in the revised and amended CORE document submitted by Estonia to the UN in 2001. The first report (CCPR/81/Add.5; hereinafter the 'first report') and the second report (CCPR/C/EST/2002/2; hereinafter the 'second report') describe legislation, practices and other factors. This report provides an overview of the developments after the submission of the previous report.

2. The Estonian National Strategy on Sustainable Development until 2030 'Sustainable Estonia 21' was approved by the Riigikogu (parliament) on 14 September 2005. 'Sustainable Estonia 21' establishes development targets for the Estonian state and society until 2030 and integrates the development of economic, social and environmental spheres in accordance with global (Agenda 21) and European Union long-term development documents. The aim of the strategy is to integrate the success requirements arising from global competition with the principles of sustainable development and preservation of the traditional values of Estonia. The general envisaged development trend is movement towards a knowledge-based society.

3. 'Sustainable Estonia 21' establishes the following long-term development goals until 2030:

- Viability of the Estonian cultural space
- Growth of welfare
- Coherent society
- Ecological balance

4. For each goal, the strategy presents a desired state of affairs by the year 2030, key mechanisms for achieving the goal, indicators and potential threats. The long-term objectives of the strategy should be reflected in shorter-term strategic documents of different fields and it should be possible to monitor the achievement of all goals.

5. **Nature Conservation Act** entered into force on 1 May 2004 and the purpose of the Act is to: (1) protect the natural environment by promoting the preservation of biodiversity through ensuring the natural habitats and the populations of species of wild fauna, flora and fungi at a favourable conservation status; (2) preserve natural environments of cultural and aesthetical value, or elements thereof; (3) promote the sustainable use of natural resources (Section 1).

6. Nature conservation is carried out by means of restricting the use of areas important from the aspect of preservation of the natural environment, by regulating activities involving specimens of species of wild fauna, flora and fungi, specimens of fossils and minerals, and by promoting nature education and scientific research. Nature conservation shall be based on the principles of balanced and sustainable development and in each individual case, alternative solutions shall be considered which, from the position of nature conservation, are potentially more effective (Section 2).

7. **Earth's Crust Act** specifies in Clause 1 of Section 1 the procedure for and principles of exploration, protection and use of the earth's crust, with the purpose of ensuring economically efficient and environmentally sound use of the earth's crust. Section 4 of the Act lays out the principles of ownership of mineral resources. Bedrock minerals, mineral resources in mineral deposits of national importance and lake mud and sea mud (medicinal mud) belong to the state and the immovable property ownership of other persons does not extend to these. Mineral resources located on immovable or in inland body of water in state ownership belong to the state. Mineral resources in state ownership are not in commerce in their natural form. If a permit is required in order to remove mineral resources in state ownership from the natural state, the mined ore generated upon mining on the basis of the permit belongs to the miner of the mineral resources while mineral ore mined without the permit belongs to the state.

8. The purpose of the **Forest Act** is to ensure protection and sustainable management of the forest as an ecosystem. Forest management is sustainable if it ensures biotic diversity, forest productivity, regeneration and viability and provides an opportunity for comprehensive forest use to meet various ecological, economic, social and cultural needs.

9. **Environmental Liability Act** regulates the prevention of and remedying of damage caused to the environment based on the principle that polluters shall pay.

Article 2. Human rights and their protection, non-discrimination

Accession to international agreements

10. Estonia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolition of the death penalty, on 30 January 2004.

Changes in legislation

11. The constitutional framework associated with the application of Article 2 of the Covenant has not changed since Estonia's second report on the implementation of the Covenant.

12. As on 1 July 2008, the **Equal Treatment Act** is subject to legislative proceedings in the Riigikogu. The purpose of the draft act is to ensure protection of persons from discrimination on the basis of nationality (ethnic background), race, colour, religion, opinion, disability and sexual orientation.

13. **Victim Support Act** entered into force on 1 February 2004. The chapter on Victim Support Services of the Act entered into force on 1 January 2005 and 35 providers of victim support who had received respective training started work on the same date. The victim support service is a public service aiming at maintaining or enhancing the victims' ability to cope. The victim support services include counselling and assistance in communicating with authorities. In 2005, the providers of victim support services were approached on 3,005 occasions in total. 841 contacts were made due to family violence, 278 contacts were associated with children who suffered from violence and 386 approaches were made by the elderly. In seven cases, the providers of victim support assisted the police in delivering death notifications.

14. In 2006, a total of 3,333 approaches were made to the providers of victim support. In 964 cases, the reason was family violence; 283 approaches were made by children who suffered from violence, and 315 cases were associated with physical violence (but not family violence).

15. In many cases, the initial psychological counselling provided by the victim support personnel is insufficient and the majority of victims need long-term professional counselling, which is not affordable to many victims due to high cost. For that reason, the 1 January 2007 amendment to the Victim Support Act established an opportunity for the compensation of the cost of the psychological care paid within the framework of victim support services to the victims of any offence and to their family members if their ability to cope has decreased due to an offence committed with regard to the victim.

16. Compensation is paid to the victims of crime in case of serious damage to health, health disorder lasting for at least six months or death caused by the crime. In case of material damage, the version of the Victim Support Act that was in force until 2007 enabled compensation of 70% of actual material damage but not exceeding EEK 50,000. The 2007 amendment to the Victim Support Act increased the rate of compensation from 70% to 80% of the damage caused by a crime of violence and the maximum amount of compensation was increased from EEK 50,000 to EEK 150,000. Any amounts which an applicant for compensation receives or is entitled to receive as compensation for damage resulting from a crime of violence from a source other than the person liable for the damage caused by the crime (such as health insurance benefits, non-recurrent public benefits, support payments pursuant to other legal acts) is deducted from the damage serving as the basis for determining the amount of compensation.

17. A total of EEK 1,027,200 was paid as compensation to 252 crime victims in 2005 and a total of EEK 1,180,600 was paid to 285 crime victims in 2006.

18. The Victim Support Department of the Social Insurance Board has organised information seminars for police officers, judges and prosecutors, and persons who communicate directly with victims. Four such information seminars were organised in 2007. The Social Insurance Board has entered into a cooperation agreement with the Police Board to maintain consistent cooperation, ensure provision of information on the nature and content of victim support to the victims by police officers, launch joint preventive actions, organise joint workshops and information seminars on the victim support services, and establish an integrated Estonian system for supporting crime victims. Information on victim support services is provided to the public through media channels and cooperation network meetings.

19. However, NGO Ohvriabi (Victim Support) has criticised the Victim Support Act for failure to provide sufficient public information on the rights to psychological care, compensations and counselling. According to the NGO, this is confirmed by the small number of compensation payments in comparison to the total number of serious offences against persons, i.e., the number of victims eligible for compensation is much higher than the number of actual applications.

Developments in court judgments

20. The courts play a significant role in securing the rights and freedoms, particularly if the legislator has not ensured sufficient protection of fundamental rights. The following sections describe several judgments in which the courts have had to secure fundamental rights in situations where the legislator has failed to do so. Most of such cases deal with the creation of the right of appeal by the courts.

21. The Supreme Court has in its decisions in recent years repeatedly emphasised that, pursuant to Section 14 of the Constitution, the guarantee of rights and freedoms is, in addition to the legislative and executive powers, the duty of judicial powers as well. The Supreme Court *en banc* decision in the Brolex case (3-3-1-38-00) was of fundamental importance in establishing this principle. For example, before the Brolex case, the judicial practice did not foresee a possibility of filing appeals against unlawful police actions.

22. Further significant development is the reopening of Supreme Court proceedings in cases where the European Court of Human Rights has decided that Estonia has violated provisions of the European Convention on Human Rights. The Supreme Court opened the proceedings for the protection of rights even though the law at the time did not clearly specify such possibility. In its decision (3-3-2-1-04), the Supreme Court took the position that a situation where the contents of an appeal against the alleged violation of fundamental rights were not heard by the administrative court constitutes a continued and material violation of Section 15 of the Constitution and when the legislator has not provided for an effective and complete mechanism for protection of fundamental rights, the judicial power must, deriving from Section 14 of the Constitution, guarantee the protection of fundamental rights. In its *en banc* judgment 3-1-1-88-07 of 16 May 2008, the Supreme Court established that a situation where a person had no right of appeal in confiscation proceedings was in violation of the Constitution.

23. There have been questions about payment of compensation in cases where a person has been placed in a care home under a court judgment, which has been subsequently found to be unlawful. The courts have found that the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act is not applicable, because this Act only concerns criminal proceedings. The general rule in the State Liability Act enables payment of compensation only if a judge committed a criminal offence when passing an unlawful judgment. Consequently, a legislative gap has occurred in this situation. At the same time, the courts, relying on the objective of effective protection of fundamental rights, have started to order payment of compensation to the persons unlawfully placed in care homes (Tallinn Circuit Court judgment 3-06-1321; Tartu Administrative Court judgment 3-07-1393). In addition, the Ministry of Justice has developed a legislative draft to regulate the payment of compensation in the described situations. The draft should be adopted in autumn this year.

24. In its decision 3-3-1-20-07, the Supreme Court has explained that a prisoner has the right to access Estonian legislation, published court judgments and the database of the European Court of Human Rights judgments. The Supreme Court found that failure to provide access to this information restricts the right to freely obtain information disseminated for public use arising from Clause 1, Section 44 of the Constitution. A prison is required to provide the technical resources for the exercise of this right.

Human rights training

25. The employees of the Office of the Chancellor of Justice have given presentations to the civil servants in penal institutions on the fundamental rights of persons and inadmissibility of torture and other kinds of cruel, inhuman or degrading treatment. Such presentations and lectures continue in expanded volume also in 2008.

26. In addition, several Estonian non-governmental organisations have in recent years held lectures and implemented projects on the protection of human rights. For example, the Human Rights Centre, established in 2007, has offered public scholarships in connection with the protection of human rights and has organised a series of roundtables on ‘Mainstreaming Gender Equality in Local Governments’ (2007). Furthermore, the Human Rights Information Centre, for instance, has conducted a training program on ‘Anti-discrimination and Diversity’ (2007-2008).

27. There have been several training courses on domestic violence, sexual violence and trafficking in human beings. The target groups of these courses have included prosecutors who have recently participated in both international and national training events, victim support personnel, teachers, youth workers, police officers and school psychologists. The training courses have been conducted by the Ministry of Social Affairs and various NGOs in Tallinn, Pärnu, Tartu, Jõhvi and Kuressaare. As an example, one could mention the three training sessions for police officers on trafficking and prostitution organised in spring 2006 in Jõhvi, Tartu and Pärnu in cooperation by the International Organization for Migration and Estonian Women’s Studies and Resource Centre. In addition, the International Organization for Migration organised two training events for border guard officials and police officers in 2007. There is also an ongoing Nordic-Baltic pilot project to support and assist victims of trafficking (2005-2008) during which training has been provided to shelter staff and psychologists. The instructors have been experts from other Baltic and Nordic countries. Staff members of Estonian shelters have made study trips to shelters in Nordic countries (Sweden and Norway) to learn from their experiences. Training was also provided in the framework of the EQUAL programme for integration of women involved in prostitution, including victims of human trafficking, into legal labour market (2005-2008). Training was provided to psychologists, prosecutors, teachers and youth workers.

28. In connection with the Daphne II project “Notes”, a public seminar and a press conference were held in January 2006 on the topic ‘No to violence in close relationships’. Attending the seminar were staff from women’s shelters in Tartu and Ida-Viru counties, county government officials from Jõgeva and Ida-Viru counties, officials of the Tallinn City Government and the Ministry of Social Affairs and police officers and journalists.

29. A comprehensive training seminar for 250 persons dealing with the relevant issues, including police officers, on the topic of ‘Professional cooperation in dealing with cases of family violence’ was held in the framework of the project for the development of the information collection system for violence in close relationships in the West Police Prefecture in 2004.

30. Guidelines for health workers ‘How to help a family where cases of violence occur - guidelines for health workers were issued in 2005-2006. This took place in the framework of the project ‘Good practice in screening of victims of violence in intimate partnerships in maternity and child health services’. The project was financed from the European Commission Daphne II programme and co-financed by the Finnish Ministry of Social Affairs and Health.

31. Estonia has also participated in the Daphne II project ‘Sexual violence: dissemination of material for education and training on health symptoms’. Training seminars for social workers, teachers, psychologists, police officers and students were also held within this project.

32. In 2007, the Association of Women’s Shelters in Estonia in cooperation with other experts carried out a large-scale training project on violence in close relationships for medical personnel, involving ten training sessions in different locations in Estonia. In September 2007, a two-day training seminar, commissioned by the Ministry of Social Affairs, on violence in close relationships was carried out for thirty medical workers from Tallinn and Harju County.

33. With a view to the future, in the framework of Estonia’s first ‘Development Plan for the Prevention and Combating of Violence in Close Relationships for 2008-2011’ continued training of various specialists is planned. The development plan highlights the need to add the topic of violence in close relationships in the curricula for the training of police, judicial, medical and social welfare workers.

34. In 2006, the police issued a handbook ‘Police Guidelines on Dealing with Cases of Violence in Close Relationships’, which covers the nature of violence in close relationships, types of violent behaviour (mental, physical and sexual), communication with parties of violence in close relationships and police activities in settling and preventing such cases.

35. The cooperation agreement between the Social Insurance Board and the Police Board signed on 26 October 2004 regulates cooperation between the police and the victim support and foresees swift information exchange between the partners in order to provide high-quality victim support service to victims of mistreatment, physical, mental or sexual violence. According to the agreement, the police are required to inform victim support workers about a victim who is in need of support service (with the consent of the victim).

36. There are regular joint training events for the police and victim support workers on issues of victim recognition, assistance, prevention and settling of cases of violence, and cooperation with various partners in the network. There are also separate training seminars for police officers on violence in close relationships and sexual violence that conclude with a knowledge test upon completion of the course and the participants are issued relevant certificates. The training programs include practical case studies and group work.

37. A Phare partnership project on ‘Enhancement of the Administrative Capacity of Estonia’s Public Sector with regard to the Implementation of Gender Equality Mainstreaming’ was implemented in 2004-2005. The aim of the project was to support the implementation of the

strategy for gender equality mainstreaming. In the framework of the same project, the Gender Equality Commissioner participated in 2006-2007 in the project ‘Equality for local development: gender mainstreaming in municipalities’, which enabled to provide training sessions for local government officials and to compile and translate into Estonian a gender equality mainstreaming handbook for municipalities.

38. The Estonian-French project on ‘Equality between Men and Women - Principle and Goal for Effective and Sustainable Enterprises’ was implemented in 2007-2008 in the framework of the EU Transition Facility 2006 programme. The project aimed at increasing the awareness of private sector entrepreneurs on legislation, policies, resources and good practices in promoting gender equality in their businesses.

39. A programme for ‘Promoting Gender Equality 2008-2010’ has been prepared in the framework of the measure for promoting gender equality under the priority of ‘Good quality and long working life’ of the Operational Programme for Human Resource Development. This programme should encompass Estonia’s main actions towards reducing gender inequality and promoting gender equality in the next few years. The objectives of actions include increasing people’s awareness of their rights and obligations, as well as creating of conditions for reduction of wage differences.

40. **Penal Code** Section 152 (Violation of equality) stipulates that 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, sexual orientation, political opinion, financial or social status is punishable by a fine of up to three hundred fine units or by detention. The same act, if committed: (1) at least twice, or (2) 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.

41. **Penal Code** Section 153 (Discrimination based on genetic risks) stipulates that unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her genetic risks is punishable by a fine of up to three hundred fine units or by detention. The same act, if committed: (1) at least twice, or (2) 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.

42. There have still been no court disputes where gender discrimination would have been the central issue. NGO Human Rights Centre has expressed its regret at this situation.

43. The Human Rights Centre has pointed out that Estonia has no central and independent authority for human rights that would help coordinate the human rights efforts and training provided by different agencies and third sector institutions. However, the functions, competence and guarantees of the Chancellor for Justice comply with the Principles Relating to the Status of National Institutions (General Assembly resolution 48/134 of 20 December 1993).

Article 3. Equality between men and women

44. As mentioned in Estonia's first (CCPR/81/Add.5. p 34) and second (CCPR/C/EST/2002/2 p 56) report, men and women are equal before the law.

45. In 2006, Estonia submitted its fourth periodic report on the Convention on the Elimination of All Forms of Discrimination against Women. The United Nations Committee on the Elimination of Discrimination against Women considered the Estonian report on 24 July 2007 and submitted its recommendations to Estonia on 10 August 2007.

Gender Equality Act

46. In the second report, we reported that the **Gender Equality Act** is being prepared in Estonia. We can now state that the Act entered into force on 1 May 2004. The Gender Equality Act defines gender equality, equal treatment for men and women, direct and indirect discrimination based on sex and sexual harassment, and provides for the obligation to promote gender equality of men and women.

47. The Gender Equality Act provides a definition of gender equality, which had been absent from Estonian legislation. Gender equality means the equal rights, obligations, opportunities and liability of men and women in professional life, upon acquisition of education and participation in other areas of social life. The Act prohibits both direct and indirect discrimination based on sex.

48. Direct discrimination based on sex occurs when one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. Direct discrimination based on sex also means the less favourable treatment of a person in connection with pregnancy and child-birth, parenting, performance of family obligations or other circumstances related to gender, and sexual harassment.

49. Indirect discrimination based on sex occurs where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

50. Sexual harassment is also included in the definition of discrimination based on sex. Sexual harassment occurs where, in any subordinate or dependent relationship, any form of unwanted verbal, non-verbal or physical activity or conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment and the person rejects or submits to such conduct as it is a direct or indirect prerequisite for getting hired, maintaining the employment relationship, participation in training, receipt of remuneration, or other advantages or benefits.

51. The Act establishes two new institutions - Gender Equality Commissioner and Gender Equality Council.

52. Since July 2008, the Riigikogu has been processing the Act on the Amendment of the Gender Equality Act. The new draft should modify the definitions of direct and indirect discrimination based on sex and sexual harassment, define gender harassment and specify the burden of proof. The amendments should also prohibit ordering discrimination and persecution of people for relying on the rights or obligations provided for by the Gender Equality Act. In addition the draft specifies and supplements the list of cases, which are not deemed to be discrimination, establishes more specific regulation for the cases of discrimination based on sex in the provision of goods and services and introduces other amendments.

Gender Equality Commissioner

53. The Gender Equality Commissioner is an independent and impartial expert who acts independently, monitors compliance with the requirements of the Gender Equality Act, appointed by the Minister of Social Affairs for five years. The Commissioner accepts applications from persons and provides opinions concerning possible cases of discrimination; analyses the effect of Acts on the situation of men and women in society; makes proposals to the Government of the Republic and government agencies for amendments to legislation; advises and inform the Government of the Republic, government agencies and local government agencies on issues relating to the implementation of gender equality; and takes measures to promote gender equality.

54. In the period 2005-2007, the Commissioner received 121 communications, including 30 communications from men, 67 from women and 24 from organisations. 49 communications were applications related to discrimination. The rest included clarification inquiries, memorandums and requests for information on gender equality matters, incl. from the Members of the Parliament, local government representatives, ministries, businesses and colleagues in other countries.

55. In case of 23 applications related to discrimination, the Commissioner established that the principle of equal treatment of sexes had been violated. In 16 cases, the Commissioner did not identify any violations. A decision could not be made with regard to ten applications, because the information provided in the applications was incomplete or the applications were withdrawn before the decision.

56. NGO Human Rights Centre has expressed the opinion that, in practice, the performance of the Commissioner has remained weak. The Centre is of the opinion that the Commissioner lacks the required power and resources to effect changes and that the work of the Commissioner would be more efficient if more human and financial resources would be made available.

57. In addition to the Commissioner, a person who believes that his or her rights have been violated can file a claim with the labour dispute committee or a court. In case of labour disputes and discriminatory job or training offers, the court or labour dispute committee may demand termination of harmful activity and compensation for patrimonial or moral damage. Complaints related to discrimination based on sex can be also resolved by competent supervisory authorities, e.g., Consumer Protection Board in case of discriminatory advertising.

58. As Clause 1, Section 152 of the **Penal Code** stipulates that unlawful restriction of the rights of a person or granting of unlawful preferences on the basis of his or her sex is punishable as misdemeanour; the injured person can also submit an application on the violation of equality to the police.

Chancellor of Justice

59. Everyone has the right of recourse to the Chancellor of Justice for the conduct of a conciliation procedure if he or she finds that a natural person or a legal person in private law has discriminated against him or her on the basis of sex. Conciliation procedure is voluntary and, therefore, the party against whom a complaint is filed is not under obligation to participate in the procedure. However, if both parties have participated in the procedure and the Chancellor of Justice has approved the agreement of the parties, then the performance of the agreement is mandatory to both parties. Until the present time, the Chancellor of Justice has not initiated any conciliation procedures in cases of discrimination on the basis of sex. The reasons for this situation could include people's lack of information on this possibility or reluctance to disclose their problems, as well as inability to recognise when they have been discriminated on the basis of sex.

60. In addition to the conciliation procedure, the Chancellor of Justice analyses the effect of the implementation of legislation to the condition of the members of the society; informs public authorities and interested persons of application of the principles of equality and equal treatment; makes proposals for amendment of legislation; promotes, in the interests of adherence to the principles of equality and equal treatment, the development of cooperation between individuals, legal persons and agencies; and promotes these principles in cooperation with other persons.

Burden of proof

61. Proving discrimination on the basis of sex is difficult for an individual, because it is often difficult to prove that a person has been put at disadvantage due to his or her sex. Pursuant to the **Gender Equality Act**, the burden of proof partially falls on the person against whom an action, complaint or application has been filed in connection with a violation of the prohibition of discrimination on the basis of sex. A person who believes that he or she has been discriminated against should initially prove the statement by presenting facts on the basis of which it can be presumed that direct or indirect discrimination has occurred. Next, the person against whom the action, complaint or application is submitted should explain that his or her behaviour was justified by an acceptable reason not related to sex. Consequently, after the start of a dispute on discrimination, the burden of proof transfers to the person who is suspected of discrimination. If the person fails to explain the reasons and motives of his or her behaviour or decision, it shall be deemed to be equal to acknowledgement of discrimination.

62. The shared burden of proof does not apply in administrative and criminal proceedings.

Compensation for damage

63. Pursuant to the **Gender Equality Act**, an injured party may demand compensation for damage and termination of harmful activity. An injured party may demand that a reasonable amount of money be paid to the party as compensation for non-patrimonial damage caused by

the violation. Upon determination of the amount of compensation, a court takes into account, *inter alia*, the scope, duration and nature of discrimination. A court also takes into account whether the violator has eliminated the discriminating circumstances or not. A person may file a demand for compensation within one year as of the date when he or she becomes aware or should have become aware of the damage caused.

64. The provisions of the **Employment Contracts Act**, **Wages Act** or **Working and Rest Time Act**, for example, may be also relied on in cases of discrimination on the basis of sex. Pursuant to the Gender Equality Act, an employee may claim compensation for damage if the employer has not complied with the requirement of equal pay or has in any other way violated the principle of equal treatment as specified in other Acts. Other Acts may be relied on to claim compensation for other types of damage, for example, being paid lower wages than agreed or cases when an employer has in any other way violated a prohibition of discrimination based on sex as stipulated in another Act. In such cases, a court may order payment of other compensation arising from the specific Act in addition to the compensation arising from the Gender Equality Act.

65. In addition to court, procedures at the Commissioner or Chancellor of Justice are also possible and these procedures are free of charge. It is true that recourse to a court requires certain expenditures, but legal aid can be applied for if necessary and the defendant is ordered to pay the legal costs if the decision is made in favour of the applicant. Unlike a court decision, the opinion of the Commissioner has no direct legal force and the Commissioner is unable to enforce termination of discriminatory behaviour or payment of compensation for discrimination. However, the opinion of the Commissioner should provide the injured person with more confidence to take recourse to a court, as it would indicate that the complaint or action is clearly justified.

Gender Equality Council

66. The **Gender Equality Act** prescribes establishment of the Gender Equality Council within the Ministry of Social Affairs. Even though the Council has not yet been established, it should become an advisory body in matters of gender equality. The Council will approve the general objectives of gender equality policy; advise the Government of the Republic in matters relating to the promotion of gender equality; present its opinion to the Government of the Republic concerning compliance of national programmes presented by the Ministries with the Gender Equality Act; and make proposals for the promotion of gender equality. In the performance of its duties, the Council has the right to establish expert committees and work groups and conduct studies.

Duty to promote gender equality of men and women

67. Pursuant to the **Gender Equality Act**, state and local government agencies are required to promote gender equality systematically and purposefully, changing conditions and circumstances, which hinder achievement of gender equality, as necessary. Upon planning,

implementation and assessment of national, regional and institutional strategies, policies and action plans, state and local government agencies should take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society.

68. The Act also establishes obligations for employers, educational and research institutions and institutions engaged in the organisation of training. Educational and research institutions and institutions engaged in the organisation of training shall ensure equal treatment for men and women upon vocational guidance, acquisition of education, professional and vocational development and re-training. The curricula, study material used and research conducted shall facilitate abolishment of the unequal treatment of men and women and promote equality.

69. The Act also includes exceptions, which may have the characteristics of discrimination on the basis of sex but are justified for some specific reasons. Definition of direct or indirect discrimination does not include provisions concerning special protection of women in connection with pregnancy and child-birth, establishment of compulsory military service only for men or acceptance of only women or only men into the membership of a non-profit association if this arises from the statutes of the association. Furthermore, a difference of treatment as regards access to employment including the training leading thereto where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, a characteristic related to sex constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate, is also not deemed to be discrimination. Application of special measures which promote gender equality and grant advantages for the less-represented gender or reduce gender inequality is not considered discrimination either.

Equal treatment in professional relations

70. Upon promotion of equal treatment for men and women, an employer is required to:

(1) Act in a way that persons of both sexes are employed to fill vacant positions;

(2) Ensure that the number of men and women hired to different positions is as equal as possible and ensure equal treatment for them upon promotion;

(3) Create working conditions which are suitable for both women and men and support the combination of work and family life, taking into account the needs of employees;

(4) Ensure that employees are protected from sexual harassment in the working environment;

(5) Inform employees of the rights ensured by this Act;

(6) Regularly provide relevant information to employees and/or their representatives concerning equal treatment for men and women in the organisation and measures taken in order to promote equality.

These requirements arise from the Gender Equality Act.

71. Pursuant to the **Gender Equality Act**, cases in which an employer selects for employment or a position, hires or admits to practical training, promotes, selects for training or performance of a task or sends for training a person of one sex and overlooks a person with higher qualifications and of the opposite sex are considered discriminatory in professional life, unless there are strong reasons for the decision of the employer or such decision arises from circumstances not related to gender.

72. The activities of an employer are also deemed to be discriminating if the employer:

(1) Overlooks a person due to pregnancy, child-birth or other circumstances related to gender or limits the duration or extent of work for the same reasons;

(2) Upon hiring, establishes conditions which put persons of one sex at a particular disadvantage compared with persons of the other sex;

(3) Establishes conditions for remuneration or other conditions which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same or equivalent work;

(4) Directs work, distributes work assignments or establishes working conditions such that persons of one sex are put at a particular disadvantage compared with persons of the other sex;

(5) Harasses sexually or fails to perform the obligation to protect the employees from sexual harassment in the working environment;

(6) Downgrades the working conditions of an employee or terminates an employment relationship with him or her due to the fact that the employee has made reference to the rights and obligations provided for in the Gender Equality Act;

(7) Punishes an employee under disciplinary procedure, transfers an employee to another position, terminates an employment relationship or promotes the termination thereof due to reasons connected with gender.

73. It is prohibited to discriminate against employees upon employment, entry into an employment contract, remuneration, promotion in employment or office, giving instructions, termination of employment contracts, access to retraining or in-service training or otherwise in employment relations.

74. Prohibited treatment in the meaning of the **Employment Contracts Act** includes discrimination against a person applying for employment or an employee on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in workers’ associations, political opinions or membership in a political party or religious or other beliefs.

75. The following exceptions to the prohibition on discrimination are permitted:

(1) 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;

(2) Grant of preferences on grounds of membership in association representing the interests of employees or representing the interests of employees;

(3) Grant of preferences to disabled workers, including creation of working environment taking account of the special needs of disabled workers;

(4) Taking account of the sex, level of language proficiency, age or disability upon employment of a person, or upon giving instructions or enabling access to retraining or in-service training, if this is an essential and determinative professional requirement arising from the nature of the professional activity or related conditions;

(5) Allowing a suitable working and rest time regime which satisfies the religious requirements of an employee.

76. The **Employment Contracts Act** prohibits direct and indirect discrimination against employees or persons applying for employment. Direct discrimination occurs where one person applying for employment or an employee is treated less favourably than another person applying for employment or another employee is, has been or would be treated in a comparable situation. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put employees or persons applying for employment at a particular disadvantage compared with other employees or persons applying for employment, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

77. The aforementioned Act on the Amendment of the **Gender Equality Act**, **Public Service Act** and Republic of Estonia **Employment Contracts Act**, which is being processed by the Riigikogu, envisages amendment or supplementation of certain provisions governing equal treatment of women and men in professional life.

78. This includes a prohibition to request gender information from persons seeking work or applying for employment. One of the most significant amendment proposals is the proposal to repeal the current provision of the Republic of Estonia **Employment Contracts Act**, which establishes that the Government of the Republic should determine a list of heavy work and work posing a health hazard where its is prohibited to employ women and a list of underground work associated with sanitary and accommodation services where it is permitted to employ women.

Department of Gender Equality and the Development Plan of the Ministry of Social Affairs 2009-2012

79. As mentioned in Estonia's second report, the Ministry of Social Affairs includes a Department of Gender Equality, which currently employs 7 persons and two of them belong to the Family Policy Unit created in 2007. According to the Development Plan of the Ministry of Social Affairs 2009-2012, one of the goals of the Ministry is to reduce the difference between the wages and salaries of men and women. The difference in wages is one of the principal indicators

of gender equality, reflecting the gender balance and different valuation of sexes, as well as living and development opportunities arising from stereotypes. While the level of wage difference was at 25.4% in 2006, the aim is to reduce it to 23% by 2012.

80. The priorities of the gender equality policy include promotion of gender equality and coordination of gender equality mainstreaming, implementation of the development plan for preventing and hindering violence in close relationships, and fight against trafficking in human beings.

81. Greater involvement of men in the activities to reduce inequalities between sexes is also required to solve the problems arising from inequality. One potential tool for making more efficient use of human resources reducing discrimination in professional relations would be better balancing of the reconciliation of work and family life between both parents.

82. 2007 was the European Year of Equal Opportunities. In connection with this year, Estonia set out to increase the awareness of minority groups and general population of the rights to equal treatment and to collect information on the extent of discrimination. The actions focused mainly on discrimination on the basis of sex, race, ethnic origin, religion or beliefs, disability, age and sexual orientation. During the year, various studies were conducted, events were organised and several organisations were provided the resources for specific small projects.

Article 4. Derogation of rights

83. We refer to the second report (paragraphs 89-110) of the Republic of Estonia; Estonia has in recent years made no changes to the situation described therein.

Article 5. Restriction of rights

84. After the consideration of the second report of Estonia by the Human Rights Committee at its 2077th and 2078th meetings, on 20 and 21 March 2003, and after the Committee issued the Concluding Observations on 3 April 2003 (CCPR/CO/77/EST), Estonia has become a State Party to the following relevant international instruments: *European Convention on Social and Medical Assistance and Protocol* thereto, entered into force on 1 August 2004.

85. *European Code of Social Security*, entered into force on 20 May 2005.

86. *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin*, entered into force on 1 May 2005.

87. *Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances*, entered into force on 1 June 2004.

88. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, entered into force on 11 June 2004.

89. *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*, entered into force on 11 June 2004.

90. *Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children*, entered into force on 1 June 2003.

91. *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, entered into force on 3 September 2004.

92. *Convention on the Civil Aspects of International Child Abduction*, entered into force on 21 February 2001.

93. *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*, entered into force on 14 February 2001.

94. *European Convention on the Compensation of Victims of Violent Crimes*, entered into force on 1 May 2006.

95. *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, entered into force on 30 April 2004.

96. *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention*, entered into force on 1 November 2004.

97. *ILO Convention on Worst Forms of Child Labour Convention*, ratified on 24 September 2001 and *ILO Minimum Age Convention*, ratified on 15 March 2007.

98. *ILO Convention concerning Discrimination in Respect of Employment and Occupation (No. 111)*, entered into force on 10 July 2005.

99. *Convention Concerning Labour Inspection in Industry and Commerce (No. 81)*, entered into force on 1 February 2006.

100. *Convention Concerning Labour Inspection in Agriculture (No. 129)*, entered into force on 1 February 2006.

101. Estonia has ratified Protocol 14 to the European Convention on Human Rights but it has not yet entered into force for reasons outside the control of Estonia.

102. Estonia is preparing ratification of the Council of Europe *Convention on Action against Trafficking in Human Beings* and ratification of the UN *International Convention for the Protection of All Persons from Enforced Disappearance*.

103. *Council of Europe Convention on the Prevention of Terrorism* (ETS 196)) and *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (ETS 201) are currently in the process of ratification.

Article 6. The right to life

104. The Estonian **Penal Code** entered into force on 1 September 2002, revoking the former Criminal Code. The second report of Estonia also referred to relevant sections of the Penal Code associated with the right to life.

105. The Ministry of Justice is developing a legislative draft, which criminalizes in case of core human rights (incl. life and health) also attempted instigation, agreement to a proposition to commit a criminal offence and agreement to commit a criminal offence even when the principal act is not yet committed. This means criminalisation of one part of the crime preparation process. The goal of the draft is to ensure better protection of most fundamental human rights.

106. The Public Prosecutor’s Office has commenced criminal proceedings against A. M. on a charge of genocide (Section 90, Penal Code) and attacks against civilians (Section 97, Penal Code). A. M. is accused of participating in the preparations for mass deportations in March 1949 and conducting the deportations in Hiiumaa. According to the known data, 20 702 people were deported during the March deportations from 25 to 27 March 1949 and approximately 3000 people died in Siberia. The judicial proceedings are underway.

107. The following table provides statistical data on persons declared missing, fugitive or dead.

	First month 2008	2007	2006	2005	2004	2003	2002
Missing persons declared fugitive	15	130	126	152	186	285	179
Search was terminated	20	116	131	138	172	288	180
Person died/declared dead	3	42	42	47	51	47	NA

Public health

108. The Population Health Strategy 2008-2020 has been adopted in Estonia. The general objective of the Strategy is to increase the number of healthy life years by decreasing mortality and morbidity rates. The Strategy defines five thematic areas, focussing on the increase in social cohesion and equal opportunities, ensuring healthy and safe development of children, development of a health-supportive environment, promotion of healthy lifestyle and securing sustainability of the healthcare system. The priorities, strategic objectives and measure packages required to achieve the general objective of the Strategy have been grouped under these thematic areas.

109. The National Strategy for Prevention of Cardiovascular Diseases 2005-2020 was launched in 2005. It focuses on creating conditions for increasing the percentage of physically active people, reducing unhealthy nutrition habits and smoking.

110. On the part of the Ministry of Social Affairs, the Strategy is implemented and action plans are prepared by the National Institute for Health Development (NIHD). In addition to the Ministry of Social Affairs, other ministries and the Health Insurance Fund also participate in the implementation of the Strategy. A total of 14.8 million EEK have been allocated in the budget of NIHD for the cardiovascular diseases strategy.

111. In the following, we provide statistical data on births. The tables present the number of births in different years and rate of deaths under 1 year of age per 1000 live births.

Birth statistics

Year	All births	Live births	Still births	Live births, died within 0-6 days
2007	15 807	15 741	66	
2006	14 925	14 869	56	27
2005	14 420	14 333	87	29
2004	14 037	13 975	62	49
2003	13 082	13 018	64	40
2002	13 061	12 987	74	32
2001	12 690	12 621	69	33

Infant deaths under 1 year of age per 1,000 live births

Year	2001	2002	2003	2004	2005	2006	2007
IMR	8.8	5.7	7	6.4	5.4	4.4	5.0

Abortions (2001-2007)
Source: Estonian Abortion Registry

Year	All abortions	Including		
		Spontaneous abortions	Legally induced	Other
	Number %	Number %	Number %	Number %
2007	11 144	795	8 900	1 449
2006	11 647	840	9 394	1 413
2005	11 849	899	9 619	1 331
2004	12 641	1 153	10 081	1 407
2003	13 021	1 142	10 625	1 254
2002	13 158	1 249	10 839	1 070
2001	14 055	1 401	11 656	998

112. Abortion is legal in Estonia and therefore also the risk that women use illegal methods for terminating a pregnancy is minimal. The number of live births exceeds the number of abortions since 2003.

113. According to the ‘Population Policy Paper’ approved by the Government of the Republic, supporting infertility treatment is a priority measure to increase birth rate to the level of population reproduction. According to the Master Plan of Support for Infertility Treatment 2007-2010, the estimated expenditures on infertility treatment over four years should be 243.3 million EEK, or 60 million EEK per year.

114. The following table presents the total fertility rate, which enables estimating national population reproduction capacity.

Year	2001	2002	2003	2004	2005	2006	2007
Total fertility rate	1.34	1.37	1.37	1.47	1.50	1.55	1.64

115. The number of persons infected with or suffering from HIV/AIDS is high in Estonia. Combating HIV/AIDS is a priority of the government. The following statistical data indicates that the number of persons infected has started to decrease in recent years.

Year	2001	2002	2003	2004	2005	2006	2007
Persons infected with HIV	1 474	899	840	743	621	668	633

116. On 1 December 2005, the Government of the Republic approved the National HIV and AIDS Strategy 2006-2015 and the corresponding action plan for 2006-2009. The overall objective of the Strategy is to achieve sustained decrease in the spread of HIV. The targets include reduction of new HIV infection cases to 20 per 100 000 population by the year 2015 (the 2004 level was 55) and to use strategic interventions to prevent expansion of the epidemic.

117. The HIV and AIDS Strategy 2006-2015 considers the following areas of work for stopping the spread of the HIV epidemic and alleviating the impact of the epidemic on the Estonian society: prevention in various target groups, HIV testing and counselling; prevention, treatment and care for persons living with HIV or AIDS; surveillance, monitoring and evaluation; and development of human and organisational resources.

118. Estonian national efforts in the field of HIV/AIDS are governed by the National HIV and AIDS Strategy 2006-2015. According to WHO estimate in 2005 (WHO, 2007), Estonia’s expenditures on combating HIV/AIDS and tuberculosis amounted to 122.4 million EEK. A little less than 80% of this amount was allocated from the state budget and nearly 20% from the Global Fund support. The total amount of support over four years (from October 2003 to September 2007) was 10.5 million USD. After expiry of this extensive support programme, Estonia is facing a period of transition in combating HIV and AIDS. The systems established with the resources of the Global Fund have made a positive contribution to Estonia’s national fight against HIV/AIDS and all actions that were previously financed by Global Fund have been covered with state budget allocations in 2008. The new national strategy also appointed a coordinating authority for the strategy - governmental high-level committee on HIV and AIDS. It includes representatives of governmental agencies, HIV experts and persons living with HIV. The strategy establishes a broader framework and prevention principles while the 4-year Action Plan of the strategy specifies particular action programs for each year (each ministry develops its own action program), based on the cost of the epidemic and prevention success indicators.

Article 7. Prohibition of torture and other cruel, inhuman or degrading treatment and punishment

119. The regular visit to Estonia of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment took place from 8 to 18 May 2007. At the end of 2007, Estonia submitted replies to the additional questions on Estonia's fourth report under the Convention for the Prevention of Torture. The replies dealt with all areas regulated by the Convention and provide a good overview of the developments in recent years.

120. According to Estonian **Penal Code**, torture and physical abuse are criminal offences:

- Causing damage to the health of another person, or beating, battery or other physical abuse which causes pain, is punishable by a pecuniary punishment or up to 3 years' imprisonment (Section 121, Physical abuse).

- Continuous physical abuse or abuse which causes great pain is punishable by a pecuniary punishment or up to 5 years' imprisonment (Section 122, Torture).

121. Both the UN Committee against Torture and the Human Rights Information Centre have stated that the formulation of Section 122 of Estonian Penal Code does not seem to comply fully with the definition provided in the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Government agrees with this but is of the opinion that the Penal Code as a whole fully covers the definition of torture in the Convention. Similar opinion was expressed by the Chancellor of Justice.[1]

122. According to the report 'Crime in Estonia 2006', in the period 2003-2006 a total of 239 cases were registered under Section 122. The numbers were respectively 24 in 2003, 44 in 2004, 92 in 2005 and 79 in 2006. In the period of 1 January 2005 until 10 August 2007 there were 48 convictions under Section 122. Currently there are 16 convicted persons serving a sentence in the prison system who have been sentenced under Section 122 of the Penal Code.

123. Article 18 of the **Constitution** lays down an absolute prohibition of torture, to which no exceptions can be made even in a state of war or emergency. In addition, according to Section 9 (3) of the **Code of Criminal Procedure**, participants in a proceeding shall not be subjected to torture or other cruel or inhuman treatment and shall be treated without defamation or degradation of their dignity. Statements obtained under torture may not be used as evidence.

124. Section 64 of the **Code of Criminal Procedure** lays down general conditions for collection of evidence. Evidence shall be collected in a manner which is not prejudicial to the honour and dignity of the persons participating in the collection of the evidence, does not endanger their life or health or cause unjustified proprietary damage. If it is necessary to undress

[1] See: http://daccessdds.un.org/doc/UNDOC/GEN/G07/449/07/PDF/G0744907.pdf?OpenElement, para 1.

a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the same sex as the person. If technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them. Investigative bodies and Prosecutors' Offices may involve impartial specialists in the collection of evidence and the specialists may be heard as witnesses (Section 64). In criminal proceedings in Estonia evidence collected in a foreign state pursuant to the legislation of such state may be used unless the procedural acts performed in order to obtain the evidence are in conflict with the principles of Estonian criminal procedure (§ 65).

125. Abuse of authority, unlawful interrogation, unlawful application of measures securing conduct of judicial proceedings, unlawful search and eviction, coercion to provide false statements or false expert opinion or false translation or interpretation, committing of violence in respect of a suspect, accused, defendant, acquitted or convicted person, witness, expert, translator or interpreter and victim, unlawful treatment of a detainee, person in custody or under arrest, etc., are criminal offences, and thus an order to commit any such acts is unlawful and shall not be complied with. An unlawful order to commit an offence cannot be invoked as a justification for the commission of the offence.

126. In accordance with the principle of oral proceedings, it is stipulated that a decision of a court may be based only on evidence which has been orally presented and directly examined in the court hearing and recorded in the minutes. A decision of a circuit court may be based on evidence which has been orally presented and directly examined in a court hearing by circuit court and recorded in the minutes or evidence which has been directly examined in a county court and presented in appeal proceedings.

127. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in relation to Estonia on 17 January 2007. The Optional Protocol Ratification Act appoints the Chancellor of Justice to serve as the national prevention body.

128. The Chancellor of Justice has the competence to supervise penal institutions and make recommendations to improve the conditions in penal institutions. The Chancellor of Justice also has a right to make proposals for legislative amendments.

129. Pursuant to Article 7 (2) of the Covenant, no one shall be subjected to medical or scientific experimentation without free consent. Article 18 of the **Constitution** of the Republic of Estonia also includes a prohibition of medical or scientific experiments against the person's will. Illegal conduct of human research (Section 138), illegal removal of organs or tissue (Section 139) and inducing persons to donate organs or tissue (Section 140) are considered criminal offences in Estonia. No criminal investigations have so far been conducted in connection with these offences.

130. In addition to the abovementioned conventions, Estonia has acceded to the following international agreements governing this field:

131. *Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, entered into force on 1 June 2002.

132. *Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine; on the Prohibition of Cloning Human Beings*, entered into force on 1 June 2002.

133. *Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin*, entered into force on 1 May 2006.

134. Pursuant to the **Transplantation of Organs and Tissues Act**, transplantation may be performed if:

(1) Transplantation does not imply serious risk to the life or health of the recipient and the donor;

(2) Implantation of an organ or tissue into the recipient is the only possible effective means of treatment;

(3) Medical investigations performed to the recipient and the results of such investigations give reason to expect successful transplantation, and improvement of the recipient’s quality of life after transplantation.

135. Transplantation requires informed consent granted on a voluntary basis by the donor and recipient or, in case provided by law, by their legal representatives. The consent should be specific for the particular situation, it should be granted in writing and is only valid if the persons concerned have been provided with appropriate information beforehand as to the purpose and nature of the transplantation, as well as on its consequences and risks. A person may withdraw the consent at any time before the transplantation.

136. Persons with restricted active legal capacity may generally not be donors, except for cases provided for by law.

137. The **Transplantation of Organs and Tissues Act** also specifies requirements for removal of organs and tissues from deceased persons. Pursuant to Section 11 (1) (3), an organ or tissue may be removed from a deceased person if ‘during lifetime, the deceased person had expressed a wish to donate organs or tissues for transplantation after his or her death, or if no information is available that the person had objected to it’.

138. It was mentioned before that supporting artificial insemination is one of the priorities of Estonia. Therefore, we would like to present the main characteristic of the regulation of the protection of embryos during artificial insemination.

139. In order to ensure voluntary consent, the **Artificial Insemination and Embryo Protection Act** requires the woman to grant a written consent indicating that she agrees to:

- Insemination with the sperm of her husband, any other specific man or a donor
- *In vitro* fertilisation of her ova
- Impregnation with an embryo originating from an ovum of another woman

In order for a married woman to undergo artificial insemination, her husband's consent, which shall be in accordance with the consent granted by the woman, is necessary. A husband has the right to declare his consent void in writing until the beginning of the procedure of artificial insemination.

140. If examinations lead to a finding which confirms risk factors but does not preclude artificial insemination, the consent of the woman shall set out separately that she consents to artificial insemination even considering the risk involved. A woman has the right to refuse to undergo artificial insemination until it is carried out and declare her consent void.

141. Embryos may be used for scientific research if:

- The embryos are not transferred to a woman in order to ensure the success of the artificial insemination or to protect the health of the child or the mother or
- The embryos have remained unused, because the woman has refused to undergo artificial insemination or the preservation term (7 years) of the embryos has expired and the embryos have not been transferred to the woman

142. An embryo may not be used for scientific research without the consent of the persons who donated the gametes and transfer of an embryo which has been used for scientific research to a woman is prohibited. An embryo may be used for scientific research within fourteen days after fertilisation of the ovum. The time during which the embryo is frozen is not included in this term.

143. The following acts with embryo in connection with artificial insemination of a woman are prohibited:

- Artificial fertilisation of an ovum with a sperm which has been selected on the basis of the sex chromosome contained therein, except in the cases where a gamete is selected in order to avoid transmission of a serious sex-related inheritable disease to the child
- Creation, by way of substitution of the nucleus of a fertilised ovum by a somatic cell of another embryo, foetus or living or dead person, of an embryo with genetic information identical to that of the embryo, foetus or living or dead person

- Fusion of embryos with different genetic information in order to create a cell fusion if at least one of the embryos is a human embryo, or fusion of a human embryo with a cell which contains genetic information different from that of the cells of the embryo and which may develop further together with the embryo

- Creation of an embryo capable of developing by fertilisation of a human ovum with animal sperm or animal ovum with human sperm

Article 8. Prohibition of slavery, servitude and compulsory work

144. Respective conventions, to which Estonia has acceded after the previous report, have been listed under Article 5.

Trafficking in human beings

145. Even though the Estonian **Penal Code** does not directly define the elements of such crime as trafficking in human beings, the Code includes 16 sections associated with trafficking and they have been presented in the following table.

146. According to the table, a total of 135 crimes associated with trafficking were registered in Estonia in both 2006 and 2007 and they can be classified under the following types of crime:

	2006	2007
Enslaving (Section 133)	1	2
Abduction (Section 134)	0	0
Unlawful deprivation of liberty (Section 136)	44	55
Illegal conduct of human research (Section 138)	0	0
Illegal removal of organs or tissue (Section 139)	0	0
Inducing person to donate organs or tissue (Section 140)	0	0
Compelling person to engage in sexual intercourse (Section 143)	7	5
Compelling person to satisfy sexual desire (Section 143[1])	-	5
Child stealing (Section 172)	0	6
Sale or purchase of children (Section 173)	0	0
Disposing minors to engage in prostitution (Section 175)	0	1
Aiding prostitution involving minors (Section 176)	2	4

	2006	2007
Use of minors in manufacture of pornographic works (Section 177)	10	4
Manufacture of works involving child pornography or making child pornography available (Section 178)	29	22
Illegal transportation of aliens across state border or temporary border line of republic of Estonia (Section 259)	5	7
Provision of opportunity to engage in unlawful activities, or pimping (Section 268)	38	-
Aiding prostitution (Section 268[1])	-	24
Total	136	135

147. Even though the number of criminal offences registered under Section 136 of the Penal Code rose from 44 to 55 from 2006 to 2007, this does not mean that the number of trafficking cases has increased correspondingly.

148. An amendment to the Penal Code entered into force on 15 March 2007, which improved the definition of the elements of enslaving (Section 133) in accordance with the definition of trafficking in the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA). The earlier version did not include cases where enslaving was not performed through violence or deceit. Therefore, Section 133 of the Penal Code was supplemented by adding another attribute - 'by taking advantage of the helpless situation of the person'. The helpless situation may be also associated with the dependency of the victim on the perpetrator (e.g., parent or legal representative and child, doctor and patient).

149. A final procedural decision was reached in case of 73 criminal offences associated with human trafficking, which were submitted to courts, and consequently the rate of solution of these crimes is 54 % (the statistical data is available on the web page of the Ministry of Justice).

150. In January 2006, the Government of the Republic approved the 'Development Plan for Combating Trafficking in Human Beings 2006-2009'. The objectives of the development plan foresee continuous mapping of the problems related to human trafficking, prevention of human trafficking by informing the public, development of the skills of the specialists, provision of assistance and rehabilitation to the victims of human trafficking, improving border control and control over employment mediation, and effective reaction to criminal offences related to human trafficking.

151. The main focus in 2006 was on better organisation of work, informing the public and international cooperation. A cooperation network of public authorities and non-governmental organisations engaged in combating trafficking was created and division of tasks and

responsibilities was agreed. First efforts were made to create a system for data collection on trafficking and to inform the public of the risks of trafficking on crime prevention web site www.kuriteoennetus.ee. In addition, the Estonian penal law was analysed to ensure compliance with the Council Framework Decision on combating trafficking in human beings and a Nordic-Baltic pilot project to support and assist victims of trafficking was launched.

152. In connection with criminal procedure, the Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, who cooperate with the competent authorities has been transposed to Estonian law since 1 February 2007. As of 1 February 2007, expulsion is suspended subject to a proposal of a Prosecutor's Office for the duration of the reflection period specified in Section 14[15] (6) of the Aliens Act if the person to be expelled is a victim or witness in a criminal procedure on a matter involving a criminal offence related to trafficking in human beings within the meaning of the Council Framework Decision 2002/629/JHA on combating trafficking in human beings.

Community service and work of imprisoned persons

153. Section 69 of the **Penal Code** lays down the concept and principles of application of community service. Pursuant to the Code, if a court imposes imprisonment of up to two years, the court may substitute the imprisonment by community service. One day of imprisonment corresponds to two hours of community service. Imprisonment may be substituted by community service only with the consent of the convicted offender. The duration of community service may not exceed 8 hours a day. If a convicted offender performs community service during free time from his or her other work or studies, the duration of community service may not exceed four hours a day. A convicted offender may not receive remuneration for community service. If a court imposes community service, the court should determine the term for the performance of the service which may not exceed twenty-four months. On the basis of a report of the probation officer, the court may suspend the running of the term due to an illness or family situation of the convicted offender, or for a period for which the convicted offender is called up for active service or training exercises in the Defence Forces. […] Legislation which regulates health protection and occupational health and safety extends to convicted offenders who perform community service. If necessary, the court may, before substituting imprisonment by community service, order the medical examination of the convicted offender in order to ascertain whether the state of health of the convicted offender enables him or her to perform community service.

154. An overview of the work in prisons was provided in the second report and no major changes have occurred in that respect. It may be noteworthy that an amendment of the **Imprisonment Act** entered into force on 1 January 2003, according to which the remuneration of a prisoner should be at least twenty per cent of the minimum wage rate established on the basis of the **Wages Act**. The Government of the Republic establishes the rate of and procedure for calculation and payment of remuneration of prisoners. This amendment was made after repeated criticisms of the Chancellor of Justice, stating that the rate of remuneration of prisoners

should be specified by law if this rate is lower than the general minimum wage rate. Paying remuneration which is lower than the general minimum wage rate is justified by the fact that a comparison of the productivity of prisoners and people living in freedom has indicated that the productivity of prisoners is approximately five times lower due to limited professional skills, low motivation and lack of work morale. Therefore, the remuneration should be also lower by a similar degree in order to maintain competitiveness of the production. On the other hand, remuneration at this level still ensures that prisoners are able to buy the necessary quantities of stable goods and hygiene products.

155. Pursuant to Section 3 (1) of the **Defence Forces Service Act** (DFSA), every male Estonian citizen is required to serve in the Defence Forces, i.e., to perform his duty to serve in the Defence Forces. Pursuant to Section 4 (1) of the DFSA, a person eligible to be drafted who refuses to serve in the Defence Forces for religious or moral reasons is required to perform alternative service pursuant to the procedure prescribed by law. For more information of alternative service, see Article 18.

156. Pursuant to Section 18 (2) (4) of the **State of Emergency Act**, the state of emergency response coordinator may during a state of emergency for elimination of a threat to the constitutional order of Estonia, *inter alia*, transfer an official to another position or to another locality until termination of the state of emergency and assign duties other than those related to the office without the consent of the official.

157. Pursuant to the **War-Time National Defence Act**, the rights and freedoms of persons may be restricted during war-time. Pursuant to Section 9, clause 1, sub-clauses 10 and 11 of this act, the Government of the Republic may, if necessary, restrict the rights and freedoms of persons and burden them with obligations, and burden the public authorities, local government executive agencies and other agencies and organisations with additional obligations for the purposes of national defence. Pursuant to Section 12 (3) (4), the Commander-in-Chief of the Defence Forces may, in case of urgent necessity and in accordance with Section 5 (4) (2), give commands and orders to legal and natural persons not under his or her command in order to engage them in the performance of national defence tasks in the interests of the war effort.

158. The **National Defence Duties Act** establishes transport duty and labour duty as compulsory defence duties during the state of war. The transport duty is a state duty imposed on the owner or possessor of a vehicle, floating vessel or aircraft for carrying out transport operations with a driver or crew for national defence purposes (Section 33). The labour duty is the duty imposed during the state of war on natural persons permanently residing in Estonia to perform work and tasks for national defence purposes (Section 38). The competency to decide on the application of labour duty during the state of war belongs to the Commander-in-Chief of the Defence Forces and his or her subordinate commanders (Section 40) and the Act lists categories of persons exempted from the labour duty.

159. The provisions of the **Employment Contracts Act** (ECA) and the **Public Service Act** (PSA) have also some relevance to Article 8, as they establish such mandatory work which is not part of the original duties of the employee or official.

160. Section 65 of ECA establishes the right of the employer to transfer an employee temporarily to another position: (1) for the prevention of a natural disaster or industrial accident or the expeditious elimination of the consequences thereof; (2) for the prevention of an accident, work stoppage, or destruction of or damage to the property of the employer; (3) for the replacement of an employee who is temporarily absent in the cases prescribed in clauses (1) and (2) of this section; (4) in other extraordinary cases. Transfer to another position is permitted for up to one month, unless the employee is advised not to accept such position for reasons of health and unless such position results in greater proprietary liability for the employee.

161. Section 66 of ECA establishes the right of the employer to transfer an employee to any position in the same locality in case of work stoppage, unless the employee is advised not to accept such position for reasons of health and unless such position results in greater proprietary liability for the employee. According to Section 67 of ECA, on the basis of a decision of a state authority, an employer has the right to temporarily transfer an employee to a position at another enterprise, agency or other organisation in the same or another locality for the prevention of a natural disaster, expeditious elimination of the consequences thereof or prevention of the spread of disease, but for not more than one month. Transferring a pregnant woman, a woman who is raising a disabled child or a child under sixteen years of age, or a minor to another locality is not permitted.

162. PSA establishes similar rules with regard to officials. According to Section 47 of PSA, the transfer of an official to another position, or the assignment to him or her of functions beyond the scope of his or her position is permitted only with the written consent of the official, except in the cases provided for in Sections 60 (non-recurrent orders), 61 (natural disaster or accident) and 64 (substituting for an absent official) of the Act. Transfer of an official to another locality is permitted only with the written consent of the official, except in the cases provided for in Section 61.

163. Pursuant to Section 21 of the **Republic of Estonia Child Protection Act**, voluntary work appropriate to the age of the child is an important condition for the normal development of the child. The child should care for him or herself and should participate in common activities and work of his or her family. The state and local governments should create conditions necessary for work by the child. The social services departments should monitor compliance of work performed by children with the requirements for safety and health at work and with the principles of this Act.

164. **The Employment Contracts Act** and the associated legislation establish restrictions on the work performed by children. Section 2^1 of ECA prescribes that an employer may not employ a minor under 15 years of age or a minor subject to the obligation to attend school, unless otherwise provided by law. Minors of 13-14 years of age and minors of 15-16 years of age subject to the obligation to attend school are permitted to perform work where the nature of the tasks is simple and does not require great physical or mental effort. The list of such light work is established by a regulation of the Government of the Republic. For additional information, see items 283-307 in the second report.

165. The Labour Inspectorate has processed in 2003-2007 applications for a consent to employment of children of 13-14 years of age, and has granted or refused the consent as follows:

Year	2003	2004	2005	2006	2007	2008*
Number of employers submitting applications	110	142	176	195	216	0
Number of employers who were granted consent to employ a minor	104	130	156	168	189	0
Total number of minors in the applications	X	1 203	1 782	2 465	1 935	0
Number of minors who were granted consent to employment	X	1 087	1 475	2 262	1 778	0

In 2003, the Labour inspectorate did not collect data on the number of minors for whom a consent to employment was requested. No applications for employment of minors were submitted in the 1st quarter of 2008.

166. Pursuant to Section 83 of the **Imprisonment Act**, all differences concerning the work of minors arising from labour protection laws, including the provisions concerning working hours, shall be applied to the work of young prisoners less than 18 years of age.

Article 9. Right to liberty and security of person

167. The relevant articles (20 and 21) of the **Constitution** have been referenced in items 308-310 of the second report.

168. Pursuant to Article 24 (2) of the **Constitution**, everyone has the right to be tried in his or her presence.

169. Persons may be deprived of liberty only in the cases and pursuant to procedure provided by law, whereas law in this context means legislation adopted by the parliament. Article 20 of the Constitution provides an exhaustive list of cases in which deprivation of liberty is permitted. The bases for deprivation of liberty under criminal procedure and misdemeanour procedure in the Estonian legal order are provided by the Code of Criminal Procedure while the Mental Health Act establishes bases for deprivation of liberty for the purposes of psychiatric treatment.

170. The new **Code of Criminal Procedure** (CCP) entered into force on 1 July 2004 and Section 9 thereof stipulates that a suspect may be detained for up to forty-eight hours without an arrest warrant issued by a court, i.e., no major change has been made in comparison to the previous Code. A person under arrest should be immediately notified of the court's decision on arrest in a language and manner which he or she understands. Investigative bodies, Prosecutors'

Offices and courts should treat the participants in a proceeding without defamation or degradation of their dignity. No one may be subjected to torture or other cruel or inhuman treatment. In a criminal proceeding, it is permitted to interfere with the private and family life of a person only in the cases and pursuant to the procedure provided for in the Code in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter or secure the execution of a court judgment.

171. The regulation of arrest is provided in Chapter 4 of CCP on 'Securing of Criminal Proceedings and Preventive Measure', Section 130 ff. Pursuant to Section 130 of CCP, arrest is a preventive measure which is applied with regard to a suspect, accused or convicted offender and which means deprivation of a person of his or her liberty on the basis of a court ruling. A suspect or accused may be arrested at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if he or she is likely to abscond from the criminal proceeding or continue to commit criminal offences. In pre-trial procedure, a suspect or accused shall not be kept under arrest for more than six months. The term shall not include the time spent under provisional arrest in a foreign country by a person whose extradition has been applied for by the Republic of Estonia.

172. Pursuant to Section 131 of CCP, at the request of a suspect or accused, the Prosecutor's Office shall immediately notify his or her counsel of preparation of an application for an arrest warrant. An investigative body shall convey a suspect or accused with regard to whom an application for an arrest warrant has been prepared to a preliminary investigation judge for the hearing of the application. The prosecutor and, at the request of the person to be arrested, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard. For the purposes of arresting a person who has been declared a fugitive or a member of the Defence Forces who is a suspect and stays outside the territory of the Republic of Estonia, a preliminary investigation judge shall issue an arrest warrant without interrogating the person. Not later than on the second day following the date of apprehension of the fugitive or bringing the member of the Defence Forces who is a suspect into Estonia, the arrested person should be taken to the preliminary investigation judge for interrogation.

173. Pursuant to Section 133 (1) of CCP, the preliminary investigation judge or court shall immediately give notification of the arrest of a person to a person close to the arrested person and his or her place of employment or study.

174. Pursuant to Section 135 (1) of CCP, at the request of a suspect or accused, a preliminary investigation judge or court may impose bail instead of arrest.

175. Pursuant to Section 136 of CCP, a Prosecutor's Office, a person under arrest or his or her counsel may file an appeal against a court ruling by which arrest was imposed or refused, extension of the term for keeping under arrest or refusal to extend the term for keeping under arrest.

176. Pursuant to Section 137 of CCP, an arrested person or his or her counsel may, within two months after the arrest, submit a request to the preliminary investigation judge or court to verify the reasons for the arrest. A new request may be submitted two months after the review of the previous request. A preliminary investigation judge shall hear a request within five days as of the receipt of the appeal. The prosecutor, the counsel and, if necessary, the arrested person shall be

summoned before the preliminary investigation judge. The request is adjudicated by a court ruling which is not subject to appeal. If the term for keeping a person under arrest has been extended for more than six months, the preliminary investigation judge should verify the reasons for the arrest at least once a month by examining the criminal file regardless of whether verification of the reasons has been requested and shall appoint a counsel for the arrested person if he or she does not have a counsel.

177. The case law of the Supreme Court provides an overview of the application and interpretation of the above provisions of CCP. The decisions of the Supreme Court indicate that they are also guided by the principles established by the European Convention on Human Rights, according to which an arrest warrant should be reviewed in a court in the presence of the arrested person and there should be a right to contest such warrant. In addition, hearing should take place within a reasonable time. The European Court of Human Rights has also made some negative decisions in relation to Estonia, concluding that a court case has not been processed within a reasonable time (e.g., Sulaoja vs Estonia; Pihlak *vs* Estonia).

178. In its decision of 19 June 2003 in the criminal case 3-1-1-85-03, the Supreme Court concluded that a situation where a person accused at trial has been arrested for over four years is critically approaching the limit where it should be asked, whether the accused has been guaranteed the right to trial within a reasonable time.

179. On 19 January 2006 in criminal case 3-1-1-150-05, the Supreme Court explained that the appellant, his or her counsel or legal representative and prosecutor should be summoned to the hearing of an appeal against an arrest warrant and other court ruling in the judicial procedure, which applied a preventive measure or another measure for securing of criminal proceedings. Summoning of the person arrested, the counsel and prosecutor should guarantee the right of these persons to participate in the oral hearing of the appeal if they wish.

180. In addition, the Supreme Court emphasised that Article 5 (3) of the Convention, which is the source of the criminal procedure law pursuant to Section 2 (2) of CCP, gives rise to the requirement to bring the arrested person promptly before a judge to secure his or her right to be heard by a judge. The same principle is embodied in the provisions of CCP that regulate the rights of suspects and procedures of arrest (Section 34 (1) (6) and Section 131 (2-4) of CCP). The right of the arrested person to be heard by a judge is not restricted by the number of occasions within one criminal case. Quite in contrary, this right should be guaranteed in the review of each arrest warrant and irrespective of the fact whether the arrested person has a counsel or whether the counsel presents any counterarguments against the application for an arrest warrant of the Prosecutor's Office. Arresting a person without guaranteeing his or her right to be heard by a judge is considered by the Criminal Chamber to constitute such violation of the criminal procedure law, which leads to cancellation of the arrest warrant.

181. On 11 December 2006 in criminal case 3-1-1-103-06, the Supreme Court explained that a reasoned suspicion of an offence is the absolute precondition of arrest, which invades two fundamental rights - the right to freedom and presumption of innocence. The reasoned suspicion of an offence should be based on specific documents in the criminal file and the arrest warrant cannot be limited to the one sentence that the documents in the file indicate a reasoned suspicion of an offence. In addition, it should be acceptable, when the reasonability of the suspicion of an offence is assessed additionally also on the basis of general human, forensic and criminal

procedure experiences. Even in cases of most serious offences, the reasoned suspicion can only be a precondition of arrest but not simultaneously the basis for arrest. The Constitution and the Code of Criminal Procedure of the Republic of Estonia do not permit arrest of a person only on the basis of seriousness of the crime.

182. On 16 February 2007 in criminal case 3-1-1-126-06, the Supreme Court indicated that Section 137 (1) of CCP provides the arrested person or his or her counsel the opportunity to submit within two months after the arrest a request to the preliminary investigation judge or court to verify the reasons for the arrest, which is essentially an additional guarantee to secure the fundamental rights. The opportunity to submit an appeal against the arrest warrant and to request verification of the reasons for the arrest ensures that the arrested person has the possibility to submit an appeal and receive adequate, i.e., fair and efficient, judicial procedure to the extent required by the European Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the invasion of his or her fundamental right to freedom. Application of provisional custody is justified only if it is absolutely necessary and the desired lawful goal cannot be achieved in any other manner. This, in turn, means that upon dissolution of the reasoned suspicion of offence or basis of arrest the arrested person in prosecution should be released.

183. Application of compelled attendance is possible in all judicial procedures if a person summoned to court does not voluntarily appear in the court.

184. Pursuant to Section 139 (1) of CCP, compelled attendance means conveyance of a suspect, accused, convicted offender, victim, civil defendant or witness to an investigative body, Prosecutor’s Office or court for the performance of a procedural act.

185. Compelled attendance may be applied if:

(1) A person who has received a summons fails to appear without a good reason;

(2) Prior summoning of the person may hinder the criminal proceeding, or if the person refuses to come voluntarily at the order of the investigative body or Prosecutor’s Office;

(3) The person absconds from the execution of the court judgment. […]

186. A person subjected to compelled attendance may be detained for as long as is necessary for the performance of the procedural act which is the basis for application of compelled attendance but not for longer than forty-eight hours.

187. Pursuant to Section 47 (5) of the **Code of Civil Procedure** (CCiP), in order to execute a ruling on compelled attendance, a person may be detained for up to 48 hours before the beginning of a court session. The provisions of Section 139 (3-5) apply to the compelled attendance. Pursuant to Section 5 (1) of the Code of Administrative Court Procedure, in matters not regulated by the Code of Administrative Court Procedure, the administrative courts take guidance from provisions of civil procedure.

188. Amendments to the **Police Act** and related legislation entered into force on 13 July 2008. The goal in amending the Police Act was to ensure legal clarity in the application of police measures that invade the fundamental rights of persons. An analysis of police activities in securing public order, including responses to breaches of public order during mass disorders, and taking into account the proposals of the Chancellor of Justice on the need to amend legislation resulted in the opinion that the current Police Act needed supplementation to ensure legal clarity with regard to the rights of the police. According to the goal, the amendments will ensure clarity for the applicators of law with regard to their authority and also ensure sufficient protection of persons during application of police measures.

Mental health

189. The area of application of Article 9 also includes patients with mental disorders. The Committee recalled the obligation in Article 9, paragraph 4 of the Covenant to enable persons detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention. Estonia was asked to furnish additional information and take steps to bring this legislation into conformity with the Covenant.

190. Pursuant to Section 3 of the current **Mental Health Act** (version of 4 February 2006), the treatment of a person with a mental disorder without his or her informed consent or the consent of his or her legal representative is permitted only in the cases provided for in Sections 11 and 17 of this Act. Pursuant to Section 11 (1) of the Mental Health Act, a person is admitted to the psychiatric department of a hospital for emergency psychiatric care without the consent of the person or his or her legal representative, or the treatment of a person is continued regardless of his or her wishes (hereinafter '*involuntary care*') only if all of the following circumstances exist:

- The person has a severe mental disorder which restricts his or her ability to understand or control his or her behaviour

- Without inpatient treatment, the person endangers the life, health or safety of himself or herself or others due to a mental disorder

- Other psychiatric care is not sufficient

191. Pursuant to Section 11 (2), involuntary care may be applied only on the basis of a court ruling. Involuntary care may be applied without a court ruling if this is an emergency requirement to protect the person himself/herself or the public and obtaining a court ruling within a sufficient time is not possible. Pursuant to Section 11 (3), the decision to apply involuntary care is made by the psychiatrist of the psychiatric department upon arrival of the person in the psychiatric department or promptly after carrying out a medical examination of a person being treated on voluntary basis if the need for involuntary care becomes evident during examination. Such decisions should be documented pursuant to the procedure established by the Minister of Social Affairs. The date of documenting the decision is deemed to be the commencement of involuntary inpatient treatment. Involuntary care may be applied on the basis of such decision for a period of 48 hours after the start of involuntary care.

192. Pursuant to Section 11 (7), least restrictive methods that ensure safety of the person brought in for treatment and other persons should be used in case of involuntary care. The medical staff should respect the rights and legal interests of a patient.

193. Pursuant to Section 12 (4), a physician should inform the person of a decision under Section 11 (3 and 5) immediately and the persons close to the patient or his or her legal representatives within 12 hours of documenting the decision. Pursuant to Section 12 (5) of the Act, upon placing a person in involuntary care without a court ruling, a person close to and legal representative of the person or a physician, lawyer or other representative of their choice have the right to meet with the person placed in involuntary care. The duration of such meeting shall be decided by the attending physician based on the state of health of the person placed in treatment.

194. Pursuant to Section 13 (2), the duration of the involuntary care in the psychiatric department of a hospital may exceed 48 hours only with the authorisation of a court. Consequently, the current version of the Act no longer enables detaining a person for 14 days without court authorisation, which was a concern for the Committee on the earlier version.

195. The contract for provision of healthcare services, including the rights and obligations of patients, have been regulated in the **Law of Obligations Act**, in force since 1 July 2002.

196. The Supreme Court has reviewed appeals from persons who have been placed in involuntary care. This fact itself indicates, *inter alia*, that a person has the right to initiate proceedings to review and contest the lawfulness of his/her detention. In the ruling of 3 October 2007 in civil matter 3-2-1-83-07, the Supreme Court has confirmed that Article 21 of the Constitution applies in addition to detention of persons in criminal proceedings also to deprivation of liberty in other proceedings, incl. placing a person in a closed institution. If the basis for placing a person in a closed institution is a mental disorder, the condition of the person should be taken into account when informing the person of the reason of deprivation of liberty. Therefore, the Mental Health Act and the Code of Civil Procedure prescribe prompt authorisation of deprivation of liberty in a court (within 48 hours), appointing a representative to the person and (prompt) hearing of his or her close persons. In the opinion of the Chamber, the rules specified in the Mental Health Act and the Code of Civil Procedure do not violate the rights of a person guaranteed in Article 21 of the Constitution.

197. The Ministry of Social Affairs has the following statistical data on placing persons in care institutions on the basis of a court ruling or on the basis of a court ruling that restricts the active legal capacity of a person if he or she poses a risk to himself/herself or others.

Persons receiving treatment at the end of the year

Year	2003	2004	2005	2006	2007
Persons	165	173	167	162	166

During the year

Year	2003	2004	2005	2006	2007
Persons	189	198	203	206	196

198. Inpatient care (psychiatric), 2003-2007:

	2003	2004	2005	2006	2007
Involuntary placing:	2 288	2 895	3 058	2 200	2 158
• Treatment continued with authorisation of administrative court	9	51	15	1 299	1 460
Persons remaining in inpatient care by the end of the year - treatment in general psychiatric ward authorised by a court	37	69	79	72	119
• Treatment in a ward with additional security authorised by a court	37	69	38	42	88

199. Psychiatric expert assessments (conducted by psychiatrists), 2003-2007

	2003	2004	2005	2006	2007
Forensic psychiatric examination	709	549	483	581	586
Incl. outpatients	653	500	450	553	502
Incl. inpatients	56	49	33	28	84
Psychiatric examination to determine suitability for service in Defence Forces	3 173	2 790	1 561	1 415	1 507
Incl. outpatients	3 120	2 717	1 477	1 294	1 407
Incl. inpatients	53	73	84	121	100
Psychiatric examination in connection with establishing incapacity for work	7 053	8 362	6 327	5 974	6 202
Incl. outpatients	6 733	8 005	6 075	5 659	5 931
Incl. inpatients	320	357	252	315	271

200. The expert committee on the quality of healthcare at the Health Care Board has reviewed appeals with regard to psychiatric care (incl. involuntary care or application of restrictive measures) as follows:

	Year	No. of cases	Did the case concern involuntary care or application of restrictive measures?	Reasoning and circumstances of the appeal
1	2002	4	No	All: no
2	2003	2	1	All: no
3	2004	4	2	One appeal in connection with involuntary care was insufficiently documented in the opinion of the committee
4	2005	1	No	No
5	2006	-		
6	2007	6	4	Partially justified (in the opinion of the committee, the submitted documents contained partially conflicting statements)

201. In 2005-2006, the Health Care Board audited involuntary care in all Estonian hospitals where psychiatric services or at least restrictive measures were permitted. It was proposed that the Estonian Psychiatric Association should harmonise the practice in the hospitals and develop harmonised criteria for assessing the level of risk from the patients in order to supply the hospitals with up-to-date and harmonised methodological guidelines and recognised criteria. In addition, three hospitals were issued a precepts requiring specification of professional duties of security workers, which has been now accomplished.

Deserters

202. In connection with Article 9 (and 10), the Committee also made a comment about detention of deserters. The Committee was concerned at information that deserters may have been kept in solitary confinement for up to three months.

203. Pursuant to Section 215[1] of the **Defence Forces Service Act**, failure by a person eligible to be drafted to report for compulsory military service is punishable by a fine of up to 300 fine units or by detention. Pursuant to the Penal Code, a misdemeanour is punishable by a detention for up to 30 days. Consequently, evasion of service in Defence Forces is no longer a criminal offence, it is misdemeanour.

204. Pursuant to Section 436 of the current **Penal Code**, unauthorised departure from a military unit or any other place of service or failure to return to service within the specified term after an authorised departure, if unauthorised absence lasts for more than three days, is punishable by up to one year of imprisonment. The same act, if unauthorised absence lasts for more than thirty days, is punishable by up to two years of imprisonment.

205. Pursuant to Section 437 of the Penal Code, unauthorised departure from a military unit or any other place of service while carrying a service weapon is punishable by 1 to 5 years of imprisonment.

206. Pursuant to Section 439 of the Penal Code, unauthorised departure from a military unit or any other place of service with the intention to evade service in the Defence Forces is punishable by 1 to 5 years of imprisonment. The same act, if committed during a state of emergency or a state of war, is punishable by 2 to 10 years of imprisonment.

207. Pursuant to Section 440 of the Penal Code, a person who evades service in the Defence Forces by causing an injury to himself or by having an injury caused to him by another person, or by simulating an illness, falsifying documents or using any other fraud is punishable by 1 to 5 years of imprisonment. The same act, if committed with the intention to evade performance of duties related to service in the Defence Forces, is punishable by up to 3 years of imprisonment. The same act, if committed during a state of emergency or a state of war, is punishable by 2 to 10 years of imprisonment.

208. The procedure for detention of asylum seekers is regulated by the **Act on Granting International Protection to Aliens.** Pursuant to Section 32 of this act, an applicant who has submitted an application during his or her stay in the country may be detained at the initial reception centre but not for longer than forty-eight hours. An applicant may be accommodated temporarily in the offices of the Citizenship and Migration Board if this is necessary for the

performance of acts in the asylum proceedings. With the permission of an administrative court judge, an applicant may be detained and be required to stay at the initial reception centre after the expiry of 48 hours. Pursuant to Section 33 of the Act, an applicant who has submitted an application for asylum during his or her stay at the expulsion centre, in a prison or house of detention, or in the course of execution of the expulsion procedure shall not be placed in the initial reception centre but shall remain at the expulsion centre, in the prison or house of detention, respectively, until the termination of the asylum proceedings. If an alien who has submitted the application for asylum during his or her stay in a prison or house of detention is released from serving his or her sentence in the prison or house of detention, he or she shall be referred to the reception centre. If criminal proceedings have commenced with regard to the applicant, the provisions of this Act shall not apply in respect to him or her if this is contrary to the provisions of the Code of Criminal Procedure.

209. The procedure of detention in an expulsion centre (aliens) is explained under Article 13 of this report.

Compensation

210. Everyone who has fallen victim to unlawful detention or custody has the right to claim compensation; this is guaranteed by the laws of the Republic of Estonia.

211. **The Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act**, which entered into force on 1 January 2002, specifies that the following persons shall be compensated for damage caused by unjust deprivation of liberty:

(1) Persons who were held in custody with the permission of a court and criminal proceedings in whose matters were terminated at the stage of pre-trial investigation or in a preliminary hearing or persons with regard to whom a judgment of acquittal has entered into force;

(2) Persons who were detained on suspicion of a criminal offence or released when the suspicion ceased to exist;

(3) Persons who were held in prison and whose judgment of conviction has been annulled and criminal proceedings in whose matters were terminated or persons with regard to whom a judgment of acquittal has been made;

(4) Persons whose period of imprisonment has exceeded the term of the punishment which was imposed on the person;

(5) Persons with regard to whom unfounded coercive psychiatric treatment has been ordered by a court in connection with the commission of an unlawful act provided that a court ruling made with regard to such person has been annulled;

(6) Persons who served detention provided that the judgment ordering detention has been annulled;

(7) Persons who were unjustly deprived of liberty by a decision of an official authorised to deprive of liberty or without conducting disciplinary proceedings, misdemeanour proceedings or criminal proceedings if such proceedings were compulsory.

212. The state should compensate for the damage caused by unjust deprivation of liberty to the above persons regardless of the guilt of an official.

213. Pursuant to Section 3 of the Act, a person has the right to apply for compensation as of the date when a decision on annulment or amendment of a judgment of acquittal or judgment of conviction is made, when a ruling or order on the termination of proceedings enters into force or when a decision to release the person is made by an official.

214. Pursuant to Section 5 of the Act, compensation in an amount of seven daily rates (days' wages) shall be paid to the person for each twenty-four hour period during which the person was unjustly deprived of liberty. The daily rates (days' wages) are calculated on the basis of the minimum monthly wage established by the Government of the Republic, valid on the date of entry into force of a decision (order) on release of a person. The daily rates (days' wages) are determined by dividing the minimum monthly wage by 30, without taking account of the fractional part. Deprivation of liberty for less than one twenty-four hour period is deemed to be deprivation of liberty for one twenty-four hour period. Loss of profit as a result of unjust deprivation of liberty and non-proprietary damage caused thereby are deemed to be compensated for to a person by payment of such compensation. The amount of compensation for direct proprietary damage is determined in accordance with the provisions of the State Liability Act. If a person who was unjustly deprived of liberty has paid for legal assistance, he or she shall be compensated for the amount paid for the legal assistance according to the rate which is established for advocates in order to pay for their participation in criminal matters as criminal defence counsel if so requested by the preliminary investigator or the court.

215. Pursuant to Section 8 (1) of the **State Liability Act** (entered into force on 1 October 2002, current version of 18 November 2006), proprietary damage shall be compensated for in money. Compensation should create the financial situation in which the injured party would be had his or her rights not been violated.

216. Pursuant 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. We emphasise that even if there were no specific compensation procedures established in separate legal Acts, the Supreme Court has concluded that a claim for compensation of damage may be filed also on the basis of the general principles of the law and Article 25 of the Constitution (decision of 6 June 2002 in case 3-3-1-27-02).

Article 10. All persons deprived of their liberty shall have the right to be treated humanely and with dignity

217. Pursuant to Article 18 of the **Constitution**, no one shall be subjected to torture or to cruel or degrading treatment or punishment. This principle should also apply to prisoners.

218. Pursuant to Section 6 (1) of the **Imprisonment Act**, which entered into force on 1 December 2000, the objective of application of imprisonment is to help prisoners lead law-abiding life and to defend public order. The Imprisonment Act specifies the procedure and organisation of imprisonment, detention and custody pending trial, and the definition and conditions of prison service.

219. There were five operating prisons in Estonia in April 2008: Tallinn, Tartu, Murru, Viru and Harku. The transition to the single-cell system started with Tartu prison and Viru prison was opened in 2008. In the year 2012, after completion of the new buildings of Tallinn prison and merger of the Tallinn and Harku prisons, Estonia would have four prisons: Tallinn, Tartu and Viru as regional single-cell prisons with up to 1000 places each while Murru prison would be kept for the prisoners who have no problems with following the punishment implementation process. After reduction in the number of prisoners, it will be possible to close down Murru prison as the last colony-type prison.

220. Estonia has been criticised for the poor condition of the houses of detention but Estonia is taking steps to improve the situation. For example, the new Viru prison includes a house of detention with 150 places, complying with all requirements. This will ensure that persons who are detained for longer periods will no longer be held in Rakvere and Narva houses of detention that did not have adequate walking areas. The premises of Rahumäe house of detention have been repaired; the Northern Police Prefecture fully renovated in 2007 the lighting of cells and installed automatic ventilation. New lighting was installed in 2005 in the cells of Narva house of detention of the Eastern Police Prefecture. A modern ventilation system was built in 2006.

Statistical data on persons held in different prisons in 2002-2007

As on 01.01.2002

	Prisons														
	Harku prison	Pärnu prison	Murru prison	Tallinn prison	Maardu prison	Ämari prison	Central Hospital of Prisons	Central Prison	Life sentence	Viljandi open prison dep	Rummu open prison	Maardu prison (youth)	Viljandi prison	Harku prison (youth)	Total
Number of sentenced persons	136	110	1 787	326	7	547	50	158	31	1	32	2	81	2	3 270

As on 01.01.2003

	Harku	Central Prison	Central Prison Hospital	Maardu	Murru	Pärnu	Rummu	Tallinn	Tartu	Viljandi	Ämari	Total
Number of sentenced persons	129	0	64	9	1560	98	29	285	322	61	205	3 059

As on 01.01.2004

	Harku	Central Prison	Central Prison Hospital	Maardu	Murru	Pärnu	Rummu	Tallinn	Tartu	Viljandi	Ämari	Total
Number of sentenced persons	131		39	15	1 581	52	32	354	417	77	523	3 221

As on 01.01.2005

	Harku	Start	Maardu	Murru	Pärnu	Rummu	Tallinn	Tartu	Viljandi	Ämari	Total
Number of sentenced persons	147	41	0	1 601	50	0	436	550	105	539	3 469

Statistical data on persons held in different prisons in 2002-2007 (*continued*)

As on 01.01.2006

	Harku	Murru	Pärnu	Tallinn	Healthcare Department of Tallinn prison	Tartu	Viljandi	Ämari	Total
Number of sentenced persons	137	1 519	100	395	21	563	111	540	3 386

As on 01.01.2007

	Harku	Murru	Tallinn	Healthcare Department of Tallinn prison	Tartu	Viljandi	Ämari	Total
Number of sentenced persons	135	1 483	428	20	554	103	542	3 265

As on 01.01.2008

	Harku	Murru	Tallinn	Healthcare Department of Tallinn prison	Tartu	Viljandi	Ämari	Total
Number of sentenced persons	101	1 310	477	19	602	31	0	2 540

General information on the conditions in prisons

221. Imprisonment is applied in maximum-security or open prisons. For the accommodation of prisoners, a maximum-security prison has cells which enable constant visual or electronic surveillance of prisoners.

222. The length of the actual sentence imposed, the age, sex, state of health and personal characteristics are taken into consideration when placing prisoners to prisons. In prisons, prisoners shall be placed in cells or rooms. Section 12 of the Imprisonment Act specifies the requirement of segregation according to which the following shall be segregated in prisons: (1) men and women; (2) minors and adults; (3) imprisoned persons and persons in custody; (4) persons who due to their previous professional activities are in risk of revenge.

223. Section 22 of the **Imprisonment Act** specifies the privileges accessible to prisoners. The director of a prison may grant the following privileges to a prisoner with the consent of the prisoner: (1) work under supervision off-grounds; (2) unsupervised movement off-grounds related to studies, work and participation in a social programme or undergoing of treatment or for family reasons.

224. *Prisoners' contact with outside world and conditions of imprisonment* (Section 23 ff). The objective of prisoners' contact with the outside world is to facilitate the prisoners' contact with their families, relatives and other close persons in order to prevent the breaking of the prisoners' social links. Prisoners are permitted to receive at least one supervised visit per month from their family members and other persons with regard to whose reputation the prison administration has no reasoned doubts. The duration of a short-term visit may be up to three hours.

225. A prisoner shall be allowed to receive long-term visits from his or her spouse, father, mother, grandfather, grandmother, child, adoptive parent, adoptive child, step parent or foster parent, stepchild or foster child, brother or sister. Long-term visits with the actual spouse are permitted on the condition that they have children with each other or a shared household or have been living together for at least two years before the start of imposition of sentence. Long-term visit means that the prisoner and the visitor are allowed to live together without constant supervision in prison premises designated for such purpose during a period of one up to three days. A prisoner has unrestricted right to receive visits from his or her criminal defence counsel, representative who is an advocate, minister of religion and a consular officer of his or her country of nationality, and with a notary for performance of a notarial act. These visits should be uninterrupted.

226. Prisoners have the right to correspondence and use of telephone (except mobile phone) if relevant technical conditions exist. It is prohibited to examine the contents of prisoners' letters and telephone messages to the criminal defence counsel, prosecutor, a court, the Chancellor of Justice or the Ministry of Justice. Prisoners should be provided with the possibility to read national daily newspapers and national periodicals in a prison. A prisoner is permitted to subscribe, through the mediation of the prison, for a reasonable number of newspapers, periodicals and other pieces of literature out of his or her personal resources. Prisoners shall be allowed to listen to radio broadcasts and watch television broadcasts in a prison.

227. The position of the Chancellor of Justice also entails supervision of prisons and the conditions therein and the Chancellor of Justice is required to publish annual reports on his or her work. On his supervision visit to Harku prison on 6 February 2007, the Chancellor of Justice discovered that the officials of Harku prison only accept letters from prisoners to the Chancellor of Justice in open envelops and the contents of the envelopes are visually examined in the presence of the prisoner. The envelopes are sealed for sending only after such examination. The response letters from the Chancellor of Justice are also opened in the presence of the prisoner to examine the contents of the envelope and discover possible prohibited items, even though this is not permitted by Section 29 of the Imprisonment Act and Minister of Justice Regulation No. 72 of 30.11.2000 on 'Internal Rules of Prisons'. The Chancellor of Justice submitted a note to Harku prison in this matter and the prison has changed its practice correspondingly.

228. Religious ceremonies in prisons are organised by clergy. A prisoner has the right to participate in a religious ceremony at the time specified in the prison schedule. A prisoner has unrestricted right to receive visits from a minister of religion. The minister of religion contributes to the reintegration of prisoners in the society, providing assistance in communication, arranging a place in the local rehabilitation centre for the prisoner and advising the prisoner if necessary.

229. *Education and work in prisons.* The objective of providing an opportunity to prisoners to acquire education to is to ensure that the prisoners have adequate knowledge, skills and ethical principles which would allow the prisoners to continue their education and work after release.

230. Prisoners who are not proficient in Estonian should, at their request, be provided with an opportunity to study Estonian. The acquisition of education is organised during working hours. Remuneration for studies may be paid to adult prisoners.

231. Prisoners who have not acquired basic education shall be provided with the opportunity to acquire basic education on the basis of a corresponding national curriculum. Prisoners are provided with the opportunity to acquire secondary vocational education and to participate in vocational training according to their wish and aptitude. Areas of specialisation which are in the highest demand in society should be preferred upon providing prisoners with secondary vocational education.

232. The most popular specialisations include metal work, woodwork and sewing. A prisoner may apply for a permission to study outside the prison. Studies take place in Estonian or Russian language.

233. In order to improve the study conditions of prisoners, Tallinn prison refurbished in 2006 the general ventilation of the vocational school and carried out maintenance repairs of the electrical workshop of the vocational school. Electrical wires were partially replaced and the lighting system was improved. According to statistical data, the prisoners were involved in vocational studies in the school year 2006/2007 as follows:

Ämari prison - 100 prisoners

Murru prison - 140 prisoners

Harku prison - 10 prisoners

Tallinn prison - 24 prisoners

Viljandi prison - 44 prisoners

Tartu prison - 106 prisoners

234. 470 prisoners study in general education schools, including 52.5% in Estonian study language and 47.5% in Russian study language.

235. *Generally, prisoners are required to work*. The obligation to work does not apply to: (1) prisoners of more than 63 years of age; (2) prisoners who are acquiring general or secondary vocational education or participating in vocational training; (3) prisoners who are unable to work for health reasons; (4) prisoners who are raising a child of less than 3 years of age. The medical officer shall determine the ability of prisoners to work.

236. Prisoners' working conditions shall comply with the requirements established by labour protection law, except the specifications arising from this Act. A prison is required to ensure that prisoners are guaranteed working conditions which are safe to life and health. Prisoners may be required to work overtime, on their days off and on public holidays only with the consent of the prisoners. Prisoners who work are paid remuneration.

237. Work in prisons may be divided in two categories: household duties (e.g., support work, cleaning, assistance in kitchen, etc.) and work in manufacturing professions. AS Eesti Vanglatööstus (Estonian Prison Industry Ltd) organises the work of prisoners in manufacturing professions in Tartu, Harju, Murru and Tallinn prisons. The same company is also responsible for mediation of the labour force of the prisons to industrial companies that rent premises on prison territory.

238. Statistical data of the Ministry of Justice on the work of prisoners by prisons in 2002-2007:

821 prisoners (of total 3270 prisoners) worked in 2002

883 prisoners (of total 3059 prisoners) worked in 2003

946 prisoners (of total 3221 prisoners) worked in 2004

882 prisoners (of total 3469 prisoners) worked in 2005

853 prisoners (of total 3386 prisoners) worked in 2006

810 prisoners (of total 3265 prisoners) worked in 2007

239. Statistical data on the (content) of the work of prisoners by different prisons in 2002-2007. The types of work of the prisoners in the said period were as follows:

2002: 426 engaged in household work in the prison and 395 by AS Eesti Vanglatööstus

2003: 463 engaged in household work in the prison and 420 by AS Eesti Vanglatööstus

2004: 457 engaged in household work in the prison and 489 by AS Eesti Vanglatööstus

2005: 430 engaged in household work in the prison and 452 by AS Eesti Vanglatööstus

2006: 382 engaged in household work in the prison and 471 by AS Eesti Vanglatööstus

2007: 426 engaged in household work in the prison and 384 by AS Eesti Vanglatööstus

240. Tartu prison has 80 workplaces for prisoners. 34 prisoners are working on the territory of Tartu prison and 20 prisoners work outside the prison. In Harku prison, AS Eesti Vanglatööstus provides at the moment work for 80 prisoners; another 18 works are engaged in household work in the prison. AS Eesti Vanglatööstus increases or decreases the number of workplaces depending on the number of prisoners. Tallinn prison has 119 support work positions for prisoners. At the moment, 99 support work positions are filled. According to plans, Viru prison, opened in April 2008, should have 170 workplaces for prisoners.

241. *Living conditions and healthcare in prison*. The cell of a prisoner shall meet the general requirements established for dwellings on the basis of the Building Act which ensures the air flow and circulation, light and temperature in the cell which is necessary for living. The actual life does not always meet the requirements with regard to living conditions, as discovered by the Chancellor of Justice during his supervision visit to Harku prison on 6 February 2007 where he criticised, for example, the limited washing conditions but the situation is constantly improving with the opening of new imprisonment facilities.

242. The provision of food for prisoners shall be organised in conformity with the general dietary habits of the population with a view to meet the food requirement necessary for survival. Food shall be provided for prisoners on a regular basis and it shall be such as to meet the requirements of food hygiene. The medical officer should supervise the preparation of the prison's menu and the provision of food and should also prescribe dietetic food to prisoners. As far as possible, prisoners are permitted to observe the dietary habits of their religion. Even though the Council of Europe Commissioner for Human Rights has on 11 July 2007 criticised the requirements for allowing special diets, it should be noted that the permission to observe the dietary habits of one's religion is sufficiently flexible.

243. Estonian prison conditions have also been inspected by international bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which has made inspection visits to Estonia in 1997, 1999, 2003 and 2007. In addition, attention is paid to the modernisation of prison conditions by closing down the old colony-type prisons and building new prisons. For example, a new prison was opened in 2002 in Tartu; two prisons were closed in 2007; a prison in Viljandi will be closed in 2008 and a new Viru prison was opened in Jõhvi; a new prison will be opened in 2012 in Tallinn as well, after which the last colony-type prisons will be closed.

244. *Healthcare* in prisons constitutes a part of the national healthcare system. The availability of emergency care twenty-four hours a day shall be guaranteed to prisoners. Prisoners who need treatment which cannot be provided in prison shall be referred to treatment at relevant providers of specialised medical care by the medical officer of the prison. Prisons shall ensure the guard of prisoners during the time when prisoners are provided with health care services.

245. Prisons shall provide separate premises fitted out for women prisoners who are pregnant and organise care for children. A mother and her child of up three years of age (inclusive) shall be allowed to live together at the request of the mother if the guardianship authority grants consent. A prison shall ensure that the ties of a mother with her child over three years of age are sustained unless this disturbs the normal raising of the child or has a negative influence on the child.

246. Prisoners shall be provided with the opportunity to engage in sports. Prisoners shall be allowed at least one hour of walk in the open air daily.

247. Upon preparation of the release of a prisoner, the social welfare of the prisoner shall be organised, the prisoner shall be granted privileges or a prison leave or the prisoner shall be transferred to an open prison. The objective of social welfare is to assist the prisoners to sustain and develop essential and positive contacts with the outside world, to increase the prisoners' independent coping abilities and to encourage law-abiding behaviour of prisoners.

248. The first rehabilitation program was started in 2001 when Estonian prisons in cooperation with the Finnish Ministry of Justice educated prison staff members in the framework of an Anger Management program. The following main programs are provided: '12 Steps' for prisoners with drug problems and, in particular, prisoners who have committed offences due to drug addiction. 'Anger Substitution Training' to teach the participants to understand their anger and substitute it by more positive alternatives. This program is designed for prisoners who incline towards violence and have limited social skills. 'Anger Management' for impulsive and aggressive prisoners. The objective is to improve the knowledge of the participants of the processes in their body during anger reactions, explain the benefits of 'anger management' and provide the learners the opportunity to control their anger through role play. 'Preserving and Restoring Couple Relationship' for prisoners and their families to raise their awareness of potential emotional tensions after the release of the prisoners and possibilities for managing these tensions. The target group includes prisoners with a functional relationship and with a chance of early release within the next 4-6 months.

249. Drug prevention activities started in 1998. The main focus until 2003 was reducing 'supply' - availability of drugs was reduced by improving control mechanisms, identifying and punishing the users. Today, more attention is paid to reducing the demand (treatment and rehabilitation of drug users) and reduction of harm (managing the associated offences and diseases). The development plan of the Ministry of Justice until 2012 has established a goal of implementing drug prevention and rehabilitation measures according to which Tartu prison will be specialising on drug-using offenders who will be provided detoxification and substitute treatment. The issue of HIV/AIDS, which is a concern in prisons, is partially related to drug use.

250. The Imprisonment Act includes separate regulation for the imprisonment of young prisoners. For the purposes of the Imprisonment Act, a young prisoner means a person who at the time of enforcement of his or her punishment is younger than 21 years of age. Young prisoners shall be imprisoned in maximum-security or open prisons prescribed exclusively for such purpose (juvenile prisons) or in separate wards of maximum-security prisons (juvenile wards). Young prisoners shall be segregated in juvenile prisons and juvenile wards as follows: (1) young prisoners less than 15 years of age; (2) 15 up to 16 years of age; (3) 16 up to 18 years of age; (4) 18 up to 21 years of age.

251. All differences concerning the working of minors arising from labour protection laws, including the provisions concerning working hours, shall be applied to the working of young

prisoners less than 18 years of age. Young prisoners of up to 18 years of age are required to acquire basic education to the extent prescribed by law. Young prisoners shall be granted an opportunity to acquire secondary vocational education according to their wish and aptitude. The number or duration of visits provided for in the Imprisonment Act (provisions referred to above) and prison leaves may be increased with a view to achieve the objectives of imposition of imprisonment of a young prisoner.

252. In addition, we would like to mention that a draft act to amend the Code of Criminal Procedure is being prepared to change the process of criminal procedure, speeding up the review and resolution of criminal cases. This legislative amendment includes special provisions for faster hearing of the court cases of persons in custody and minors.

253. *Disciplinary sanctions imposed on prisoners*. Pursuant to Section 63 of the Imprisonment Act, disciplinary sanctions may be imposed on a prisoner for the violation of the requirements of the Imprisonment Act, internal rules of the prison or other legislation by the prisoner's fault. The sanctions include: (1) reprimand; (2) prohibition of one short or long-term visit; (3) removal from work for up to one month; (4) commission to a punishment cell for up to 45 twenty-four hour periods. Young prisoners may be committed to a punishment cell for up to 20 twenty-four hour periods.

254. Statistical data on the violations committed by prisoners in prisons in 2002-2007 (by prisons and violation categories).

2002

	Maardu	Harku	Murru	Rummu open prison	Ämari	Tallinn	Viljandi	Central Prison	Pärnu
Total	2	4	58	3	31	34		13	5

2003

	Maardu	Harku	Murru	Rummu open prison	Ämari	Tallinn	Viljandi	Tartu	Pärnu
Total	8	3	133	9	51	42	6	64	15

2004

	Maardu	Harku	Murru	Rummu open prison	Ämari	Tallinn	Viljandi	Tartu	Pärnu
Total	4	4	129	4	76	77	1	66	20

2005

	Murru	Ämari	Tallinn	Tartu	Pärnu	Viljandi	Harku
Total	148	102	77	29	21	9	7

2006

	Murru	Ämari	Tallinn	Tartu	Pärnu	Viljandi	Harku
Total	291	134	44	23	20	19	8

2007

	Murru	Ämari	Tallinn	Tartu	Viljandi	Harku
Total	383	151	105	22	5	7

255. *Prison organisation and officers*. Professional education of prison officers is provided by the Estonian Public Service Academy. The Public Service Academy is the educational institution that prepares officers for all internal security authorities. Professional preparation of prison officers takes place at the level of both vocational studies and higher education. All guards and senior guards have to pass the vocational studies for prison officers. The duration of vocational studies is one school year. Half of the school year is spent on theoretical studies at the Public Service Academy and the other half on practical studies in prison. Class 1 and 2 prison inspectors (inspector, specialist, chief specialist, duty officer, head of department) and chief inspectors (prison director and deputy director) have to complete the applied higher education course in correctional studies. The study period is three years with theoretical studies accounting for 2/3 and practical training for 1/3 of the total studies.

256. Officers who have not completed professional training upon starting employment in prison should pass local basic training in prison. As of autumn 2007, the Public Service Academy started to provide centralised basic training as well. The study period of basic training is two weeks. An inter-prison training plan is drafted annually for the provision of in-service training to prison officers in view of the training and in-service training requirements of different groups of officers. A large part of specific in-service training is provided by the officers of the prison system and the Ministry of Justice while management training and other similar courses are provided by various training companies.

257. *Disciplinary punishment of prison officers*. Various national institutions carry out prison inspections. Everyone whose rights and freedoms are violated has the right of recourse to the courts pursuant to Article 15 of the **Constitution**. In addition to courts, the prisons are also supervised by the Ministry of Justice, with the prisons belonging to its administrative area, as well as the Ministry of Education and Research (educational matters) and the Ministry of Social Affairs (healthcare matters). The Chancellor of Justice has also supervisory competence to verify whether a public authority respects the fundamental rights and freedoms of persons and follows good administrative practice. Social control is exercised through prison committees established at the prisons and through the media. Consequently, if a prisoner believes that his or her rights have been violated, he or she has the right to file an application with respective supervisory authorities. In addition, the above supervisory authorities, except the courts, can also carry out inspections at their own initiative. For instance, the Chancellor of Justice found during his visit to Murru prison on 16 April 2007 special cells that did not comply with the requirements for cells but caused suspicion that they might have been used for disciplinary sanctions. The Chancellor of Justice issued a respective note to the prison to which the prison replied that they have placed shelves in the cell in question.

258. Prison officers are subject to both disciplinary and criminal punishment. Pursuant to Section 150 of the **Imprisonment Act**, various disciplinary punishments may be imposed on prison officers who committed disciplinary offences. These punishments include: reprimand, reduction of salary by 10 to 50 per cent for up to three months, or release from service pursuant to Section 118 of the Public Service Act.

259. Unlawful treatment of prisoners or persons in detention or custody and abuse of authority are punishable under criminal law pursuant to the **Penal Code**. Pursuant to 324 of the Penal Code, an official of a custodial institution who, taking advantage of his or her official position, degrades the dignity of a prisoner or a person in detention or custody, or discriminates against such person or unlawfully restricts his or her rights, shall be punished by a pecuniary punishment or up to one year of imprisonment. Pursuant to Section 291 of the Penal Code, an official who unlawfully uses a weapon, special equipment or violence while performing his or her official duties shall be punished by a pecuniary punishment or 1 to 5 years of imprisonment.

260. Statistical data on disciplinary proceedings and sanctions initiated against the staff of penal institutions (in connection with the violation of rights of prisoners) in 2002-2007:

	2002	2003	2004	2005	2006	2007
Disciplinary proceedings initiated	0	0	5	2	3	8
Sanctions	0	0	Reprimand in 2 cases	0	0	Reprimand in 1 case

261. There have been no criminal proceedings.

262. The Ministry of Justice supervises the work of prisons through supervisory control (in addition to daily operational activities). Supervisory control means inspection of prisons to discover, correct and prevent errors in the actual work and work organisation of the prison. Supervisory control includes controls of the lawfulness and efficiency of prison work and accurate documentation of procedures.

Date	Prison	Objective
15.03-23.04.2004	All	Control of remuneration of all prison officers since 1 July 2003
April 2004	Maardu	Control of lawfulness of the actions of officers and structural units of Maardu prison and adequacy of their response in connection with the death of prisoner Valeri Lesnugin in Maardu prison on 22 April 2004
7.06-11.06.2004	Murru	Control of the procedure for granting prison leave permissions in Murru prison
3.04-8.04.2005	Pärnu, Tartu	Control of official travel in the government area of the Ministry of Justice
2.05-20.05.2005	Ämari	Control of compliance with the Estonian language proficiency requirements for prison officers and the actions of the prison to ensure compliance
28.09-13.10.2006	Murru	Control of supervision of prisoners in Murru prison
18.06-21.06.2007	Tallinn	Control of compliance with the precepts in the approved final report on regular supervisory control

263. The majority of precepts issued in the framework of supervisory control have required more accurate compliance with professional duties. The prisons have not received any complaints and have not initiated any investigations on the basis of Section 122 (torture) of the **Penal Code** but there have been cases of physical abuse in prison and 52 corresponding criminal procedures have been initiated since 2005.

264. In 2005, 22 criminal procedures were initiated on the basis of Section 121 (physical abuse) of the Penal Code: Murru prison - 2; Tallinn prison - 4; Tartu prison - 6; Pärnu prison - 3; Viljandi prison - 1; Ämari prison - 6. 16 criminal procedures were initiated in 2006: Murru prison - 8; Tallinn prison - 3; Tartu prison - 5. 14 criminal procedures have been initiated since the beginning of 2007: Murru prison - 8; Ämari prison - 2; Tallinn prison - 3.

265. All criminal procedures initiated on the basis of Section 121 of the Penal Code have dealt with injuries due to conflicts between prisoners. The register of criminal matters does not enable identification of procedures initiated against officers.

266. *Information and right of appeal*. Pursuant to Section 14 (2) of the Imprisonment Act, the prisoner should meet with the director of the prison or a prison officer appointed by the director not later than on the day following the date on which a prisoner arrived in a prison and the director or officer should explain to the prisoner his or her rights and obligations. The prisoner should be given written information concerning the Acts which regulate the application of his or her imprisonment, the internal rules of the prison and the submission of complaints. In addition to access to legislation, the prisoners can have daily communication with the appointed contact persons who they can also approach with questions regarding the possibilities of appeal. Since 2007, the prisoners have the opportunity to visit the electronic Riigi Teataja (State Gazette) web page to search for legislative Acts through special computers installed in prisons. In addition, the prisoners have electronic access to the national database of judicial decisions and the HUDOC database of the case law of the European Court of Human Rights.

267. Section 1^1 (4-9) regulates the procedure for challenges and right of appeal. All challenges and requests for the commencement of administrative proceedings and all requests in administrative proceedings should be submitted in writing.

268. There is also established case law on guaranteeing the rights of prisoners. In the following, we provide some examples from the jurisprudence of the Supreme Court in connection with the Imprisonment Act.

269. In its decisions of 22 March 2006 (administrative matter 3-3-1-2-06) and 28 March 2006 (administrative matter 3-3-1-14-06), the Supreme Court has emphasised that dignity is the foundation of all fundamental rights and the objective of the protection of fundamental rights and freedoms. Even though a person who has committed an offence should serve a punishment and, therefore, his or her fundamental rights and freedoms are restricted in accordance with the law, this does not give the right to greater interference with the fundamental rights of the person than prescribed directly by the law. The conditions of disciplinary punishment applicable to a prisoner should be specified to a sufficient degree and these requirements should be observed. Commission to a punishment cell without adequate legal basis is unlawful and also degrading for the dignity due to the extremely restrictive nature of this measure.

270. In the decision of 1 March 2007 in administrative matter 3-3-1-103-06, the Supreme Court analysed the right to use a telephone in prison and concluded that, even though the prison officers may supervise the use of telephone due to the need to ensure security and supervision of prisoners in the prison and to prevent abuse of the right to unrestricted communication with the defence counsel and administrative authorities, the supervision of the use of telephone may not violate the prisoner's right to confidentiality of the message.

271. In the decision of 31 May 2007 (administrative matter 3-3-1-20-07), the Supreme Court concluded that the universal right to freely obtain information disseminated for public use arises from the Constitution. Restricting prisoners' access to published judicial decisions, incl. the database of decisions of the European Court of Human Rights, constitutes a restriction of this right. Universal right to freely obtain information disseminated for public use is a fundamental right, which may be restricted only on the basis of other constitutional rules. The regulation on the outside communication of the prisoner, which establishes the existence of relevant technical conditions as a precondition for the use of means of communication (Section 28 (1) of the Imprisonment Act), is not sufficient.

272. For deserters, see Article 9.

Article 11. No person may be deprived of his liberty solely on the grounds of inability to fulfil a contractual obligation

273. See item 109 in the first report and item 438 in the second report.

Article 12. The right to liberty of movement and freedom to choose his or her residence

274. The limitations prescribed by law are necessary in a democratic society to protect the benefits listed in the Constitution and are in accordance with the general comment No. 27 of the Human Rights Committee (HRI/GEN/1/Rev.7 - General Comments adopted by the Human Rights Committee). In addition, the Supreme Court as the highest court, in deciding on appeals, has the right to assess the proportionality of limitations, i.e., their adequacy, necessity and moderation in the interests of the objective, which is a precondition for establishing limitation in the Convention as well. Consequently, a mechanism has been created to ensure annulment of disproportional limitations.

275. In a decision of 6 October 1997 (constitutional matter 3-4-1-3-97), the Supreme Court has concluded with regard to the liberty of movement that the Article 34 of the Constitution provides an opportunity to restrict the liberty of movement in cases and pursuant to the procedure prescribed by law. For the purposes of this provision of the Constitution, law is understood in the formal sense, not in the sense of any legislation of general application.

276. Pursuant to Article 35 of the **Constitution**, everyone has the right to leave Estonia. This right may be restricted in the cases and pursuant to procedure provided by law to ensure the administration of court or pre-trial procedure, or to execute a court judgment. Further restrictions have been established by the War-Time National Defence Act and State of Emergency Act.

277. A person's right and/or obligation to leave any country, including the native country, is associated with the need to possess a required identity document. An Estonian citizen staying (residing) permanently in Estonia and an alien staying (residing) permanently in Estonia on the basis of a right of residence should hold an identity card.

278. Pursuant to the **State Borders Act**, an Estonian citizen crossing the state border upon departure from Estonia or arrival in Estonia should carry a travel document or other document which is prescribed for visiting a foreign state by an international agreement. A citizen of a third country who lacks the legal basis or who does not hold a valid travel document for entry in Estonia and who wishes to apply for asylum or for residence permit on the basis of temporary protection in Estonia shall be allowed to enter Estonia after submitting an application for asylum or an application for residence permit on the basis of temporary protection to the border guard authority.

279. The documents associated with the movement of aliens between countries are alien's passport, temporary travel document, travel document for refugee, and certificate of record of service on Estonian ships. A temporary travel document is a travel document issued by the Republic of Estonia to an alien staying in Estonia for departure from and return to Estonia.

280. Pursuant to the **Identity Documents Act**, a certificate of return shall be issued to an Estonian citizen staying in a foreign state whose travel document becomes unusable or is destroyed or lost.

281. A permit of return may be issued pursuant to the Identity Documents Act to an alien for return to Estonia if: (1) the alien resides in the Republic of Estonia on the basis of a residence permit and his or her alien's passport, temporary travel document or travel document for a refugee becomes unusable or is destroyed or lost when he or she is in a foreign state; (2) the Republic of Estonia consents to the return of the alien pursuant to an international agreement.

282. The above regulation guarantees the person's right to leave and return to the country and the obligation to guarantee this right is also prescribed in the general comment No. 27 of the Human Rights Committee (HRI/GEN/1/Rev.7 - General Comments adopted by the Human Rights Committee).

283. Statistics of the Citizenship and Migration Board: applications for identity documents

	2002	2003	2004	2005	2006	2007
ID cards in total	140 150	245 116	311 396	207 777	143 843	116 346
Estonian passports	179 640	260 161	203 887	141 891	122 238	100 454
Alien's passports	9 409	11 319	22 450	58 058	12 557	9 417
Seafarer's discharge books	983	1384	1567	950	1234	714
Certificates of record of service on Estonian ships	557	379	681	1 327	634	357
Temporary travel documents	138	145	116	84	63	69
Travel documents for refugees	2	2	3	0	0	1
Total	330 879	518 506	540 100	410 087	280 569	227 358

284. Article 36 of the **Constitution** of the Republic of Estonia prescribes that no Estonian citizen may be expelled from Estonia or prevented from settling in Estonia. No Estonian citizen may be extradited to a foreign state, except under conditions prescribed by an international treaty and pursuant to procedure provided by such treaty and by law. Extradition is decided by the Government of the Republic. Everyone who is under an extradition order has the right to contest the extradition in an Estonian court. Every Estonian has the right to settle in Estonia.

285. Consequently, the Constitution of the Republic of Estonia grants every citizen of Estonia the unalienable right to live in Estonia and prohibits expulsion of citizens from Estonia. **The Obligation to Leave and Prohibition on Entry Act**, which provides the bases for the application of the obligation to leave Estonia and the prohibition on entry into Estonia, only applies to aliens. In addition, it should be emphasized that, pursuant to the Constitution, every Estonian has the right to settle in Estonia: the term ‘Estonian’ has a different meaning than the term ‘citizen of Estonia’ and has no clear definition; it tends to be associated with national self-determination (proficiency in Estonian language, ancestry).

286. Pursuant to Section 17 of the **State Borders Act**, in the interests of national security, in order to prevent the spread of an infectious disease into Estonia or into the territory of a foreign state, and at the request of a foreign state, the Government of the Republic has the right to: (1) temporarily restrict the crossing of the state border or suspend the crossing of the state border; (2) establish quarantine for the crossing of the state border for persons and conveyance of domestic animals, poultry, livestock products, plant produce and other cargo across the border. The Government of the Republic shall notify the interested states of restriction on crossing of the state border or closure of the state border.

287. Precepts to leave, precepts to leave subject to compulsory execution, precepts to legalise, imposition of penalty payment

	2002	2003	2004	2005	2006	2007
Precepts to legalise	597	427	291	325	258	233
Impositions of penalty payment	78	43	175	234	180	100
Precepts to leave	235	191	151	117	142	138
Precepts to leave subject to compulsory execution	26	47	24	28	35	24

288. Valid prohibitions on entry

	10.2003	01.01.2008
Temporary	867	1 637
Permanent	254	388
Total	1 121	2 025

289. In reference to the concluding observations of the Human Rights Committee of 3 April 2003 (CCPR/CO/77/EST) on the second report of Estonia (CCPR/C/EST/2002/2), Estonia has already replied to the concern at the high number of stateless persons and low number of naturalisations expressed in the concluding observation No. 14 (Answers to the UN Human Rights Committee on the International Covenant on Civil and Political Rights, submitted on 24 March 2003).

290. An alien who wishes to acquire Estonian citizenship should satisfy the criteria established in the **Citizenship Act** and meet the requirements of the Act. Parents who are not citizens of any country may apply for Estonian citizenship for their child who was born in Estonia after 26 February 1992 and is not deemed and has not been deemed by any other state to be a citizen of that state. The parents should have been legally residing in Estonia for at least five years. The basis of legal residence in Estonia is deemed to be a valid residence permit. This legislative amendment was based on the recommendations of the CRC Committee. For citizenship of children and the simplified procedure for acquisition of such citizenship, see Article 24.

291. Statistics of the Citizenship and Migration Board: acquisition and resumption of Estonian citizenship

- Persons who acquired citizenship by naturalisation in different years

Basis	2002	2003	2004	2005	2006	2007
General conditions	2 213	1 720	3 483	4 552	3 254	2 408
Minors under 15 years of age	1 673	1 895	2 899	2 332	1 492	1 733
Achievements of special merit	10	10	6	9	4	4
Persons with restricted active legal capacity or disability	195	81	135	179	3	83
Total	4 091	3 706	6 523	7 072	4 753	4 228

- Decisions to refuse to grant citizenship

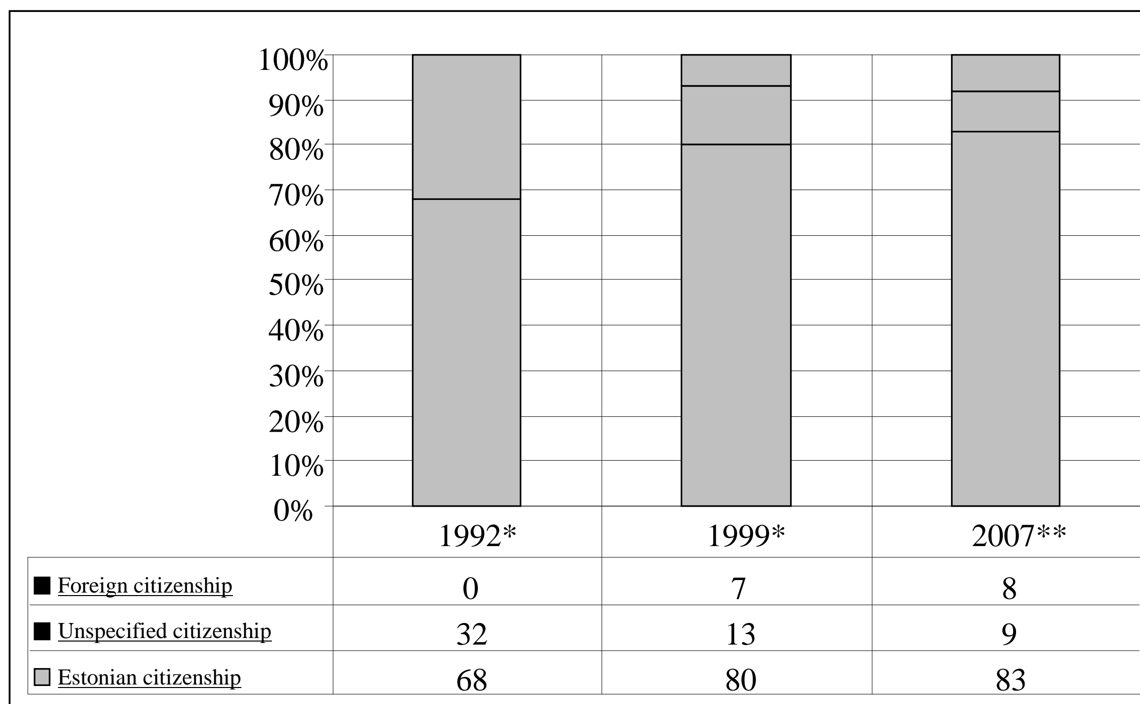
	2002	2003	2004	2005	2006	2007
Refusals	22	17	8	27	44	21

- Persons who lost Estonian citizenship

	2002	2003	2004	2005	2006	2007
Release	381	188	56	75	54	38
Deeming as lost		1	1	4	6	18

292. As on 2 February 2008, Estonia had 112 049 persons with undetermined citizenship, i.e., 8 % of the population (51 253 persons with undetermined citizenship resided in Tallinn and 35 911 in Ida-Virumaa). The percentage of persons with undetermined citizenship in Estonian population has been constantly decreasing.

Figure 3. Distribution of Estonian population by citizenship (%) (2007)



* *Source*: Citizenship and Migration Board (2006).

** *Source*: Population Register (as on 02.01.2007).

*** *Source*: Population Register (as on 02.01.2008).

293. One of the objectives of the Estonian Integration Program 2008-2013 is to achieve a situation by 2013 where the percentage of persons with undetermined citizenship in Estonian population has been constantly decreasing. On the Integration Program in general, see Article 27.

294. As regards to the case law on refusal to grant of citizenship, the Supreme Court *en banc* has taken the position (e.g., in decision 3-3-1-101-06 of 3 January 2008 and others) that the international law leaves the specific conditions for the acquisition of citizenship to be decided by individual countries and the conditions for acquisition of citizenship by naturalisation are prescribed by the national citizenship policy, which lies in the competence of the Riigikogu. The Constitution does not specify the subjective right to acquire citizenship by naturalisation as a fundamental right. Upon establishing rules that regulate acquisition and loss of citizenship, the legislator should consider the fundamental rights and freedoms laid down in the Constitution. Major fundamental rights that the legislator should consider upon regulating citizenship are the fundamental right to equality and non-discrimination.

295. **The entry of aliens into Estonia, their stay, residence and employment in Estonia and the bases for legal liability of aliens are regulated in the Aliens Act.** Pursuant to the Aliens

Act, aliens staying in Estonia are guaranteed rights and freedoms equal to those of Estonian citizens unless the Constitution, other Acts or international agreements of Estonia provide otherwise. Aliens are guaranteed the rights and freedoms arising from the generally recognised rules of international law and international custom. However, aliens staying in Estonia are required to observe the constitutional order and legislation of Estonia.

296. **The Act on Granting International protection to Aliens** grants international protection to an alien with regard to whom refugee status or supplementary protection status is established or to an alien with regard to whom it is established that he or she belongs to the category of persons in need of temporary protection as defined in a decision of the Council of the European Union.

297. The alien should have a legal basis for entry and stay in Estonia. The legal bases of the stay of an alien in Estonia include residence permit, visa or another legal basis.

298. The annual immigration quota is the quota for aliens immigrating to Estonia which shall not exceed 0.1 per cent of the permanent population of Estonia annually. The immigration quota is established annually by the Government of the Republic. Persons who have the right to settle in Estonia outside of the immigration quota or to whom the immigration quota does not apply are not included in calculating fulfilment of the immigration quota. The immigration quota does not apply to certain persons, for instance, people whose immigration is related to marriage or blood relationship.

299. In reference to the principles of equal rights and protection of family life, the Supreme Court has in its decisions declared several decisions to refuse the grant of citizenship to be in conflict with the Constitution if they were only justified with the fulfilment of the immigration quota. The Supreme Court has (decision of 18 May 2000 in administrative matter 3-3-1-11-00; decision of 12 June 2000 in administrative matter 3-3-1-15-00) adopted the position that only fulfilment of the immigration quota cannot be sufficient justification for refusal to grant of residence permit to an alien who is living family life in Estonia within the meaning of the Constitution. Non-compliance of the application of immigration quota in individual cases cannot constitute a basis for questioning the constitutionality of the quota as such. A person with regard to whom it has been established that his or her spouse was born in Estonia and is permanently residing in Estonia, has property and place of employment in Estonia and is unable to lead family life in the country of his or her citizenship, cannot be refused the temporary residence permit only on the grounds that the immigration quota has been fulfilled.

300. The **Aliens Act** was amended on the basis of these court decisions and, as of 1 October 2002, the Act establishes that the immigration quota does not apply to the spouse of an Estonian citizen or of an alien who resides in Estonia on the basis of a residence permit and to a minor child, adult child, parent, grandparent or ward of an Estonian citizen or of an alien to whom a residence permit is issued on the basis provided for by law. Even the CERD committee noted in its concluding observations on the fifth periodic report of Estonia (CERD/C373/Add.2) with satisfaction that the immigration quota are no longer applied to the spouses of the Estonian citizens and non-citizens residing in Estonia and to children under 15 years of age.

301. Statistics of the Citizenship and Migration Board

- Registered applications for temporary residence permit and for extension of such permit

Basis	2002	2003	2004	2005	2006	2007
Family migration	2 246	2 575	2 413	2 563	2 549	2 656
Work	1 074	1 238	1 146	1 380	1 223	1 053
Entrepreneurship			176	254	132	16
Study	936	850	766	716	531	446
Legal income	462	511	861	1 114	569	95
International agreement	3 158	3 430	2 971	8 162	8 962	2 978
Long-term stay			2	0	0	
Total	7 876	8 604	8 335	14 189	13 966	7 244

- Use of immigration quota

Basis	2002	2003	2004*	2005	2006	2007
Temporary residence permit for employment	41	207		300	442	551
Temporary residence permit on the basis of an international agreement	119	86		77	120	116
Temporary residence permit in case of sufficient legal income	3	40		33	22	18
Temporary residence permit for enterprise		4		2	5	1
Family migration	262					
Total	425	337	310	412	589	686

* Data on the distribution of the use of quota in 2004 is not available

- Refusals to grant residence permits and documents to aliens

	2002	2003	2004	2005	2006	2007
Temporary residence permit	31	116	128	77	70	57
Extension of temporary residence permit	3	24	68	89	60	30
Long-term residence permit	9	75	95	49	117	150
Alien’s passport	51	33	31	58	30	15
Alien’s ID	237	403	523	363	291	139

302. The Supreme Court has (constitutional matter No. 3-4-1-2-01 of 5 March 2001) declared Section 12 (4) and Section 12 (5) of the Aliens Act to be in conflict with the Constitution. These provisions did not enable considering the behaviour of an alien who has been staying in the country for a long time in assessing his or her threat to the security of the country, duration of permanent residence, consequences of expulsion for his or her family members, and connections of the immigrant and his or her family members with the country of origin.

303. The UN Human Rights Committee reviewed the action of Vjatseslav Tsarjov (an alien who has been in the service of a former foreign security service) against the Republic of Estonia. Mr. Tsarjov filed an action against the refusal to grant of permanent residence permit and claimed that the Republic of Estonia violated his rights guaranteed by the International Covenant on Civil and Political Rights. The Committee published its opinion on the action on 26 October 2007 and found that the Republic of Estonia has not violated the rights of Mr. Tsarjov, which are guaranteed by the Covenant.

304. In the decision of 21 June 2004 (constitutional matter 3-4-1-9-04), the Supreme Court declared unconstitutional the provision of the Aliens Act, which did not grant the competent authority the right of discretion in refusing to grant a residence permit due to submission of false information. The Supreme Court adopted the position that the principle of proportionality is linked with the right of discretion. The executive power needs the right of discretion to ensure application of the principle of proportionality.

305. The new **Citizen of European Union Act** entered into force on 1 August 2006, changing the conditions and procedures required in case of the citizens of the European Union, the citizens of the European Economic Area, and the citizens of the Swiss Confederation (hereinafter citizens of the European Union) and to their family members from third countries for taking up residence in Estonia. The citizens of EU who resided in Estonia on the basis of a residence permit on 1 August 2006 are deemed to be citizens of EU with the right of residence. The right of residence of an EU citizen in Estonia may be temporary or permanent. Entitlement to permanent right of residence is generally created after residing in Estonia for a period of five years on the basis of temporary right of residence.

306. In order to acquire the temporary right of residence, an EU citizen should register his or her residence at the local government authority within three months after the date of entry in Estonia. The temporary right of residence is acquired for up to five years.

307. A citizen of the EU is entitled to permanent right of residence if he or she has resided in Estonia for five consecutive years based on temporary right of residence. Permanent residence in Estonia means staying in Estonia for at least 183 days during a year. The period of the EU citizen’s residence in Estonia on the basis of residence permit prior to 1 August 2006 is included in the period required for eligibility to permanent right of residence. A newborn child of a citizen of the EU with permanent right of residence is entitled to permanent right of residence.

308. Estonia has amended the **Aliens Act** and brought it into compliance with the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals

who are long-term residents. After the amendment, the Aliens Act contains as of 1 June 2006 a new chapter that specifies the regulation of residence permit for long-term residents. The main criterion for acquisition of the status of long-term resident is, pursuant to Directive 2003/109/EC, the duration of residence on the territory of a Member State.

Article 13. Expulsion of aliens

309. The comments on this article are based on current legislation of the Republic of Estonia, case-law of the Supreme Court and the following information materials: Estonian Migration Foundation, European Migration Network, third 'Return' study - Estonian report, 14 September 2006 (available in the internet at http://www.migfond.ee/ee/files/Return%20Study%20eesti%20keeles_EMF.doc).

310. At first, it should be emphasised that **the Republic of Estonia belongs to the Schengen visa area as of 21 December 2007**, the European Parliament and Council Regulation No. 562/2006 is applicable to Estonia and, consequently, Estonian legislation has undergone significant amendments. The amendments made in connection with accession to the Schengen visa area entered into force on 21 December 2007 and pertain, *inter alia*, to expulsion of aliens from the country.

311. Aliens are prohibited from staying in Estonia without a legal basis. All persons staying unlawfully in Estonia are under the obligation to leave. If a person has no legal basis for entry in the country (visa, residence permit, the person is not a citizen of Estonia), he or she is sent back from the border.

312. **The Obligation to Leave and Prohibition on Entry Act provides the bases and procedure for the application to the aliens of the obligation to leave Estonia and the prohibition on entry into Estonia as well as the procedure of transit of aliens through Estonia.** For details on the aliens' obligation to have a legal basis for stay in Estonia, see Article 12 of the Covenant.

313. Both voluntary and compulsory expulsion may be applied to expel a person from Estonia. Sending back from the border is the responsibility of the Board of Border Guard. Various state authorities, agencies and third-sector representatives participate in the process of sending back. Cooperation occurs both between the different departments of one authority (e.g., Citizenship and Migration Board (CMB) cooperates with the expulsion centre) and between different public authorities (e.g., CMB and the Board of Border Guard). The CMB also cooperates with the Estonian Migration Foundation in the field of return and expulsion.

314. An alien staying in Estonia without any basis for stay is issued a precept to leave Estonia. The precept is issued by CMB. Before the issue of a precept, an alien shall be notified of issue of the precept and the possibility to provide his or her opinion and objections shall be granted. A precept shall be prepared in writing and shall set out obligation imposed on the alien by the precept, a warning regarding the consequences of failure to comply with the precept, surveillance measures to be applied, the factual circumstances which are the basis for the issue of the precept, and applied legislative or regulatory provisions and a reference to the possibilities and place as well as terms and procedure for the contestation of the precept. The Citizenship and Migration Board shall, if possible and in accordance with the standard format established by the Minister of

Internal Affairs, enter a notation concerning the issue of a precept in the travel document of an alien which the alien uses to cross the border. The precept may be contested in an administrative court.

315. An alien shall be expelled from Estonia upon expiry of the term for compulsory execution of a precept to leave. Expulsion may be contested pursuant to the procedure provided for in the Code of Administrative Court Procedure. On average, 3-5 persons are expelled each month. CMB, Border Guard and the police are the authorities responsible for execution of expulsion.

316. Expulsion is not applied if: (1) a precept is annulled or declared invalid or it has expired; (2) expulsion is no longer possible; (3) expulsion is prohibited pursuant to the Obligation to Leave and Prohibition on Entry Act, or (4) an alien, who is subject of an expulsion decision made on the grounds referred to in Article 3 of the Council Directive No. 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals, has a residence permit or he or she is a citizen of the European Union, a Member State of the European Economic Area or the Swiss Confederation or is a family member of such citizen.

317. An alien, who is subject of an expulsion decision made on the grounds referred to in Article 3 of the Council Directive No. 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals, which has not been annulled or suspended by the country that made this decision, shall be expelled from Estonia without issuing a precept and without permission of administrative court. In addition, a precept to leave and permission of administrative court are not required for expulsion of an alien who has entered Estonia illegally; a prisoner who is an alien and has no residence permit or right of residence upon release or release on parole before the prescribed time; an alien who is staying in Estonia without a basis upon expiry of his or her visa-free period of stay permitted on the basis of an agreement on visa-free travel between states, other international agreement or a resolution of the Government of the Republic to forego the visa requirement.

318. Since 1 May 2003, the **Obligation to Leave and Prohibition on Entry Act** stipulates that an alien may not be expelled to a state to which expulsion may result in consequences specified in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty. The expulsion of an alien shall comply with Articles 32 and 33 of the United Nations Convention relating to the Status of Refugees (together with the Protocol relating to the Status of Refugees of 31 January 1967).

319. A person to be expelled who does not have a valid travel document required for crossing the state border may be issued a single travel document of the European Union, which is accepted by the country of destination.

320. Section 9^{1} of the **State Borders Act** states similarly that persons who are not permitted to cross the state border, and persons who illegally cross the state border, are detained or seized and returned into a state from or through which they arrived or were conveyed into Estonia, taking into account the specifications in the **Citizen of European Union Act**. The carrier who transports, personally or through a representative, persons who are not permitted to cross the state border shall organise and cover the expenses for their return from the border.

321. Pursuant to Section 22 of the **Obligation to Leave and Prohibition on Entry Act**, if the admitting country refuses to admit a person to be expelled or if other circumstances impeding the completion of expulsion become evident, the person to be expelled shall be detained by way of administrative procedure until the completion of his or her expulsion or until he or she is placed in an expulsion centre, but not for longer than forty-eight hours. If it is not possible to complete expulsion within the specified term, the person to be expelled shall be placed in an expulsion centre, subject to a permission of an administrative judge, until his or her expulsion, but for not longer than two months. If it is impossible to enforce expulsion within the term of detention in an expulsion centre, an administrative court shall extend the term of detention in the expulsion centre of a person to be expelled up to two months at a time until expulsion is enforced or until the alien is released.

322. Persons to be expelled are placed in an expulsion centre. Male and female persons to be expelled shall be accommodated in separate rooms. If possible, family members shall be accommodated together. A minor shall be accommodated separately from adult persons to be expelled except if this is evidently in conflict with the interests of the minor.

323. The expulsion centre was opened for the persons to be expelled in March 2003. In total, the centre can accommodate 42 persons to be expelled. The rooms of the persons to be expelled comply with the requirements for living quarters. Normally, no more than two persons are placed in one room. The persons to be expelled can use three dining and recreation rooms (one in each hallway), which are equipped with furniture, television and radio, three rest-rooms with the possibility to use a shower 24 hours a day. The persons to be expelled can use a laundry machine and a dryer. Books for reading are available in dining and recreation rooms. The persons to be expelled can use a ping pong table, various board games and drawing tools. Persons to be expelled are permitted to move about in the residential building of the expulsion centre in the rooms prescribed by the internal rules from the time of rising until the time of retiring.

324. Catering for persons to be expelled is organised in the common dining and recreation room. Catering for persons to be expelled shall be organised in conformity with the general dietary habits of the population of Estonia with a view to meet the food requirement necessary for survival. Food shall be provided on a regular basis and it shall be such as to meet the hygiene requirements. The compliance of catering with the requirements is monitored by the nurse of the expulsion centre.

325. A medical examination of the person to be expelled is organised upon his or her arrival in the expulsion centre and an examination of infectious diseases is conducted subject to consent of the person to be expelled. Emergency medical care shall be ensured for persons to be expelled.

326. Persons to be expelled have the right of correspondence and the use of telephone. Visits by the consular officer, legal counsel and clergy are allowed for persons to be expelled. Short-term supervised visits of personal, legal or commercial interest by other persons may be permitted by the head of the expulsion centre.

327. If an illegal immigrant is granted the opportunity to leave Estonia within a specific term (the term is specified in the precept to leave), he or she may apply for remigration support from the Estonian Migration Foundation (EMF) subject to satisfying other established criteria. Within the limits of its competence, EMF also offers free counselling (explaining which documents are required for return, recommends travel agents, real estate agents, translation agencies, etc.).

328. Estonia has concluded agreements on readmission with 21 countries: Latvia, Lithuania, Finland, Norway, Sweden, Iceland, Slovenia, Italy, Switzerland, France, Germany, Benelux countries (Belgium, the Netherlands, Luxembourg), Spain, Croatia, Austria, Portugal, Hungary, Bulgaria and Romania. Draft agreements on readmission are being prepared with Georgia, Azerbaijan, Armenia, Greece and Ukraine.

329. In case of other countries, the authorities are guided by the information received on the person to be returned and good practice. The agreements on readmission have been concluded to ensure prompt return of the person who illegally stays in or enters the country to the country of his or her origin or nationality.

330. Now that the EU has concluded an agreement on readmission with the Russian Federation, the procedure of returning persons to Russia should become less complicated (the agreement was signed on 25 May 2006 and entered into force on 1 June 2007). After entry into force of the agreement on readmission, the Russian foreign mission should promptly and irrespective of the will of the person issue the person to be readmitted the required travel document. The agreement also simplifies expulsion of third-country nationals who have arrived in the European Union through the Russian Federation. The Russian Federation was granted a three-year transition period in this respect. At first, Russian only readmits the citizens of such third countries with whom it has concluded agreements on readmission. The agreements constitute part of the European Community law and do not require additional ratification in the parliaments of the Member States.

331. The Supreme Court of the Republic of Estonia has also analysed the impossibility of expulsion. For example, the Supreme Court has in its decision of 13 November 2006 (administrative case 3-3-1-45-06) confirmed that one case in which expulsion is impossible is absence of an admitting country. Pursuant to the law, a person to be expelled should be expelled to the country from which he or she arrived to Estonia, to the country of his or her nationality, to the country of his or her habitual residence, or to a third state with the consent of the third state. If there is more than one option, the reasoned preference of the person to be expelled shall be the primary consideration. The prospects of expulsion depend in addition to existing citizenship also on other factors, including existence of an admitting country, which may also be a third country. The prospect that a country agrees to admit a person who has been living in Estonia for a long time and is not a national of that country is significantly lower than in case of the national of the respective country. The links of the person with the relevant country should be investigated, also simple ethnic attributes and existence of close relatives in that country cannot sufficiently justify the position that the country in question could be the admitting country for the person of undefined nationality. The same should be considered in case of persons with undetermined citizenship who have been living in Estonia for a long time but originate from the former republics of the USSR. If expulsion of persons from Estonia to a country has not succeeded due to the reasons associated with that country or if expulsion has succeeded only rarely then expulsion to this country should be deemed to have low prospects. If expulsion has low

prospects in case of an admitting country, a person should not be placed in an expulsion centre for expulsion to that country, because detention in an expulsion centre is an intense interference in the right to freedom protected by Article 20 (2) (6) of the Constitution.

332. Similarly, in the decision of 16 October 2006 (administrative case 3-3-1-53-06), the Supreme Court has concluded that detention of a person in an expulsion centre without a prospect of expulsion should be assessed in the light of Article 20 (2) (4) of the Constitution and Article 5 (1) (f) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which directly guarantee everyone the protection of physical liberty from arbitrary detention with a view to extradition. In the interests of protection of dignity and physical liberty, the prospects of expulsion of the person should be considered already when making a decision on the application for temporary residence permit. In case of refusal to grant the residence permit, reasons on prospects of expulsion should be submitted. The prospects of expulsion should be also considered when the authority deciding on the application for residence permit differs from the authority deciding on expulsion and placing in an expulsion centre. If consideration indicates that the prospects of expulsion are low, the residence permit should be granted irrespective of the fact that the law permits granting a residence permit only as an exception.

333. Statistics of the Citizenship and Migration Board: aliens placed in the expulsion centre*

	2002	2003	2004	2005	2006	2007
Aliens placed in the expulsion centre	35	23	14	31	35	39

* Expulsion camp in 2002.

334. **The Act on Granting International Protection to Aliens** regulates the bases for granting international protection for aliens, the legal status of aliens and the bases for their stay in Estonia on the basis of international agreements and the legislation of the European Union. International protection is granted to an alien with regard to whom refugee status or supplementary protection status is established or to an alien with regard to whom it is established that he or she belongs to the category of persons in need of temporary protection as defined in a decision of the Council of the European Union. An alien is a third-country national or a stateless person. A third-country national is an alien who is a national of a country other than a Member State of the European Union, a Member State of the European Economic Area or the Swiss Confederation.

335. Section 4 of the Act provides a definition of refugees and persons enjoying subsidiary protection:

- A refugee is an alien who, owing to a well-founded fear of being persecuted or for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country and with regard to whom no circumstance exists precluding recognition as a refugee.

- Person enjoying subsidiary protection is an alien who does not qualify as a refugee and with regard to whom no circumstance exists which would preclude granting of subsidiary protection and in respect of whom substantial grounds have shown for believing that his or her return or expulsion from Estonia to his or her country of origin may result in a serious risk in the specified country, including:

  (1) Imposition or execution of death penalty to him or her; or

  (2) Torture or inhuman or degrading treatment or punishment of him or her; or

  (3) Individual threat to his or her life or civilians' life or violence towards him or her or civilians by reason of international or internal armed conflict.

336. The purpose of temporary protection is to provide, in the event of a mass influx or imminent mass influx of aliens who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of aliens requesting temporary protection.

337. Statistics of the Citizenship and Migration Board

Applications for asylum	2002	2003	2004	2005	2006	2007
	9	14	11	11	7	14
Decisions on asylum	2002	2003	2004	2005	2006	2007
Asylum granted						2
Subsidiary protection granted	1			1		2

No unaccompanied minors have submitted applications for asylum during the period 2002-2007. Three minors have been placed in the expulsion centre during the period 2003-2007.

338. In addition, we would like to refer to possible expulsion in connection with a crime in the first degree. Pursuant to Section 54 of the **Penal Code**, if a court convicts a citizen of a foreign state of a criminal offence in the first degree and imposes imprisonment, the court may impose expulsion with prohibition on entry within ten years as supplementary punishment on the convicted offender. If the spouse or a minor child of the convicted person lives with him or her in the same family in Estonia on a legal basis, the court in its judgment shall provide reasons for imposition of expulsion. Expulsion shall not be imposed on a convicted citizen of a foreign state who at the time of commission of the criminal offence was less than 18 years of age.

Article 14. Equality of all persons before the courts

Article 14 (1) - Equality before the courts

339. Reference concerning the articles in the Constitution relevant to equality before the courts and competence, independence and impartiality of the courts is made in paragraphs 119-121 of the First Report and paragraph 490 of the Second Report.

340. Pursuant to § 4 of the new **Code of Criminal Procedure (CCP)**, Criminal procedural law applies equally to all persons, with the exceptions provided for in the law.

341. § 376 of the CCP establishes a special procedure for preparation of statement of charges, according to which a statement of charges with regard to the President of the Republic, members of the Government of the Republic and the Riigikogu, the Auditor General, or the Chief Justice and justices of the Supreme Court may be prepared only on the proposal of the Chancellor of Justice and with the consent of the majority of the membership of the Riigikogu. A statement of charges with regard to the Chancellor of Justice may be prepared only on the proposal of the President of the Republic and with the consent of the majority of the membership of the Riigikogu. A statement of charges with regard to a judge may be prepared only on the proposal of the Supreme Court and with the consent of the President of the Republic. A special procedure is also provided for performance of related procedural acts.

342. Pursuant to § 7 of the **Code of Civil Procedure (CCiP)**, in the administration of justice in civil matters, the parties and other persons are equal before the law and the court. The same principle applies upon administrative court procedures.

343. The legal basis for administration of courts and court service has been provided for in the **Courts Act**. Pursuant to § 2 of the Courts Act, justice shall be administered solely by the courts. No one has the right to interfere with the administration of justice. Acts which are directed at disturbing the administration of justice are prohibited in courts and in the vicinity thereof.

344. § 3 of the Courts Act establishes the main guarantees for independence of judges: judges shall be appointed for life; judges may be removed from office only by a court judgment; criminal charges against a judge of a court of the first instance and a court of appeal may be brought during their term of office only on the proposal of the Supreme Court *en banc* with the consent of the President of the Republic; criminal charges against a justice of the Supreme Court may be brought during his or her term of office only on the proposal of the Chancellor of Justice with the consent of the majority of the membership of the Riigikogu.

345. Information on independence and impartiality of courts has been provided in the documents **"Answers to the Questionnaire of the Human Rights Committee on ICCPR"** (pg 39-41: "Independence of the judiciary"); "**Answers of the Estonian Delegation to additional questions to the Human Rights Committee from 21 March 2003**" (pg 1-7).

346. Pursuant to Article 24 of the **Constitution**, no one shall be transferred, against his or her free will, from the jurisdiction of the court specified by law to the jurisdiction of another court. Everyone has the right to be tried in his or her presence. Court sessions shall be public. A court may, in the cases and pursuant to procedure provided by law, declare that a session or a part thereof be held *in camera* to protect a state or business secret, morals or the private and family life of a person, or where the interests of a minor, a victim, or justice so require. Judgment shall be pronounced publicly, except in cases where the interests of a minor, a spouse, or a victim require otherwise. Relevant exceptions for declaring a proceeding (session) subject to conducting *in camera* have been specified in the codes of court proceeding.

347. §s 11 and 12 of the CCP establish the principle of public access to court sessions and the restrictions on the public access. The principle of public access applies to the pronouncement of court decisions without restrictions unless the interests of a minor, spouse or victim require pronouncement of a court decision in a court session held *in camera*. A court may remove a minor from a public court session if this is necessary for the protection of the interests of the minor. A court may declare that a session or a part thereof be held *in camera*:

(1) In order to protect a state or business secret or classified foreign information;

(2) In order to protect morals or the private and family life of a person;

(3) In the interests of a minor;

(4) In the interests of justice, including in cases where public access to the court session may endanger the security of the court, a party to the court proceeding or a witness.

If a court session is held *in camera*, the court shall warn the parties to the court proceeding and other persons present in the courtroom that disclosure of the information relating to the proceeding is prohibited.

348. § 37 of the CCiP establishes the principle of public court hearings and § 38 regulates declaration of proceedings as closed. The general rule is that court hearing of a matter is public. The court shall declare a proceeding or a part thereof closed on the initiative of the court or based on a petition of a participant in the proceeding if this is clearly necessary:

(1) For the protection of national security or public order and above all, for the protection of a state secret, classified foreign information or information intended for internal use;

(2) For the protection of life, health or freedom of a participant in a proceeding, witness or other person;

(3) For the protection of the private life of a participant in a proceeding, witness or other person unless the interest of open proceeding exceeds the interest of protection of private life;

(4) In order to maintain the confidentiality of adoption;

(5) In the interests of a minor or a mentally handicapped person and, above all, for hearing such persons;

(6) For the protection of business or know-how secrets if public hearing is likely to damage an interest deserving substantial protection;

(7) For hearing a person obligated by law to protect confidential information or business secrets of persons if the person is entitled by law to disclose such information and secrets in the course of a proceeding;

(8) For the protection of the confidentiality of messages transmitted by post, telegraph, telephone or other commonly used means.

The court may declare a proceeding or a part closed on its own initiative or based on a petition of a participant in the proceeding in a case not specified above if objective administration of justice would otherwise be clearly compromised or if the possibility to convince the parties to terminate the proceeding by compromise or resolve the dispute in another manner is higher in a closed proceeding.

349. Pursuant to Subsection 19 (4) of the **Code of Administrative Court Procedure**, matters are heard orally in public court sessions. Matters may be heard in a court session held *in camera* in the cases provided by civil procedure.

Article 14 (2) - The presumption of innocence, burden of proof

350. Pursuant to § 22 of the **Constitution**, no one shall be presumed guilty of a criminal offence until a conviction by a court against him or her enters into force. No one has the duty to prove his or her innocence in a criminal procedure. No one shall be compelled to testify against himself or herself, or against those closest to him or her.

351. § 7 of the CCP establishes that no one shall be presumed guilty of a criminal offence before a judgment of conviction has entered into force with regard to him or her. No one is required to prove his or her innocence in a criminal proceeding. A suspicion of guilt regarding a suspect or accused which has not been eliminated in a criminal proceeding shall be interpreted to the benefit of the suspect or accused.

352. The Supreme Court has established special characteristics of criminal proceedings, for example, in proceedings in tax matters. The Supreme Court has stated (in its decision of 22 October 2007 regarding criminal case 3-1-1-57-07), that in the case of a criminal proceeding several fundamental rights are guaranteed to the person that can be regarded as procedural guarantees which are not granted under administrative proceeding or administrative court proceeding. One of the most important among such criminal proceeding guarantees is the principle provided for in Article 22, paragraph 2 of the Constitution and considered an element of the presumption of innocence, namely that no one is required to prove his or her innocence in a criminal proceeding. Also, pursuant to Article 22, paragraph 3 of the Constitution, a person has the right to refuse to testify against himself or herself or against those closest to him or her. Since the burden of proof is different in tax proceedings as compared to criminal proceedings, unlike a taxable person in a tax proceeding, pursuant to Subsection 7 (2) of the CCP, a suspect or accused in criminal proceeding is not required to submit proof on that expenses have been incurred on account of income taxed earlier or on which tax is not imposed, or on account of loans received.

353. In its decision of 5 October 2007 (criminal case 3-1-1-50-07), the Supreme Court emphasized that pursuant to the presumption of innocence, only suspicion which has not been eliminated shall be interpreted to the benefit of the accused regardless of whether the suspicion is sufficient or not.

354. However, in its decision of 18 December 2007 (criminal case 3-1-1-85-07), the Supreme Court has stated that if the accused decides to actively defend himself or herself, the accused is required to submit proof for confirmation of the accuracy of his or her allegations or at least create a real possibility for verification of the allegations by the body conducting proceedings. If the accused defending himself or herself actively fails to submit evidence confirming the accuracy of his or her allegations or provide a real possibility for verification of said allegations, there is no ground for claiming that there are doubts regarding the version supported by the prosecution that should be interpreted to the benefit of the accused.

Article 14 (3) - Minimum guarantees

355. Reference to the relevant articles in the Constitution is made in paragraph 124 of the First Report and reference to §s of the CCP in paragraphs 527-540 of the Second Report. Since 1 July 2004, a new CCP is in force instead of the CCP referred to in the Second Report; guarantees to persons have not been amended with the new Code.

Article 14 (3) (a) - Notification obligation

356. Subsection 9 (2) of the CCP stipulates that a person under arrest shall be immediately notified of the court's decision on arrest in a language and manner which he or she understands.

357. Pursuant to § 10 of the CCP, the language of criminal proceeding is Estonian, but with the consent of the participants in the proceeding it may be conducted in another language if the participants are proficient in such language. The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian. If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

358. Pursuant to § 339 of the CCP, it is considered a material violation of criminal procedural law if a criminal case is heard without participation of a translator or an interpreter in a language in which the accused is not proficient.

359. Pursuant to Subsection 33 (2) of the CCP, the rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

Article 14 (3) (b) - Right of defence

360. Pursuant to § 43 of the CCP, in a criminal proceeding, the suspect and accused may choose a counsel personally or through another person. A counsel shall be appointed by an investigative body, Prosecutor's Office or court, if:

(1) The suspect or accused has not chosen a counsel but has requested the appointment of a counsel;

(2) The suspect or accused has not requested a counsel but the participation of a counsel is mandatory;

(3) A counsel chosen by a person cannot assume the duties of defence within twelve hours as of the detention of the person as a suspect or, in other cases, within twenty-four hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself.

361. According to Subsection 45 (1) of the CCP, a counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings. The participation of a counsel in a pre-trial proceeding is mandatory as of presentation of the criminal file for examination. The participation of a counsel in a court proceeding is mandatory.

362. The rights of a counsel also include the right to confer with the person being defended without the presence of other persons for an unlimited number of times with unlimited duration unless a different duration of the conference is provided for in the Code (CCP 47). Both prisoners and arrested persons have unrestricted right to be visited by their criminal defence council or representative who is an advocate. Visits shall be uninterrupted. Visits from a criminal defence counsel and a representative who is an advocate shall be allowed within sight but not within hearing distance from prison officers. It is not permitted to terminate visits from a criminal defence counsel (**Imprisonment Act**).

363. The accused has the right to examine the criminal file through his or her counsel and participate in the court hearing (CCP 35 (2)). The accused have the right to participate in person at hearings in courts of all instances, in addition to the criminal defence counsel's participation in the court proceeding.

Article 14 (3) (c) - Trial without undue delay

364. In its Decision of 20 October 2005 (criminal case 3-1-1-95-05), the Supreme Court annulled a judgment of a court of appeal and enforced the judgment of acquittal of a court of first instance, inter alia, based on the opinion expressed by the Supreme Court that the reasonable time for proceeding of the matter had already passed.

365. The Supreme Court has discussed the principle of reasonable time in more detail in its Decision of 26 November 2007 (criminal matter 3-1-1-58-07). A person's right to demand that public hearing of his or her case takes place within a reasonable time emanates from the first sentence of Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In criminal proceedings, the aforementioned right of a person is reflected in the obligation of all bodies conducting proceedings to take steps both in pre-trial procedure and in judicial proceedings for resolution of the criminal case as quickly as possible. The limits of reasonable time in the proceedings of a criminal case depend on the gravity of the criminal offence, complexity and volume of the criminal case, as well as on other specific circumstances, including the course of the proceeding so far.

Article 14 (3) (d) - Trial in the person's presence; right to legal assistance on account of the State

366. A person has the right to be tried in his or her presence in all instances of judicial proceedings. The right of defence has been guaranteed to a person based on the CCP; it is mandatory as of presentation of the criminal file for examination in pre-trial procedure and judicial proceedings.

367. Pursuant to § 43 of the CCP, a counsel shall participate in criminal procedure, whether on contractual basis or appointed by an investigative body, Prosecutor's Office or court. In a court proceeding, a person being defended may, upon agreement, have up to three counsels. For more detailed information regarding appointment of counsel, see Article 14 (3) (b).

368. Funds spent on legal assistance by the state, in kroons (data of Ministry of Justice)

	Criminal matters	Civil matters	Administrative matters	Misdemeanour matters	Other	Year total
2003	24 940 537.06	1 119 872.46	128 599.00	49 894.80		26 238 903.32
2004	24 267 763.80	1 617 763.25	151 662.05	50 511.05		26 087 700.15
2005	22 201 857.56	1 427 884.40	162 054.10	92 785.50	19 417.90	32 247 971.97
2006	36 107 670.50	3 533 768.60	238 375.00	148 210.00	22 165.70	40 050 189.80
2007	39 755 231.50	6 440 204.00	248 021.70	104 624.90	8 378.00	46 556 460.10

Comment regarding the total sum of 2005: since a new reporting system was introduced during the year, in many cases the domain of legal assistance was not specified, for which reason the total sum of domains differs from the total sum of the year.

369. 1. The purpose of the **State Legal Aid Act (SLAA)** that came into force on 1 March 2005 is to ensure the timely and sufficient availability of competent and reliable legal services for all persons. State legal aid is provided to natural or legal persons unable to pay for competent legal services in judicial proceedings, pre-trial proceedings, enforcement proceedings and administrative proceedings, as well as for preparation of legal documents and other legal counselling or representation.

More specifically, pursuant to § 4 of the SLAA, the categories of state legal aid are:

(1) Appointed defence in criminal proceedings;

(2) Representing a person in pre-trial proceedings in a criminal matter and in court;

(3) Defending a person in extrajudicial proceedings in a misdemeanour matter and in court;

(4) Representing a person in pre-trial proceedings in a civil matter and in court;

(5) Representing a person in administrative court proceedings;

(6) Representing a person in administrative proceedings;

(7) Representing a person in enforcement proceedings;

(8) Preparing legal documents;

(9) Providing other legal counselling to a person or representing a person in another manner.

370. Pursuant to § 6 of the SLAA, a natural person may receive state legal aid if the person is unable to pay for competent legal services due to his or her financial situation at the time the person is in need of legal aid or is able to pay for legal services only partially or in instalments or whose financial situation does not allow meeting basic subsistence needs after paying for legal services.

371. In criminal proceedings, a suspect or accused who is a natural person who has not chosen a criminal defence counsel by agreement and in whose criminal case the participation of a criminal defence counsel is required by law or who applies for the participation of a criminal defence counsel may receive state legal aid regardless of his or her financial situation. State legal aid is also granted to an insolvent legal person who has not chosen a criminal defence counsel by agreement and in whose criminal case the participation of a criminal defence counsel is required by law or who applies for the participation of a criminal defence counsel may receive state legal aid as a suspect or accused. In court proceedings regarding a misdemeanour matter, a natural person subject to proceedings who has not chosen a defence counsel by agreement and in whose misdemeanour matter the participation of a defence counsel is required by law may receive state legal aid regardless of his or her financial situation. In court proceedings regarding a misdemeanour matter, an insolvent legal person who has not chosen a defence counsel by agreement and in whose misdemeanour matter the participation of a defence counsel is required by law may also receive state legal aid. Special provisions regarding state legal aid also exist regarding insolvent non-profit associations or foundations which are entered in the list of non-profit associations or foundations benefiting from income tax incentives or are equal thereto.

372. Pursuant to § 5 of the SLAA, state legal aid is provided by an advocate pursuant to the Bar Association Act. Estonian Bar Association is a self-governing professional association acting on local government administration principles established on 14 June 1919 for the organization of the provision of legal service in private and public interest and defending of the professional rights of the attorneys. Estonian Bar Association assists the members of the Bar Association in their professional activity and performs surveillance, also looks out for the carrying on of the traditions of Estonian attorneys. The Bar Association also carries out the public law function - discharges functions in relation to civil defence and representation in civil and administrative matters for a fee payable by the state. Since 1992, Estonian Bar Association is a member of the International Bar Association (IBA), and since 1 May 2004 a full member of a body uniting the bar associations of the Member States of the European Union (CCBE).

373. The members of the Bar Association (advocates) include sworn advocates, senior clerks of sworn advocates and clerks of sworn advocates. As at 1 January 2008, Estonian Bar Association has a total of 662 members: 333 sworn advocates; 124 senior clerks of sworn advocates; 69 clerks of sworn advocates; 13 associated members; 92 persons have suspended their professional activity.

Article 14 (3) (e) - hearing of witnesses

374. Pursuant to Subsection 66 (1) of the CCP, a witness is a natural person who may know facts relating to a subject of proof. The right of the accused to participate in the hearing of his or her criminal case includes the right to request summoning of witnesses to court and the right of posing questions to them.

375. § 288 of the CCP establishes the rules of cross-examination. In a cross-examination, the party to the court proceeding at whose request the witness has been summoned to the court is the first to examine the witness. It is prohibited to pose leading questions during a first examination. A first examination is followed by the second examination by the counter-party. Leading questions may be posed in the second examination in order to verify the testimony given in the first examination. In the second examination, leading questions shall not be posed concerning new facts. The person who was the first to examine a witness may examine the witness again in order to clarify the answers given in the second examination. Leading questions may be posed only concerning the new facts treated in the second examination. The court intervenes in a cross-examination in order to overrule prohibited, irrelevant or defamatory questions posed to the witness.

376. In addition to this, pursuant to § 289 of the CCP, in order to verify the credibility of the testimony of a witness, the court may, at the request of a party to the court proceeding, order that the testimony given by the witness in pre-trial procedure be disclosed during the cross-examination if such testimony is in conflict with the testimony given during the cross-examination.

377. Specifications have been provided for in the CCP concerning hearing of witnesses who are less than fourteen years old, and such persons cannot be cross-examined.

378. 28. In its Decision of 28 June 2006 (criminal case 3-1-1-52-06), the Supreme Court has explained that the adversary principle of judicial proceedings is emphasized by provisions of § 288 of the CCP, according to which the basic method for judicial investigation of personal evidence is cross-examination. In the case of cross-examination, the acquisition of statements used as evidence in court mainly takes place as a result of joint activity of the parties to the judicial proceedings involving continuous and active verification of each other's sources of evidence. In cross-examination, the court's role is significantly more neutral as compared to the period before entry into force of the new Code of Criminal Procedure. Moreover, cross-examination guarantees more efficient defence of the accused, since the criminal defence counsel has the possibility of verifying the reliability of the statements made by prosecution's witnesses or the victim in the second examination.

379. In addition to this, pursuant to § 291 of the CCP, at the request of a party to a court proceeding, the court may order that the testimony given by a witness in pre-trial procedure be disclosed if the witness: is dead; refuses to give testimony in the course of examination by the court, except upon lawful refusal to give testimony; witness suffers from a serious illness and therefore he or she cannot appear at a court session; the whereabouts of the witness cannot be ascertained; the witness fails to appear in court due to other impediment.

Article 14 (3) (f) - assistant of a translator or interpreter

380. The institution of translators/interpreters is regulated by §§ 161 and 162 of the CCP. If a text in a foreign language needs to be translated or interpreted or if a participant in a criminal proceeding is not proficient in Estonian, a translator or interpreter shall be involved in the proceeding. If a translator or interpreter does not participate in a procedural act where the participation of a translator or interpreter is mandatory, the act is null and void. A translation or interpretation of any aspect of a procedural act rendered by a translator or interpreter shall be precise and complete. If a non-staff translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

Article 14 (3) (g) - The right not to be a compellable witness against oneself

381. The Code of Criminal Procedure establishes the right of a suspect and the accused to refuse to give testimony and the right to know that his or her testimony may be used in order to bring charges against him or her.

Article 14 (4) Juveniles

382. The **Code of Criminal Procedure** provides for procedural specifications both in the case of the accused and witnesses who are minors. The **Penal Code** also provides for possible sanctions applicable to minors that can be applied instead of a punishment. As concerns proceedings against minors: if at the time of commission of the criminal offence, the person being defended was a minor the person has committed a crime as a minor, the participation of a counsel throughout a criminal proceeding is mandatory.

383. Pursuant to Subsection 213 (4) of the CCP, in the case of a suspect who is a minor, a Prosecutor's Office is required to assign the head of the probation supervision department with the duty to appoint a probation officer.

384. Pursuant to Subsection 216 (4) of the CCP, if a minor is suspected or accused of committing a criminal offence together with an adult, an investigative body, Prosecutor's Office or court may, by an order or ruling, sever the criminal case concerning the minor for a separate criminal proceeding if severance does not prejudice the comprehensiveness, thoroughness or objectivity of the criminal proceeding and is in the interests of the minor.

385. Pursuant to § 290 of the CCP, in the hearing of a witness under 14 years of age, he or she shall not be cross-examined. A witness who is a minor of less than 14 years shall be heard in the presence of a child protection official, social worker or psychologist who may question the witness with the permission of the judge. The body conducting the proceeding may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

386. A court may declare that a session or a part thereof be held *in camera* if it is in the interests of the minor. As an exception to the principle of public access, a court's judgment may also be pronounced at a session held *in camera*, if it is in the interests of the minor.

387. If a minor is required to reimburse the expenses relating to a criminal proceeding, the body conducting the proceedings may impose the reimbursement of expenses on his or her parent, guardian or child care institution (CCP § 188).

388. § 201 of the CCP regulates cases where commencement of criminal proceedings is refused or a criminal proceeding is terminated for the reason that the unlawful act was committed by a minor who was incapable of guilt on the grounds of his or her age. In such a case, the investigative body or Prosecutor's Office shall refer the materials of the criminal case to the juvenile committee of the place of residence of the minor. If a Prosecutor's Office finds that a minor who has committed a criminal offence in the age of 14 to 18 can be influenced without imposition of a punishment or a sanction prescribed in the Penal Code, the Prosecutor's Office shall terminate the criminal proceeding by a ruling and refer the criminal file to the juvenile committee of the place of residence of the minor. Prior to referral of materials to a juvenile committee, the nature of the act with the elements of a criminal offence and the grounds for termination of the criminal proceeding shall be explained to the minor and his or her legal representative.

389. § 308 of the CCP provides for that if a court finds as a result of the hearing of a criminal case that a minor can be influenced without imposing a punishment, the court may, upon the making of the court judgment, release the convicted offender from punishment and apply the sanctions provided for in the Penal Code with regard to him or her.

390. § 87 of the **Penal Code** establishes such sanctions applicable to minors. Taking into account the level of the moral and mental development of a person of 14 to 18 years of age and his or her ability to the understand the unlawfulness of his or her act or to act according to such understanding, the court may release the person from punishment and impose the following sanctions on him or her: admonition; subjection to supervision of conduct; placement in a youth home; placement in a school for pupils who need special treatment due to behavioural problems.

391. § 404 of the CCP provides for that permission for placement of a minor in a school for students who need special treatment due to behavioural problems or for extension of the term for his or her stay in such a school is granted by a judge on the basis of a written reasoned application of a juvenile committee.

392. Pursuant to § 3 of the **Juvenile Sanctions Act**, one or several of the following sanctions may be imposed on a minor: (1) warning; (2) sanctions concerning organisations of study; (3) referral to a psychologist, addiction specialist, social worker or other specialist for consultation; (4) conciliation; (5) an obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a children's home; (6) community service; (7) surety; (8) participation in youth or social programs or rehabilitation service or medical treatment programs; (9) sending to schools for students with special needs.

Article 14 (5) - Appeal procedure

393. We hereby refer to paragraphs 130-131 of the First Report and paragraphs 552-553 of the Second Report.

394. Pursuant to Article 24 of the **Constitution**, everyone has the right of appeal to a higher court against the judgment in his or her case pursuant to procedure provided by law. According to Estonian judicial proceedings-related legislation, incl. CCP, every person has an unrestricted right to file an appeal against judgments made in respect of him or her. In Estonia, the right of appeal against judgements of courts of first instance is absolute, and the same principle applies in the case of misdemeanour matters.

395. Right of appeal against judgments of the court of appeal, i.e. the right of filing an appeal in cassation to the Supreme Court, is limited to cases where a provision of substantive law has been applied incorrectly or the provisions of procedural law have been violated to a significant extent.

396. Number of cases in appeal and cassation procedure, 2003-2007 (statistics by the Ministry of Justice), as compared to the number of cases in courts of first instance:

Type of procedure	2003	2004	2005	2006	2007
Matters received by county courts					
Criminal cases	10 672	8 622	9 609	10 687	10 244
Civil cases	24 864	25 301	45 803	31 067	26 820
Administrative cases	2 941	3 257	2 772	2 552	2 736
Cases appealed to courts of appeal					
Criminal cases	2 141	1 787	1 568	1 778	1 893
Civil cases	2 325	2 401	2 541	2 212	2 280
Administrative cases	950	1 250	1 060	959	1 102
Cases settled by county courts					
Criminal cases	10 361	9 525	9 501	9 353	10 143
Civil cases	23 471	33 873	25 682	32 359	31 643
Administrative cases	2 669	3 003	2 733	2 542	2 471
Cases reviewed by courts of appeal					
Criminal cases	2 544	1 693	1 505	1 708	1 882
Civil cases	2 108	2 032	2 292	1 999	2 097
Administrative cases	843	1 120	1 061	1 076	1 032

397. Statistics of the Supreme Court regarding proceeding applications and cases heard

	Administrative cases		Criminal and misdemeanour cases		Civil cases		Constitutional review cases
Year	Applications	Cases settled	Applications	Cases settled	Applications	Cases settled	Cases settled
2002	445	69	682	149	956	155	18
2003	440	75	725	166	710	159	22
2004	635	85	838	146	667	158	23
2005	567	85	661	160	778	184	37
2006	566	97	595	123	820	153	17
2007	745	93	563	110	747	162	23

Article 14 (6) - State responsibility, compensation

398. As regards relevant regulations of the **Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act** and the **State Liability Act**, see Article 9.

Article 14 (7) - The right not to be tried twice for the same offence

399. Pursuant to Article 23 of the **Constitution**, no one shall be prosecuted or punished again for an act of which he or she has been finally convicted or acquitted pursuant to law.

400. § 199 of the CCP establishes circumstances precluding criminal proceedings. Inter alia, criminal proceedings shall not be commenced if a decision or a ruling on termination of criminal proceedings has entered into force in respect of a person in the same charges on the bases provided for in § 200 of the Code (if circumstances specified in § 199 of the Code which preclude criminal proceedings become evident in pre-trial proceedings, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office).

Article 15. Prohibition of retroactivity in criminal law

401. We hereby refer to paragraphs 132-133 of the First Report and paragraphs 559-560 of the Second Report.

402. The new **Penal Code** includes the principle provided for in the Constitution that no one shall be convicted or punished for an act which was not an offence pursuant to the law applicable at the time of the commission of the act. A person shall be punished for an act if the act comprises the necessary elements of an offence is unlawful and the person is guilty of the commission of the offence. No one shall be punished more than once for the same offence, regardless of whether the punishment is imposed in Estonia or in another state. An act shall not be declared to be an offence by analogy in law.

403. Pursuant to Subsection 1 (1) of the **Penal Code Implementation Act** in force since 1 September 2002, a person who has been convicted of a criminal offence which, pursuant to the Penal Code is no longer punishable as a criminal offence shall be released from punishment. According to Subsection 3 (1) of the same Act, criminal proceedings concerning a criminal offence committed prior to entry into force of the Penal Code shall be terminated on the same grounds.

404. 4. In its Decision of 4 March 1997 (3-1-1-24-97), the Supreme Court has also stated that if a new Code of Criminal Procedure simultaneously aggravates a punishment with respect to one aspect (establishes a possibility for imposition of a longer sentence) and commutes it with respect to another aspect (provides the possibility to replace the death penalty with life sentence), the new Code shall have retroactive effect only to the extent that it commutes the more severe punishment.

405. 31. In its Decision of 31 March 2008 (3-1-1-4-08), the Supreme Court stated that both in case of prosecution and court judgments, an offence must be classified based on the wording of the Penal Code in force at the time of committing the offence, which ensures control over whether the offence was punishable at the time it was committed and guarantees compliance with the temporal applicability principles of the Penal Code. A person can be found guilty only in the case if the act committed by him or her was punishable as a criminal offence both at the time of its commitment and at any given time from the commitment until the rendering of the judgment. Finding a person guilty and punishing him or her is impermissible both if the court finds that the act committed by the person does not comply with the necessary elements of a criminal offence valid at the time of act commitment and in the case if the punishability of the act has been annulled afterwards. Therefore, there can be no doubt in that after invalidation or amendment of the necessary elements of a criminal offence valid at the time of act commitment, the legal object of a criminal proceeding also includes a question of whether (and if, based on which provision) an act is punishable according to the new Penal Code.

406. In its judgment regarding the case *Veeber vs* Estonia (2) (judgment of 21 January 2003 regarding application 45771/99), the European Court of Human Rights found that Estonia's courts applied the Criminal Law of 1995 retroactively with respect to acts that did not constitute a criminal offence before.

407. In § 8 of its concluding observations, the Committee has expressed its concern in that the relatively broad definition of the **crime of terrorism and of membership of a terrorism group** under the State party's Criminal Code may have adverse consequences for the protection of the rights under Article 15 of the Covenant. The Committee has requested the State party to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant.

408. In connection with the aforementioned, we note that **§ 237 (crime of terrorism) and § 237.1 (terrorism group) were amended on 24 January 2007, the amendment entered into force on 15 March 2007**. In the explanatory memorandum to the Draft Amendment Act it has been explained that the amendment of the elements of terrorism and the related new elements are associated with Estonia's international obligations. The term 'crime of terrorism' is also specified by the draft act. The amendments are based on the Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA), the Council of Europe Convention on the Prevention of Terrorism, and the International Convention for the Suppression of the Financing of Terrorism.

409. As of 27 March 2007, the terms related to crimes of terrorism are worded as follows in the Penal Code:

> **Subsection 237 (1) - Act of terrorism** is commission of a criminal offence against international security, against the person or against the environment, or a criminal offence dangerous to the public posing a threat to life or health, or the manufacture, distribution or use of prohibited weapons, the illegal seizure, damaging or destruction of property to a significant extent as well as threatening with such acts, if committed with the purpose to

force the state or an international organisation to perform an act or omission, or to seriously interfere with or destroy the political, constitutional, economic or social structure of the state, or to seriously interfere with or destroy the operation of an international organisation, or to seriously terrorise the population.

Pursuant to Subsection 237[1] (1), a terrorist organisation is a permanent organisation consisting of three or more persons who share a distribution of tasks and whose activities are directed at the commission of a criminal offence provided in § 237 of the Penal Code as well as forming, directing or recruiting members to such organisation.

410. **§ 237** contains the main necessary elements of a **crime of terrorism**, which constitutes in commission of criminal offences directed against the listed legal rights or threatening with such offences. The purpose of terrorism has been specified as compared to the wording of the § previously in force. Pursuant to the amendment, the possible political aims are specified and serious terrorising of the population added as the purpose of necessary elements of an offence. The purpose of committing acts of terrorism or threatening with such acts is to impair the functioning of a state or an international organisation, through terrorising the population, destabilizing state structures or demanding the performance of some kind of acts from the state (for example, to release imprisoned members of a terrorist organisation or to cede part of the territory of a state to the terrorists). Also, pursuant to the Framework Decision on Combating Terrorism, the list of criminal offences committed for the purpose of terrorism has been amended and specified. The maximum custodial sentence for a crime of terrorism has been increased as compared to the earlier level, since pursuant to Article 5 of the Framework Decision on Combating Terrorism, an offence committed for the purpose of terrorism must be punishable by custodial sentences heavier than those imposable for such offences in the absence of such intent. Because of this, the maximum custodial sentence for a crime of terrorism has been established at the same level as the maximum custodial sentence for murder (up to twenty years or life sentence).

411. Pursuant to the draft act, **membership in a terrorist organisation, as well as forming, directing or recruiting members to such organisation** have been criminalized in **§ 237[1]** as separate elements to constitute an offence. Commitment of crimes of terrorism in an organised manner objectively poses a great threat, since it allows extensive and systematised attacks against legal rights. Pursuant to Article 5 of the Framework Decision on Combating Terrorism, the directing of such an organisation must be punishable by custodial sentences with a maximum sentence of up to 15 years and in other cases with a maximum sentence of up to 8 years.

412. Pursuant to **§ 237[2] of the Penal Code, preparation of and incitement to acts of terrorism are criminalised.** Preparation of acts of terrorism shall mean organisation of training for the commission of acts of terrorism, if the training provider is aware of the training objectives, as well as recruiting of persons for the commission of such criminal offences or preparation of acts of terrorism in another manner. In order to avoid unreasonable extension of the term ‘preparation’, it should be interpreted based on international legislation and practice. Public incitement for the commission of acts of terrorism shall mean any activities by which other persons are publicly incited for the commission of such acts, for example distributing brochures or publishing a call that has respective content on an Internet home page.

413. Pursuant to **§ 237[3] of the Penal Code, the financing or supporting of acts described in §s 237-237[2] in another manner is criminalised.**

Article 16. The right of all persons to recognition everywhere as subjects of law

414. **The General Part of the Civil Code Act** (GPCCA) in force since 1 July 2002 (which replaces the earlier General Part of the Civil Code Act referred to in paragraphs 561-570 of the Second Report) regulates the active and passive legal capacity of both natural and legal persons.

415. Pursuant to 7 of the GPCCA, all natural persons have uniform and unrestricted passive legal capacity, which is the capacity of a natural person to have civil rights and perform civil obligations. Passive legal capacity begins with the live birth of a human being and ends with his or her death.

416. Pursuant to § 8 of the GPCCA, active legal capacity of a natural person is the capacity to enter independently into valid transactions. Persons who have attained 18 years of age (adults) have full active legal capacity. 9 of the GPCCA provides for extension of restricted active legal capacity of minor of at least 15 years of age.

417. Persons who are under 18 years of age (minors) and persons who due to mental illness, mental disability or other mental disorder are permanently unable to understand or direct their actions, have restricted active legal capacity. If a guardian has been appointed to such a person by a court, the person is presumed to have restricted active legal capacity. (Pursuant to 520 of the CCiP, if this is necessary in the interests of the person, the court shall appoint a representative to an adult with restricted active legal capacity in a proceeding for appointment of a guardian (proceeding on petition).

418. Pursuant to §10 of the GPCCA, unilateral transactions made by a person with restricted active legal capacity without the prior consent of his or her legal representative are void. Pursuant to § 11 of the GPCCA, a multilateral transaction entered into by a person with restricted active legal capacity without the prior consent of his or her legal representative is void unless the legal representative subsequently ratifies the transaction. If the person acquires full active legal capacity after entry into the transaction, he or she may ratify the transaction himself or herself.

419. However, a transaction entered into by a person with restricted active legal capacity without the prior consent or subsequent ratification of his or her legal representative is valid if:

(1) No direct civil obligations arise from the transaction for the person;

(2) The person performed the transaction by means which his or her legal representative or a third person with the consent of the legal representative had granted to him or her for such purpose or for free use.

420. Nevertheless, any unilateral transactions made by a minor of less than 7 years of age are always void.

Article 17. Inviolability of private and family life

421. The related §s of the Constitution (26, 33, 43, 42, 44, 15) have been specified in paragraphs 143-145, 147-148, 150-151 of the First Report and paragraphs 572-574, 576-577, 579-580 of the Second Report.

Rights of persons in criminal proceedings

422. § 64 of the CCP establishes the general conditions for collection of evidence:

423. Evidence shall be collected in a manner which is not prejudicial to the honour and dignity of the persons participating in collection of evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be collected by torturing a person or using violence against him or her in any other manner, or by means affecting a person's memory capacity or degrading his or her human dignity.

424. If it is necessary to undress a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the same sex as the person.

425. If technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them. Investigative bodies and Prosecutors' Offices may involve impartial specialists in collection of evidence and the specialists may be heard as witnesses.

426. If necessary, participants in a procedural act shall be warned that disclosure of information relating to pre-trial proceedings is prohibited.

427. The general conditions for collection of evidence by surveillance activities have also been provided for in the CCP (see §s 433-440 below).

428. Pursuant to Subsection 31 (3) of the CCP, detention of a suspect, inspection, search, interrogation of a suspect, hearing of a witness or victim are urgent procedural acts. To some extent, all these procedural acts contravene with a person's private life.

429. A postal or telegraphic item is seized for the purposes of examination at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling. In the course of examining a postal or telegraphic item, information derived from inspection of the circumstances relating to the subject of proof shall be collected and the item to be used as physical evidence in a criminal proceeding shall be confiscated from the provider of the postal or telecommunications service. An object of examination which is not related to the criminal case, shall be sent to the addressee by the provider of the postal or telecommunications service. A postal or telegraphic item shall be released from seizure by an order of the Prosecutor's Office. A copy of an order on release from seizure shall be sent to the persons who are not participants in the proceeding but whose confidentiality of messages has been violated by the seizure and examination of the postal or telegraphic item.

430. A search shall be conducted on the basis of an order of a Prosecutor's Office or a court ruling. The search of a notary's office or advocate's law office shall be conducted at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling. In cases of urgency, an investigative body may conduct a search on the basis of an order of the investigative body without the permission of a Prosecutor's Office, but in such case the Prosecutor's Office shall be notified of the search within twenty-four hours and the Prosecutor's Office shall decide on the admissibility of the search. A person may be searched without a search warrant:

(1) In the event of detention of a suspect or arrest;

(2) If there is reason to believe that the object to be found is concealed by the person at the place of search.

431. If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member, or a representative of the legal person or the state or local government agency whose premises are to be searched, and he or she shall sign the warrant to that effect. In the absence of the appropriate person or representative, the representative of the local government shall be involved. A notary's office or an advocate's law office shall be searched in the presence of the notary or advocate. If the notary or advocate cannot be present at the search, the search shall be conducted in the presence of the person substituting for the notary or another advocate providing legal services through the same law office, or if this is not possible, any other notary or advocate.

432. **CCP also establishes rules regarding collection of evidence by surveillance activities.** Evidence may be collected by surveillance activities in a criminal proceeding if collection of the evidence by other procedural acts is precluded or especially complicated and the object of the criminal proceeding is a criminal offence in the first degree or an intentionally committed criminal offence in the second degree for which at least up to three years' imprisonment is prescribed as punishment (§ 110 of the CCP). § 114 of the CCP regulates grant of permission for surveillance activities. A preliminary investigation judge shall immediately review a reasoned request for conducting surveillance activities submitted by a prosecutor who directs the proceedings and grant or refuse to grant permission for the conduct of the surveillance activities by a ruling. Permission for surveillance activities is granted for up to two months and the permission may be extended by up to two months at a time at the request of a prosecutor who directs the proceedings.

433. If covert entry into a dwelling or any other building or a vehicle, computer, computer system or computer network is necessary for conducting surveillance activities specified in § 115 (covert surveillance and covert examination and replacement of object) § 118 (wire tapping or covert observation of information transmitted through technical communication channels or other information) or § 119 (staging of criminal offence) of the CCP or in order to install or remove technical appliances necessary for surveillance activities, separate permission shall be requested for this.

434. In cases of urgency, surveillance activities specified in § 116 (covert examination of postal or telegraphic items), § 118 and § 119 of the CCP may be conducted without the permission of the preliminary investigation judge on the basis of an order of the head of the Police Board, Central Criminal Police or the Security Police Board or an official appointed by him or her. The Prosecutor's Office shall immediately notify the preliminary investigation judge of the surveillance activities conducted and the judge shall decide on the admissibility of the activities and the grant of permission for continuation of the surveillance activities by a ruling.

435. Covert examination of postal or telegraphic items (§ 116 of the CCP), wire tapping or covert observation of information transmitted through technical communication channels or other information (§ 118 of the CCP), and staging of criminal offence (§ 119 of the CCP) are the surveillance activities requiring the permission of the preliminary investigation judge for the collection of evidence (Subsection 112 (3) of the CCP).

436. Pursuant to § 117 of the CCP, upon collection of information concerning messages transmitted by the public telecommunications network, information is collected from the operator of the electronic communications network or the provider of the postal or electronic communications service in order to ascertain the fact that a message has been transmitted, the duration and manner of transmission of the message, and the personal data and location of the sender or receiver.

437. As regards the **Surveillance Act** that entered into force on 18 March 1994, we refer to paragraphs 616-627 of the Second Report. If not provided otherwise in the Code of Criminal Procedure, the Surveillance Act is applied to surveillance activities within the framework of criminal proceedings (with exceptions discussed above).

438. The Ministry of Justice is preparing a new draft act to replace the Surveillance Act in force so far, the purpose of which is to regulate the surveillance system.

439. **The Penal Code in force criminalises the following activities associated with surveillance activities:**

- A person without the lawful right to be engaged in surveillance in observing another person in order to collect information relating to such person shall be punished by a pecuniary punishment or up to 3 years imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment (§ 137).

- Unlawful search or eviction from a dwelling is punishable by a pecuniary punishment (§ 314 of the Penal Code).

- Unlawful surveillance activities or unlawful and covert collection of information, unlawful concealment or destruction of information collected by surveillance activities or covertly, if conducted by a person with the right arising from law to engage in surveillance or covert collection of information, are punishable by a pecuniary punishment or up to 3 years imprisonment (§ 315 of the Penal Code).

440. *Protection of personal rights*. Pursuant to Subsection 128 (1) of the **Law of Obligations Act (LOA)**, damage subject to compensation may be patrimonial or non-patrimonial. Non-patrimonial damage involves primarily the physical and emotional distress and suffering caused to the aggrieved person.

441. Pursuant to Subsection 134 (2) of the LOA, in the case of an obligation to compensate for damage arising from deprivation of liberty or violation of a personality right, in particular from defamation, the obligated person shall compensate the aggrieved person for non-patrimonial damage only if this is justified by the gravity of the violation, in particular by physical or emotional distress.

442. Pursuant to § 1043 of the LOA, a person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law. Pursuant to Subsection 1045 (1) (4) of the LOA, the causing of damage is unlawful if, inter alia, the damage is caused by violation of a personality right of the victim.

443. Pursuant to § 1046 of the LOA, the defamation of a person, inter alia by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is unlawful unless otherwise provided by law. The violation of a personality right is not unlawful if the violation is justified considering other legal rights protected by law and the rights of third parties or public interests. In such case, unlawfulness shall be established based on the comparative assessment of different legal rights and interests protected by law.

444. Pursuant to § 1047 of the LOA, the violation of personality rights or interference with the economic or professional activities of a person by way of disclosure of incorrect information or by the incomplete or misleading disclosure of factual information concerning the person or the activities of the person is unlawful unless the person who discloses such information proves that, upon the disclosure thereof, that the person was not aware and was not required to be aware that such information was incorrect or incomplete. The disclosure of defamatory facts concerning a person or facts which may adversely affect the economic situation of a person is deemed to be unlawful unless the person who discloses such facts proves that the facts are true. In the case of the disclosure of incorrect information, the victim may demand that the person who disclosed such information refute the information or publish a correction at the person’s expense regardless of whether the disclosure of the information was unlawful or not.

445. Sufficient judicial practice is available in Estonia regarding cases of violation of personal rights. Inter alia, the Supreme Court has confirmed that the obligation of refuting incorrect information has been provided for in law as objective liability, irrespective of the unlawfulness of disclosure of the information and the guilt of the person who disclosed it. It is irrelevant if the person who disclosed the information knew or must have known about the incorrectness or incompleteness of the information at the time of disclosure. It is also irrelevant whether the information disclosed defames the victim or not (decision of the Supreme Court of 30 October 2007 regarding the case 3-2-1-73-07).

446. The Supreme Court has explained that a value judgment is expressed by an assessment given to a person, which has derogatory meaning in the specific cultural environment due to its content or form. A judgment can be substantiated, but the correctness or incorrectness of its contents cannot be proved. Since such information contains no data, the victim cannot demand refutation of defamatory data. The characteristics of unlawfulness of disclosure of a defamatory factual allegation and a defamatory value judgment are different. The unlawfulness of a defamatory factual allegation, above all, arises from inaccuracy of the factual allegation and the care exercised by the publisher upon verification of facts, while the unlawfulness of a defamatory value judgment arises from its impropriety, circumstances of disclosure and consideration of various protected benefits and interests. Pursuant to the Law of Obligations Act, disclosure of an inaccurate factual allegation may be unlawful also if it is not defamatory (damaging the reputation) (Decision of the Supreme Court of 31 May 2006 in case 3-2-1-161-05).

447. Pursuant to the Penal Code, defamation and insulting are no longer punishable pursuant to criminal procedure, with the exception of the following special cases:

- Defamation or insulting a person enjoying international immunity or a family member of such person is punishable by a pecuniary punishment or up to 2 years imprisonment (Subsection 247 of the Penal Code).

- Defaming or insulting a representative of state authority or any other person protecting public order, if committed in connection with the performance of his or her official duties by such person, is punishable by a pecuniary punishment or up to 2 years' imprisonment (Subsection 275 of the Penal Code).

- Defamation or insulting a court or judge in connection with their participation in administration of justice is punishable by a pecuniary punishment or up to 2 years imprisonment (Subsection 305 of the Penal Code).

448. *Data protection*. Data protection is regulated by the **Personal Data Protection Act** in force since 1 January 2008, the purpose of which is protection of fundamental rights and freedoms of natural persons in accordance with public interests with regard to processing personal data. The Act provides for the conditions and procedure of processing personal data, state supervision over the processing of personal data and the liability for violation of personal data processing requirements. § 4 of the Act states that personal data are any data relating to an identified natural person or a natural person identifiable, irrespective of the type or form of the data.

449. The following are sensitive personal data:

(1) Data revealing political opinions or religious or philosophical beliefs, except data relating to being a member of a legal person in private law registered pursuant to the procedure provided by law;

(2) Data revealing ethnic or racial origin;

(3) Data relating to the state of health or disability;

(4) Data relating to genetic information;

(5) Biometric data (above all, fingerprint, palm print and iris data and genetic information);

(6) Data relating to sexual life;

(7) Data concerning membership in trade unions;

(8) Data regarding committing a crime or becoming a victim of a crime before a public court session or before a judgment is made in a matter concerning an offence or termination of a proceeding.

450. Personal data may be processed only with the permission of the data subject, unless otherwise provided by law. An administrative authority may process personal data only in the course of performance of public duties in order to perform an obligation prescribed by law, international agreements or directly applicable legislation of the Council of the European Union or the European Commission (§ 10).

451. Consent for the processing of personal data by the data subject is valid only if it is based on the data subject’s free will. For processing of sensitive personal data, the sensitive nature of the personal data must be explained to the person and consent to re-submission in writing acquired. The consent of a data subject shall be valid during the life of the data subject and thirty years after the death of the data subject, unless the data subject has decided otherwise. A data subject may withdraw his or her consent at any time. In the case of a dispute, a data subject is presumed not to have granted consent for the processing of personal data relating to him or her.

452. **The Personal Data Protection Act** specifies the cases where processing of personal data is permitted without the consent of a data subject.

453. A data subject has the right to receive personal data relating to him or her from a processor of personal data. After the death of a data subject, the heir, the spouse, a parent, grandparent, child, grandchild, brother or sister of the data subject shall have the rights provided for in Chapter 2 of the Personal Data Protection Act regarding the personal data of the data subject.

454. Pursuant to § 22, a data subject has a right of recourse to the Data Protection Inspectorate or court if the data subject finds that his or her rights are violated in the processing of personal data.

455. § 23 provides that if the rights of a data subject are violated in the processing of personal data, the data subject has the right to claim compensation for the damage caused to the data subject: (1) on the bases and pursuant to procedure provided for in the **State Liability Act**, if the rights are violated in the course of performance of public duties, or (2) on the bases and pursuant to procedure provided for in the Law of Obligations Act, if the rights are violated in a private law relations.

456. The Data Protection Inspectorate shall monitor compliance with the Personal Data Protection Act and legislation established on the basis thereof (§ 32). The Act also provides for liability. Thus, violation of the obligation to register the processing of sensitive personal data, violation of the requirements regarding security measures to protect personal data or violation of other requirements for the processing of personal data is punishable by a fine of up to 300 fine units (in the case of legal persons, by a fine of up to 500,000 kroons) (§ 42). Violation of the requirements regarding security measures to protect personal data or violation of other requirements for the processing of personal data, in case the Data Protection Inspectorate has issued a precept for elimination of the violation and it has not been complied with, is punishable by a fine of up to 300 fine units (in the case of legal persons, by a fine of up to 500,000 kroons) (§ 43).

457. *Pursuant to the Penal Code, the following activities constitute a criminal offence*:

- Violation of the confidentiality of a message communicated by a letter or other means of communication is punishable by a pecuniary punishment. The same act, if committed by a person who has access to the message due to performance of his or her official duties, is punishable by a pecuniary punishment or up to one year of imprisonment (Subsection 156 of the Penal Code).

- Disclosure of information obtained in the course of professional activities and relating to the health, private life or commercial activities of another person by a person who is required by law to maintain the confidentiality of such information is punishable by a pecuniary punishment (Subsection 157 of the Penal Code).

- Illegal disclosure of sensitive personal data, enabling access to such data or transfer of such data for personal gain or if significant damage is caused thereby to the rights or interests of another person that are protected by law shall be punished by a pecuniary punishment or up to one year of imprisonment (Subsection 157^1 of the Penal Code).

- An official or employee of the registrar of a national or local government database who unlawfully enters data in the register or unlawfully fails to enter data in the register, or unlawfully publishes data, enables access to data, forwards data or violates other requirements for maintaining a database and thereby causes significant damage to the rights or interests of another person that are protected by law shall be punished by a pecuniary punishment or up to 3 years' imprisonment (Subsection 292 of the Penal Code).

458. *Correspondence and other communication*. § 102 of the **Electronic Communications Act** that entered into force on 1 January 2005 establishes general principles of data protection, according to which a communications undertaking is required to maintain confidentiality of all information which becomes known thereto in the process of provision of communications services and which concerns subscribers as well as other persons who have not entered into a contract for the provision of communications services but who use communications services with the consent of a subscriber; above all, the following data must be protected:

(1) Specific data of using communications services;

(2) The content and format of messages transmitted through the communications network;

(3) Information concerning the time and manner of transmission of messages.

459. The information specified may be disclosed only to the relevant subscriber and, with the consent of the subscriber, to third persons, except in the cases specified in the Act. Communications undertakings shall grant surveillance agencies and security authorities access to the communications network for the conduct of surveillance activities or for the restriction of the right to confidentiality of messages, correspondingly (§ 113).

460. The Electronic Communications Act also provides for liability: violation of the obligation to preserve the secrecy of information related to the conduct of surveillance activities, or activities which restrict the right to inviolability of private life or the right to confidentiality of messages is punishable by a fine of up to 200 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 40,000 kroons (§ 186). Violation of the obligation to maintain the confidentiality of information concerning a user which becomes known in the process of provision of communications services is punishable by a fine of up to 200 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 30,000 kroons (§ 187).

461. The purpose of the **Postal Act** is to ensure the high quality conveyance of postal items and to protect the interests of customers of postal services. § 33 of the Postal Act defines the term 'postal secrecy', which means confidentiality of all information pertaining to the contents of a postal item and information concerning the postal traffic of a specific person. Postal service providers, their employees and persons entitled to managing postal service providers shall maintain postal secrecy during and after the provision of the postal service. The said persons are prohibited from collecting information concerning the content of postal items or specific circumstances of postal traffic to a wider extent than needed for the provision of postal services. The use of such information for purposes other than the provision of postal services is prohibited.

462. Pursuant to § 48 of the Postal Act, violation of an obligation by a postal service provider or universal postal service provider is punishable by a fine of up to 100 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 50,000 kroons.

463. Limitations of the rights of prisoners and other imprisoned persons with respect to correspondence etc. have already been discussed under Article 10.

Article 18. Freedom of thought, conscience and religion

464. Relevant provisions of the Constitution have been discussed in paragraphs 152-155 of the First Report and paragraphs 652-655 of the Second Report.

465. Pursuant to the Constitution, restrictions upon exercise of one's religion are allowed for the protection of public order, health and morals. There are no restrictions regarding freedom of conscience, religion and thought, while Article 40, paragraph 1 of the Constitution protects both religious and non-religious beliefs. If a person's opinions and inner beliefs transform into

expression of opinions or realisation of ideas, the aforementioned restrictions may be possible. As concerns the personal rights provided for in Article 41 of the Constitution, the only restriction is that beliefs shall not excuse a violation of the law. The state, however, may not establish legal liability merely for having beliefs. The right to remain true to one's opinions and beliefs is additionally protected by Article 12 of the Constitution, which prohibits discrimination on the basis of political or other opinions and establishes that the incitement of political hatred, violence or discrimination is punishable by law.

466. According to § 11 of the **Republic of Estonia Child Protection Act**, the child has the right to freedom of thought, conscience, religion and experience. The child has the right and shall be accorded the opportunity to seek, receive and impart diverse humanistic information and to engage in organisations and movements.

467. Pursuant to Subsection 4 (4) of the **Republic of Estonia Education Act**, the study and teaching of religious education shall be voluntary.

468. Subsection 3 (4) of the **Basic Schools and Upper Secondary Schools Act** provides for that religious education shall be non-confessional. A school is required to teach religious studies if at least fifteen students in a stage of study so wish. The study of religious education shall be voluntary.

469. The purpose of the **Churches and Congregations Act** is to provide the procedure for membership of churches, congregations, associations of congregations, monasteries and religious societies and the regulation of their activities in order to realise their freedom of belief as ensured for everyone by the Constitution to be exercised.

470. Churches, congregations, associations of congregations and monasteries are religious associations (§ 2). A religious society is a voluntary association of natural or legal persons the main activities of which include confessional or ecumenical activities relating to morals, ethics, education, culture and confessional or ecumenical diaconal and social rehabilitation activities outside the traditional forms of religious rites of a church or congregation and which need not be connected with a specific church, association of congregations or congregation (Subsection 4 (1)).

471. § 8 of the Act establishes the rights of an individual. Every person has the right to freely choose, profess and declare his or her religious beliefs unless it damages public order, health, morals, or the rights or freedoms of others. No one is required to provide information on his or her religion or membership in congregations, except a suspect, accused, accused at trial or victim in the course of criminal proceedings. Every person has the right to leave a congregation if he or she notifies the management board of the congregation of his or her decision beforehand. Every person has the right to leave a monastery if he or she notifies the superior of the monastery of his or her decision beforehand. The guardian of a person who has been divested of active legal capacity does not have the right to change the religion or membership in a congregation of the

person. Every person has the right to be buried according to his or her confession. In the absence of relatives, guardians or curators, and if it is known that a deceased person was a member of a congregation, the congregation of the deceased person shall perform the confessional funeral service.

472. Persons staying in medical institutions, educational institutions, social welfare institutions and custodial institutions and members of the Defence Forces have the right to perform religious rites according to their faith unless this violates public order, health, morals, the rules established in these institutions or the rights of others staying or serving in these institutions (Subsection 9 (1)). A religious association shall conduct religious services and religious rites in a medical institution, educational institution or social welfare institution with the permission of the owner or the head of the institution, in a custodial institution with the permission of the director of the prison, in the Defence Forces with the permission of the commanding officer of the military unit and in the National Defence League with the permission of the chief of the unit (Subsection 9 (2)).

473. Every person of at least fifteen years of age may independently become a member of a congregation or leave a congregation pursuant to the procedure prescribed in the statutes. A child who is less than fifteen years of age may be a member of a congregation with the permission of his or her parents or guardian (§ 10).

474. As regards Sunday schools, see Article 27.

475. According to the data of the Ministry of Education and Research, in Estonia, religious studies and theology curricula have been elaborated at the level of professional higher education, Bachelor's study, Master's study and Doctoral study in 5 institutions of higher education:

- Public university: Tartu University
- Private university: Theological Institute of the Estonian Evangelical Lutheran Church
- Private institutions of professional higher education: Theological Academy of Tartu, Higher Theological Seminar of the Estonian Union of Evangelical Christians and Baptists, Theological Seminar of the Estonian Methodist Church

476. 2008/2009. Within the framework of state-commissioned education for the study year 2008/2009, it is planned to finance 13 student places under 3+2 Master's study in theology at the Tartu University. There will be no separate commission for the religious education curriculum. However, within the framework of Master's study in theology at the Tartu University, for example, while holding a student place formed on the basis of state-commissioned education, it is possible to choose the field of study 'religion education'. Religion and theology-related studies in private universities and private institutions of professional higher education are not subject to state financing. Some Doctoral study student

places included under state-commissioned education are allocated to public universities without a specified field. The respective universities have the right to assign such student places to theology.

477. As regards preparation of teachers, the Chancellor of Justice has explained (in its reply of 10 May 2006 to an interpellation by members of *Riigikogu*) that liabilities of the state arise from the provisions of the Republic of Estonia Education Act regarding provision of methodological services to teachers and arrangement of training. The requirements to qualification of teachers do not differentiate the requirements set for teachers of compulsory and elective subjects. Therefore, there are no grounds for different preparation for compulsory and elective subjects' teachers - the state has the liability of providing teachers who teach religious studies the same way as teachers teaching mathematics or philosophy, for example. The state participates in preparation of teachers (and any other specialists) through state-commissioned education. The commission concerns graduates of specific curricula. The curricula are prepared by universities (institutions of professional higher education). In the Estonian Information System for Education, the Tartu University has an accredited curriculum for preparation of religious studies teachers. The provision of state-commissioned education by the University has been determined by the Ministry of Education and Research. However, it is also possible to be employed as a religious studies teacher after acquisition of a higher education in the field (private institutions of education also offer theology curricula) and completion of teaching-related in-service training. Therefore, a qualified teacher need not have graduated based on a religious studies teacher curriculum.

478. Based on the **Churches and Congregations Act**, there are 9 churches, 9 associations of congregations, 70 single congregations and 7 monasteries in Estonia. Religious associations are not required to provide information to the state regarding their membership or data on ethnic composition. The membership-related numerical data provided in the following table have been submitted to the Ministry of the Interior department for religious affairs in reply to the department's respective inquiry on voluntary basis.

Churches

Name	Membership	Congregations
Estonian Apostolic-Orthodox Church*	approx. 25000	61
Estonian Evangelical Lutheran Church*	approx. 180 000	164
Estonian Christian Pentecostal Church*	approx. 4 500	32
Estonian Charismatic Episcopal Church*	300	3
Charismatic Church of Fellowship of Estonia	503	3+3**
Estonian Methodist Church*	1 737	24
Estonian Orthodox Church of Moscow Patriarchate*	approx.170 500	30
Roman-Catholic Church*	approx. 6 000	9
New Apostolic Church in Estonia	2 217	3+15**

Unions of congregations

Name	Membership	Congregations
Estonian Union of Seventh-Day Adventists*	1 711	19
Estonian Union of Baha'i Congregations	142	5
Estonian Union of Evangelical Christian and Baptist Congregations	5 974	83
Estonian Union of Evangelistic Christian Pentecostal Congregations	approx. 1 000	3
Estonian Union of Evangelical and Free Congregations	approx. 1 000	6
Estonian Union of Congregations of Jehovah's Witnesses	4 248	4+51**
Estonian Union of Christian Free Congregations	approx. 350	6
Estonian Union of Congregations of Old Believers	approx. 15 000	10+1**
The House of Taara and Mother Earth People of Maavald		4

Single congregations
(Data has not been requested from all of the congregations entered in the register)

Name	Membership	Congregations
Estonian Congregation of St Gregory of the Armenian Apostolic Church*	2 030	1+5**
Estonian Buddhist Congregation "Drikung Kagyu Ratna Shri Centre"	34	1
Estonian Islam Congregation	approx. 1 400	1
Estonian Jewish Congregation	approx. 2 500	1
Estonian Evangelical Moravian Congregation	142	1
Tallinn Congregation	50	1
Estonian Congregation for Krishna Consciousness	approx. 150	1
Nyingma Estonian Congregation of the Tibetan Buddhism	less than 20	1
Tallinn Congregation of the Ukrainian Greek-Catholic Church	318	1
Estonian Congregation of the Church of Jesus Christ of Latter-Day Saints	803	1

* As of 1 January 2008; the rest as of 1 January 2007.

** In the case of numerical data of the indicated congregations, the first number represents congregations entered in the register and having the status of a legal person, and the second number represents the congregations not entered in the register because of the religious association's will and not having the status of a legal person.

Monasteries

Name	Membership
Dominican Order Monastery in Tallinn	3 monks
Missionaries of Charity Order Convent in Tallinn	4 nuns
St. Felice da Cantalice Congregation Convent in Ahtme	2 nuns
St. Felice da Cantalice Congregation Convent in Narva	2 nuns
Convent of the Roman Catholic Church of Immaculate Conception of the Blessed Virgin Mary in Tartu	3 nuns
Convent of the Order of the Most Holy Saviour of Saint Bridget in Pirita	8 nuns
The Pühtitsa Dormition Stavropegic Convent in Kuremäe*	174 nuns

* This convent is Orthodox (canonically subordinated to the Patriarch of Moscow and all Russia); the rest of the convents and monasteries are Roman-Catholic.

479. Pursuant to subsection 3 (1) of the **Defence Forces Service Act** (DFSA), every male Estonian citizen is required to serve in the Defence Forces - to perform his duty to serve in the Defence Forces. Pursuant to Subsection 4 (1) of the DFSA, a person eligible to be drafted who refuses to serve in the Defence Forces for religious or moral reasons is required to perform alternative service pursuant to the procedure prescribed by law. Pursuant to the Defence Forces Service Act in force, the duration of compulsory military service is from 8 to 12 months, while the duration of alternative service is from 12 to 18 months (alternative service of such duration has never been applied). The duration of alternative service shall be determined by the Government of the Republic on the proposal of the Minister of Defence.

480. The Committee expressed their concern in that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service. Pursuant to **Regulation No. 241 of the Government of the Republic of 25 July 2000** (establishment of duration of compulsory military service and alternative service), the general duration of compulsory military service is 8 months or 11 months (in certain cases). Pursuant to the Regulation, the duration of alternative service is 16 months. Such difference arises from the need to ensure equality of the compulsory military service and alternative service by work volume or intensity. In theory, a conscript is in service 24 hours a day; in civilian service, however, ordinary standards for working time are followed. As compared to compulsory military service, the duration of alternative service is reasonable and its nature is not that of a punishment, although it has to be admitted that NGO Human Rights Centre does not agree with such justification.

481. 2005. In 2005, there were no persons in alternative service; in 2006 there were 2 such persons and in 2007 11 of 65 applications for alternative service were satisfied.

482. The **Penal Code** criminalises the following acts which limit freedom of religion:

- Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person are punishable by a fine of up to 300 fine units or by detention. Same act, if it causes the death of a person or results in damage to health or other serious consequences, was committed by a person who has previously been punished by such act, or was committed by a criminal organisation, is punishable by pecuniary punishment or up to 3 years' imprisonment. The same act, if committed by a legal person, is punishable by a fine of up to 50,000 kroons or pecuniary punishment (§ 151 of the Penal Code).

- 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, 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 (Subsection 152 of the Penal Code).

- A person who interferes with the religious affiliation or religious practices of a person, unless the religious affiliation or practices are detrimental to the morals, rights or health of other people or violate public order, shall be punished by a pecuniary punishment or up to one year of imprisonment (§ 154 of the Penal Code).

- Compelling a person to join or be a member of a religious association or a political party is punishable by a pecuniary punishment or up to one year of imprisonment (Subsection 155 of the Penal Code).

Article 19. The freedom of expression

483. Relevant provisions (41, 45, 44, 4, 17) of the Constitution have been discussed in paragraphs 161-165 of the First Report and paragraphs 679-683 of the Second Report.

484. The freedom of expression is not an absolute freedom. Article 45 of the **Constitution** provides that any restrictions must be provided for in the law. For example, such restrictions have been provided for in the Law of Obligations Act (violation of individual rights). An overview of the protection of individual rights has been provided for in Article 17 of this Report.

485. In its decision of 19 February 2008 (civil matter No. 3-2-1-145-07), the Supreme Court explained that the right to demand that the person who disclosed incorrect information refute the information or publish a correction is a proportional restriction of the freedom of the press. The

right of expression (freedom of speech) is opposed by a person's individual right to honour and good name. Pursuant to the law, in the case of the disclosure of incorrect information, the victim may demand that the person responsible refute the information or publish a correction at the person's expense regardless of whether the disclosure of the information was unlawful or not; regardless of whether the disclosed allegation is defamatory. What is important is that the allegation is incorrect. This complies with the second sentence of Article 45, paragraph 1 of the Constitution, which allows restricting of the freedom of expression, inter alia, to protect the rights of others, incl. to protect honour and good name.

486. Pursuant to § 4 of the **State of Emergency Act**, during a state of emergency, inter alia, the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means may be restricted in the interests of national security and public order. Pursuant to Subsection 4 (2), restrictions on rights and freedoms of persons shall not involve torture, cruel or degrading treatment or a punishment not arising from law or deprivation of the right to freedom of thought, conscience and religion. Arbitrary deprivation of life is prohibited as well. Everyone whose rights and freedoms are violated has the right of recourse to the courts.

487. Pursuant to Subsection 5 (2) (12) of the **War-time National Defence Act**, the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means may be restricted in the interests of national security and public order.

488. Freedom of expression is also restricted in connection with minors. Pursuant to § 179 of the Penal Code, a person who hands over, displays or makes otherwise knowingly available pornographic works or reproductions thereof to a person of less than 14 years of age, engages in sexual intercourse in the presence of such person or knowingly sexually entices such person in any other manner shall be punished by a pecuniary punishment or up to one year of imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment. Pursuant to § 180 of the Penal Code, a person who hands over, displays or makes otherwise knowingly available works or reproductions of works promoting violence or cruelty to a person of less than 18 years of age, kills or tortures an animal in the presence of such person without due cause or knowingly exhibits violence to him or her in any other manner shall be punished by a pecuniary punishment or up to one year of imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

489. The prohibition of incitement of hatred is also a restriction of the freedom of expression. Pursuant to § 151 of the Penal Code (incitement of hatred), activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person are punishable by a fine of up to 300 fine units or by detention. The same act, if committed by a legal person, is punishable by a fine of up to 50,000 kroons. The same act, if (1) it causes the death of a person or results in damage to health or other serious consequences, (2) was committed by a person who has previously been punished by such act, or (3) was committed by a criminal organisation, is punishable by pecuniary punishment or up to 3 years' imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

490. The objective of the **Public Information Act** is to ensure that the public and every person has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society, and to create opportunities for the public to monitor the performance of public duties. See Articles 685-692 of the Second Report.

491. Estonian legislation does not regulate press or publishing. To some extent, respective functions are performed by the Estonian Newspaper Association (ENA) acting for the common benefit of newspaper publishers, uniting 44 publications published in Estonia, with a total daily circulation of 624,860 copies (May 2008). ENA aims at defending the common interests and rights of newspapers, proceeding from internationally recognised principles of democratic journalism. The Statues of the ENA were approved on 13 May 2004.

492. The Estonian Press Council established by the ENA in 2002 is a voluntary body of media self-regulation to handle complaints from the public about material in the media. The Council provides the public with a possibility to find solutions to disagreements with the media without the need to go to court. In addition to representatives of the media sector, the Estonian Press Council includes members from the non-media sectors. The Estonian Press Council consists of ten members.

493. The Council discusses complaints of the public about material that has appeared in the press. As compared to the court, the handling of complaints by the Press Council is quick and free of charge. The newspapers undertake to publish any condemning decisions of the Estonian Press Council. The decisions of the Council must be published in their original wording without any editorials comments. *Eesti Televisioon* and *Eesti Raadio* undertake to broadcast any condemning decisions of the Estonian Press Council. All of the decisions of the Estonian Press Council are published at the ENA home page under the heading Estonian Press Council.

Statistics 2003-2008 (as of 25 April 08)

	2003	2004	2005	2006	2007	2008
Complaints	33	32	45	35	24	17
Inquiries by phone	239	203	206	293	317	
Inquiries by e-mail	9	34	12	24	28	
Decisions	14	33	34	27	21	13
Acquittals	6	18	22	16	14	8
Condemnations	8	15	12	11	7	5
Preliminary agreements		1	0	3	0	0
Withdrawals				1	0	1
Without decision				3	0	1
Rejections		4	8	4	3	2
In process at the end of period		2	5	2	2	4

494. The Public Word Council, a statutory body of non-profit organisation Avalik Sõna (Public Word), was established in 1991. The members of the non-profit organisation Avalik Sõna

include the Journalists' Union, the Union of Media Educators, the Consumers' Union, the Estonian Council of Churches, Estonian Lawyers' Union and NGO Media Watch. The Estonian Press Council is formed of delegated representatives of member organisations. The total number of members is limited to 17. More than 350 cases have been processed through the years, regarding which both condemning and acquitting adjudications have been made with respect to journalists and publications.

495. The Public Word Council provides a possibility for comparison with respect to adjudications made by the Estonian Press Council (the aforementioned body of self-regulation for printed media, which was established mainly because of the discontent of newspapers with criticism from EPC).

Statistics of complaints processed by PWC

	2003	2004	2005	2006	2007
Number of complaints	25	17	13	19	21
Adjudicated	23	16	16	8	19
Cases dismissed	6	4	5	3	6
Cases upheld	9	7	6	3	10
General ruling or public memorandum	1	1	4	2	3
Rejected*	7	4	2	6	5

* Based on rules of procedure, EPC had no competence (e.g. if the case is already in court, anonymous complaints, etc.). 'Case dismissed' means that good journalistic practices or ethics had not been violated; 'cases upheld' means that a violation was discovered.

496. The general principles of the Code of Ethics for the Estonian Press, which is followed by both the Estonian Press Council and the Public Word Council, are that freedom of communication is the basic premise for a working democratic society and that the press and other media serve the right of the public to receive true, fair and comprehensive information. The critical observation of the implementation of political and economic power is the main obligation of the press; provided it remains within the limits of the law, the free press and other media may not be restricted or obstructed in the gathering and publication of information; a journalist is responsible for his or her own statements and work. Media organizations undertake to prevent the publication of inaccurate, distorted or misleading information; the reputation of any individual may not be unduly harmed without there being sufficient evidence that the information regarding that person is in the public interest; individuals in possession of political and economic power and information important to the public are to be considered as public figures and their activities be subject to closer scrutiny and criticism. The media shall also consider as public figures individuals who earn their living through publicly promoting their persona or their work.

497. <u>According to the Statistical Office</u>

Books and pamphlets - indicator and year

	2003	2004	2005	2006	2007
Annual issue, million copies	5.6	5.8	6.0	7.3	8.9
Annual issue in Estonian, million copies	4.6	4.7	5	6.0	6.7
Children's books, million copies	0.5	0.8	0.9	1.2	1.3
School textbooks, million copies	1.5	1.1	1.2	0.8	0.8
Number of titles of first editions	3 416	3 690	3 733	3 692	3 973
Number of titles of first editions of children's books	277	363	392	515	546
Number of titles of first editions of school textbooks	216	192	193	160	178
Annual issue of first editions, million copies	4.8	5.1	5.2	6.2	8.2
Number of copies per inhabitant	4. 10-111	4.3	4.5	5.4	6.6

Periodicals - year and indicator

	Number of titles	In Estonian	Magazines	Magazines in Estonian	Annual issue, million copies	Annual issue in Estonian, million copies	Number of copies per inhabitant
2003	1 180	948	294	233	19.8	18.0	14.6
2004	1 171	958	310	245	23.5	21.4	17.4
2005	1 190	986	313	253	25.3	22.0	18.7
2006	1 158	954	312	251	28.6	25.0	21.3
2007	1 183	982	317	256	31.8	27.3	23.7

Newspapers - year and indicator

	Number of titles	In Estonian	Daily newspapers	Daily newspapers in Estonian
2003	128	92	14	11
2004	133	98	13	9
2005	138	102	15	10
2006	143	105	16	11
2007	148	108	16	11

498. The **Broadcasting Act** provides for the procedure for broadcasting information and the principles of broadcasting activities; the conditions for possession and ownership of technical means (transmitters, transmitter networks) intended for broadcasting information; the procedure for the broadcasting activities of legal persons in private law on the basis of broadcasting

licences. For the purposes of the Act, "broadcasting" means the transmission over the air, including that by satellite, or via a cable network in analogue or digital form using free access or systems of conditional access, of radio or television programme services intended for reception by the public with commonly used receivers (§ 2).

499. Broadcasters have the right to freely decide on the content of their programmes and programme services in compliance with the law and the conditions of a broadcasting licence. The restriction of the freedom of creation guaranteed by law is punishable under administrative or criminal procedure (§ 6). Upon granting transmission time to a political party or a political movement to present its positions, a broadcaster shall also provide an opportunity to grant transmission time in the same programme service for other political parties or movements without undue delay (§ 6.1).

500. Any natural or legal person, regardless of nationality or domicile, whose lawful rights, in particular reputation, have been damaged by an assertion of incorrect facts in a broadcast shall have the right of reply or equivalent remedies which shall be in accordance with the provisions of civil, administrative or criminal law (§ 8).

501. A legal person in private law needs for broadcasting activity a broadcasting licence, which grants the legal or natural person, specified in the licence the right to broadcast programmes and programme services under the conditions specified in the licence. Broadcasting licences are issued by the Ministry of Culture. The Ministry of Culture shall refuse to issue a broadcasting licence if, inter alia, the applicant or the programme service planned by the applicant does not meet the requirements provided for in this Act or the activity applied for is illegal.

502. According to the Statistical Office:

Television - indicator and year

	2003	2004	2005	2006
Broadcasting stations total	4	4	4	4
Broadcasting stations that submitted a report	4	4	4	4
Public law broadcasting stations	1	1	1	1
Private law broadcasting stations	3	3	3	3
National broadcasting stations	3	3	3	3
Regional broadcasting stations	0	0	0	0
Local broadcasting stations	1	1	1	1
Total duration of broadcasting, hours	19 888	20 743	21 498	23 401
Share of broadcasting in Estonian, %	98.0	98.9	99.3	99.1
Share of broadcasting with subtitles in Estonian, %	45.1	41.7	42.9	39.6

Note: For confidentiality reasons, since 2001 the data are presented only about 3 nationwide broadcasters, excluding the data on one local broadcaster.

* Advertising, presentation of programmes and teleshopping.

Radio - indicator and year

	2003	2004	2005	2006
Number of broadcasters	31	31	32	32
Number of transmitters	123	121	130	139
Public law broadcasting stations*	5	5	5	5
Broadcasting stations of local governments	0	0	0	0
Private law broadcasting stations	26	26	27	27
Other broadcasting stations	0	0	0	0
National broadcasting stations	4	4	4	4
Regional broadcasting stations	15	15	16	16
Local broadcasting stations	11	11	11	11
International broadcasting stations	1	1	1	1
Total duration of broadcasting, hours	238 367	227 653	259 756	277 195
Share of broadcasting in Estonian, %	65.6	68.7	72.5	75.2
Share of broadcasting in Russian, %	20.3	21.3	24.0	22.0
Share of own programmes, %	94.2	93.9	94.5	94.3
Share of children's' programmes, %	0.4	0.5	0.4	0.5

Note:
Indicator
Public law broadcasting stations*
* Since 2000, the 5 broadcasting programmes of Eesti Raadio have been regardless as separate units.

503. 12. On 12 March 2008, the new **Advertising Act** was adopted, that entered into force on 1 November 2008. Main requirements to an advertisement is that, given ordinary attention by the public, it shall be clearly distinguishable from other information and its content, design and presentation shall ensure that it is recognised as advertising (§ 3). The Act also provides for what kind of advertising is prohibited. More stringent special requirements have been established for advertising directed principally at children.

504. Moreover, there are several domains and subjects that may not be advertised. Advertising of the following is prohibited: lawyers and sworn translators, notaries and bailiffs, patent agents, tobacco products, narcotic and psychotropic substances, weapons and ammunition, explosive substances and pyrotechnic products, gambling games and lotteries, health care services, infant formulas, works which contain pornography or promote violence or cruelty, services offered for satisfaction of sexual desire. Additionally, restrictions have been established with regard to advertising certain services and goods.

Radio - indicator and year

	2003	2004	2005	2006
Share of advertising, %	2.6	2.9	2.6	2.6

Television - indicator and year

	2003	2004	2005	2006
Share of advertising*, %	11.2	12.3	13.5	12.5

Note: For confidentiality reasons, since 2001 the data are presented only about 3 nationwide broadcasters, excluding the data on one local broadcaster.

* Advertising, presentation of programmes and teleshopping.

505. Use of the Internet is commonplace in Estonia. The Internet is used for searching of information, as a communication channel, and for mediation of various services offered.

506. 2006. Survey ordered from Faktum & Ariko by the Riigikogu in 2006: "Inhabitants of Estonia and the Internet" that was conducted in the period May 3, 2006 to May 18, 2006, showed that:

- Only one out of ten households (11%) is not connected to the Internet
- Less people use fixed telephone than the Internet - the respective shares being 56% and 62%
- 80% of the 16-64 years old inhabitants of Estonia have used the Internet at least once in their life
- Only 4% of the people who have used a computer have not used the Internet
- Searching for information for personal or work-related purposes is a very common activity - 67% and 61% of the respondents did it at least once a week
- 81% of all Internet users engage in transactions over the Internet every month; approx. 1 hour per week is devoted to this purpose
- The Internet is a daily entertainment channel for one out of four (28%) Internet users; On average, 1 hour per day is spent on the Internet for entertainment, which is more than the share of other activities
- Communication via forums and chat rooms is a relatively time-consuming activity for those involved in it (36% of all Internet users)
- Of the E-services offered by the state, the home pages of local governments are clearly the most popular -these had been used by 44% of the respondents and additional 29% of the respondents were aware of them
- 35% of all Internet users had used e-government services via net banks and additional 22% were aware of them

- The web page riik.ee and electronic State Gazette (Riigi Teataja) are equally popular - one-third have used them and one-third are aware, but have not used

- Approximately one-half of the Internet users were aware or had used the pages Eesti.ee and Official Announcements (Ametlikud Teadaanded - www.ametlikudteadaanded.ee) (47% and 51%, respectively)

507. It is also possible to refer to the results of a survey by Emor published on 6 December 2006, according to which 60% of the inhabitants of Estonia (i.e., 730,000 people) use the Internet. As compared to autumn 2005, the number of Internet users had increased by 35,000 by December 2006. One out of three inhabitants of Estonia of age 6-74 uses the Internet every day. Most of the Internet users use it at home. 243,000 households have a computer with an Internet connection, and the number of such households is increasing rapidly. As compared to autumn of the previous year, this number has increased by 56,000. Purchasing goods over the Internet is becoming more popular. In the last six months, one out of ten 15-74 years old inhabitants (approx. 109,000) had purchased goods over the Internet. The Internet is mainly used for purchasing of clothing and books and subscribing to newspapers and magazines. (The data are based on e-monitoring survey conducted by TNS Emor in September-November 2006, in the course of which survey 1,861 inhabitants of age 6-74 were interviewed.)

508. 2007. According to the data of the Statistical Office, in the first quarter of 2007 the use of the Internet was as follows:

16-74 year olds by nationality and use of the Internet, 1st quarter 2007*

	Used the Internet	Did not use the Internet	Total	Used the Internet (%)	Did not use the Internet (%)	Total (%)
Total	656.0	375.8	1 031.8	63.6	36.4	100.0
Estonians	466.8	223.2	690.0	67.7	32.3	100.0
Other nationalities	189.2	152.6	341.8	55.4	44.6	100.0

16-74 years old users of the Internet by nationality and place of use, 2007*

	Total	At home	At work	At educat. institution	Other	Total users of the Internet (%)	At home (%)	Other (%)
Total	656.0	542.1	279.5	116.2	141.4	100.0	82.6	21.6
Estonians	466.8	379.5	219.8	86.9	103.5	100.0	81.3	22.2
Other national.	189.2	162.6	59.8	29.3	37.9	100.0	85.9	20.0

* Statistical office, data of survey “IT in Household”.

Article 20. Prohibition of war propaganda

509. Reference to Article 12 of the **Constitution** has been made in Article 169 of the First Report.

510. Pursuant to Article 41 of the Constitution […] beliefs shall not excuse a violation of the law […].

511. Pursuant to Article 45 of the Constitution, the right of expression may be restricted by law to protect public order, morals, and the rights and freedoms, health, honour and good name of others.

512. War propaganda and incitement of hatred have always been acts punishable pursuant to criminal procedure and remain so according to the new **Penal Code**. Pursuant to § 92 (Propaganda for war) of the Penal Code, any incitement to war or other use of arms in violation of the generally recognised principles of international law is punishable by a pecuniary punishment or up to 3 years' imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

513. 10. On 10 April 2006 (criminal case 3-1-1-117-05), the Supreme Court has explained that § 151 of the Penal Code establishes liability for any activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status. This means that punishable is any activity by which a message inciting to hatred or violence on the specified basis is disclosed in any way, i.e. made available to an undetermined group of people. The message transmitted must be such that could possibly bring about hatred or violence in other persons as well, result in spread of hatred or violence aimed against some social group. With a view of the objective necessary elements of an offence pursuant to § 151 of the Penal Code, it is necessary to establish what kind of significant damage was caused to which public interests.

514. 18. On 18 December 2006, the Supreme Court adopted a decision regarding the charges against Vladimir Penart (criminal case 3-1-1-140-03). V.P. was found guilty based on Subsection 61[1] (1) of the CoCrP in that while being in the service of the USSR Ministry of Internal Affairs and state security and working as the head of the Elva District Department of the ESSR Ministry of Internal Affairs, he committed a crime against humanity by murdering three persons - the courts established that the victims were murdered because of their political or ideological beliefs. The Supreme Court upheld the judgement of conviction, explaining that pursuant to Article 7 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of no punishment without law provided for in Article 7 (1) shall not prejudice the trial and punishment of any person for any which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations. In such cases, a person cannot justify his or her conduct with violation of the no punishment without law-principle or lack of respective punishment provision in the national law.

515. 17. On 17 January 2006, the European Court of Human Rights adopted its decision in the case *Kolk and Kislyiy* vs Estonia (applications no. 23052/04 and 24018/04). 10. On 10 October 2003, the applicants, Kolk and Kislyiy, were convicted of crimes against humanity under Subsection 61^{1} (1) of the Code of Criminal Procedure by the Saare County Court. They were sentenced to eight years' suspended imprisonment with a probation period of three years. It was stated in the judgment that the applicants had, in March 1949, participated in the deportation of the civilian population from the occupied Republic of Estonia to remote areas of the Soviet Union. The applicants alleged that their conviction of crimes against humanity was based on retroactive application of the criminal law. The ECHR found that since no statutory limitation applies to crimes against humanity, irrespective of the date on which they were committed, the applications must be rejected and declared inadmissible.

Article 21. The right to peaceful assembly

516. For reference to Article 12 of the Constitution, see Article 172 of the First Report. References to the **Public Assemblies Act** have been provided in Articles 721-731 of the Second Report and there have been no significant amendments to said Act.

517. Pursuant to the Covenant, restrictions may be provided by law only if they are necessary in a democratic society to protect national or public security, public order, public health or morals or the rights and freedoms of others.

518. § 14^{2} of the Act provides for the consequences of ignoring the requirements for holding a public meeting. Holding a public meeting by ignoring the requirements or holding of a public meeting for which the notice for public meeting was not registered or if holding the meeting was banned by reasoned ruling is punishable with a fine of up to 200 fine units.

519. Pursuant to Subsection 4 (1) (13) of the **State of Emergency Act**, the right of persons to assemble peacefully and to conduct meetings without prior permission may be restricted during a state of emergency.

520. Pursuant to § 9 of the **Emergency Situation Act**, during an emergency situation which is declared regarding a natural disaster or catastrophe, it is permitted to prohibit natural persons from assembling and conducting meetings in the emergency area, in order to maintain public order and ensure traffic safety. Also, during an emergency situation which is declared in order to prevent the spread of an infectious disease, it is permitted to prohibit natural persons from assembling and conducting meetings in the emergency area.

521. Pursuant to Subsection 5 (2) of the **Peace-Time National Defence Act**, the right of persons to assemble peacefully and to conduct meetings may be restricted in the interests of national security and public order.

522. Pursuant to § 265 of the **Penal Code** (unauthorised public meeting), organising an unauthorised public meeting or incitement to participation in such meeting is punishable by a pecuniary punishment or up to one year of imprisonment.

Article 22. The right to freedom of association

523. Reference concerning the provisions regarding the freedom of association of the Constitution is made to the First Report.

524. The relevant laws have been listed in the periodical report. Next, the most significant amendments of the legislation are presented.

525. The law regulating incorporation of companies (**Commercial Code**) was amended after accession to the EU; the requirements to residence of members of management board and heads of foreign branches of companies were amended in such a manner that the permanent residence of relevant persons may be in Estonia, some other Member State of the European Economic Area or Switzerland. According to the data of the Commercial Register, in May 2008, there were 115,727 actively operating companies in Estonia.

Non-profit associations (NPAs)

526. § 26 of the **Non-Profit Associations Act** / § 17 of the **Foundations Act** establish that the residence of at least one-half of the members of the management board must be in Estonia, other Member State of the European Economic Area or Switzerland. The main organisation uniting NPAs is the Network of Estonian Non-profit Organisations (94 member organizations); in addition to this, there are several domain-specific associations. According to the data of the Commercial Register, in May 2008, there were 26,198 NGAs and 788 foundations in Estonia.

527. 2002. In December 2002, the *Riigikogu* approved the Estonian Civil Society Development Concept. Important principles of the Concept include the following: supporting the idea of voluntary action, improvement of the better acknowledgement and implementation of the economic, social and political rights and obligations of citizens, establishment of a favourable environment for the functioning and strengthening of citizens’ associations, involvement of citizens and their associations more widely in the process of developing, implementing and analyzing public policies and legal acts, and acknowledgement and consideration of the specific rights and interests of insufficiently represented or unacknowledged citizens and their associations in arranging public life.

528. In the Concept, the term “citizens” indicates all the persons legally living in Estonia, and citizens’ associations are considered to be various types of organizations established on the basis of the freedom of association which do not strive for profit.

529. For the implementation of the Concept, a joint committee of representatives of the Government of the Republic and of citizens’ associations was assembled by Government of the Republic Order of 9 October 2003, which committee organises its work in groups. The committee consists of 22 members: secretary generals of five Ministries, heads of foundations (Enterprise Estonia, Integration Foundation), representative organisations of employers and employees, and representatives of citizens’ associations. The joint committee of the Government

of the Republic and representatives of citizens' associations is chaired by the Minister of Regional Affairs. The work of the committee is co-ordinated and maintained by the Ministry of the Interior. In 2005, the Government of the Republic Civic Initiative Support Strategy and the Good Practices of Involvement were completed by the committee; the Development Plan for Civic Initiative Support and General Principles for Supporting Citizens' Associations are currently being prepared.

530. In 2005, the state commenced allocation of aid through Enterprise Estonia to county development centres for arrangement of training intended for non-profit associations. Numerous information and training events have been arranged - for example, a conference of the European Economic and Social Committee was held in Tallinn on 31 March 2006 on the subject "Future of Europe and Civil Society". Daily information regarding the possibilities of citizens' associations is offered at the home page of the Ministry of the Interior, where it is also possible to acquire an overview of the basic documents and records of the committee- The organisations represented in the committee and their networks function as important carriers of information in the capacity of commission members.

531. The Activity Plan for the Implementing of Estonian Civil Society Development Concept for 2007-2009 is available at the web page of the Ministry of the Interior.

532. On the initiative of the State Chancellery, the Good Practices of Involvement have been completed for strengthening of the co-operation between public sector and citizens' association in as early stage of the development of draft acts, policies, etc. as possible. These Good Practices of Involvement establish the required activities step by step, from composition of the terms of reference to notification about the results and assessment of the outcomes of involvement. An Involvement Coordinator is employed by each Ministry for monitoring the implementation of the Good Practices. A web portal (involvement information system) has been created for governmental agencies and citizens' associations for participation in e-consultations.

533. Involvement has been successfully used by the Ministry of the Environment upon arrangement of round table meetings with participation of environmental organisation representatives and Ministry officials, for example, within the framework of preparing the National Development Plan for the Use of Oil Shale; the Ministry of Culture upon preparation of strategies and legislation (incl. Creative Persons and Artistic Associations Act, Act to Amend Heritage Conservation Act, Act to Amend Museums Act, and transposition of the EU Audiovisual Media Services Directive); and the Ministry of Agriculture upon implementation of the Estonian Rural Development Strategy 2007-2013. The Ministry of Foreign Affairs consults with the Estonian Roundtable for Development within the framework of development and implementation of the Estonian Humanitarian and Development Aid Development Plan 2006-2010.

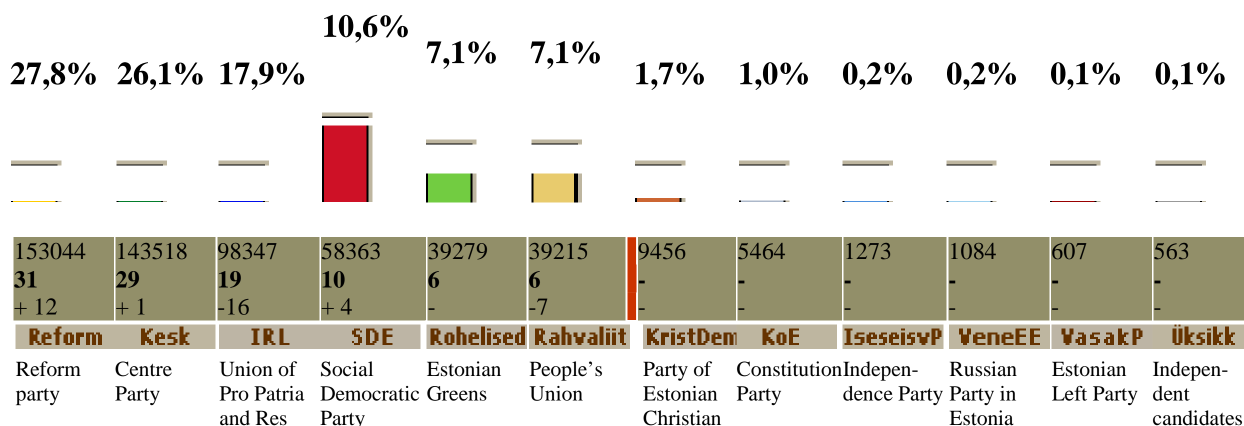
Political parties

534. Amendments to the **Political Parties Act** after the year 2002 do not concern the general principles of formation of political parties and participation in them, with the exception of the specification that in addition to Estonian citizens, citizens of the European Union with active legal capacity who have attained eighteen years of age and who are not Estonian citizens but reside in Estonia permanently may be members of political parties. Amendments concerning

participation in elections to the European Parliament and contributing to transparency of the financing of political parties, incl. the accessibility of lists of members of political parties, have been made in the Act.

535. The distribution of mandates in 1999 parliamentary elections[2]

As at 07 March 2007 22:02:31



Votes total: 550213
5% threshold: 27510.65
Data provided by: 657 polling divisions of 657

Displayed in boxes under the columns:
1st line - Votes per political party
2nd line - Number of mandates
3rd line - Comparison of mandates with 2003
- Results of 2003 elections

536. At present, 14 active political parties have been registered in the Commercial Register, with their respective membership: (01.01.2008):

Democrates - Estonian Democratic Party	920
Estonian Left Party	1 015
Estonian Independence Party	1 010
Estonian Centre Party	10 102
Estonian Reform Party	6 348
People's Union of Estonia	9 903
Party of Estonian Christian Democrats	2 108
Estonian Greens	1 469
Union of Pro Patria and Res Publica	8 878
The Constitution Party	1 542
Union of Farmers	1 425
Social Democratic Party	3 275
Russian Party in Estonia	1 412
Republican Party	1 046

[2] *Source*: National Electoral Committee.

Trade unions

537. 2006. The **Employees' Representative Act** adopted in 2006 ensures (in the opinion of trade unions, Action Plan 2004-2007 Fulfilment Report) participation by trade unions in informing of, and consulting with, employees. By the Employees' Representatives Act, the **Trade Unions Act** has been amended with a provision regarding a shop-steward, who is deemed to be the representative of employees also within the meaning of the Republic of Estonia Employment Contracts Act. The Act has also been amended with provisions regarding the liability of the employer and shop-steward.

538. Since the year 2001, Government of the Republic has engaged in trilateral negotiations concerning employment and social issues with the Central Organisation of Estonian Trade Unions (EAKL), Estonian Employees Unions Association (TALO) and Estonian Employers Confederation. An agreement has been entered into between EAK and Estonian Employers Confederation regarding the minimum wage in 2008. TALO unites trade associations and unions and their umbrella organisations; agreements have been concluded regarding the wage conditions and minimum wage of TALO members.

539. 2008. In the course of consultations held from January to April 2008, representatives of the Ministry of Social Affairs, Ministry of Justice, Estonian Employers Confederation, Central Organisation of Estonian Trade Unions, Estonian Employees Unions Association and Estonian Chamber of Commerce and Industry reached an agreement regarding the new draft Employment Contracts Act. According to the agreements reached, the representatives of employees and employers will also be involved in further processing of the draft Act, as well as in improvement of the employees' awareness in general.

540. As at 2007, based on data by EAKL, 39,106 inhabitants of Estonia participate in trade unions.

Article 23. Marriage and family

541. As compared to the previous Report, the Acts referred to in said Report have not been amended.

542. An important legal instrument is the **State Family Benefits Act**, the purpose of which is to ensure partial reimbursement of expenses relating to the care, raising and education of children. The Act specifies the types and extent of state family benefits, as well as the conditions and procedure for receiving the benefits.

543. There are many possibilities for supporting families with children, of which family benefits and tax incentives are the most common. Family benefits are paid to:

(1) Permanent residents of Estonia;

(2) Aliens residing in Estonia who have temporary residence permits or who stay in Estonia on the basis of residence permits granted by competent authorities of European Union Member States, Member States of the European Economic Area or the Swiss Confederation;

(3) Aliens residing in Estonia on the basis of temporary right of residence.

544. Family members who reside in Estonia and children away from their family due to studies abroad are entitled to family benefits.

545. Types of family benefits are as follows: childbirth allowance, child allowance, child care allowance, single parent's child allowance, conscript's child allowance, child's school allowance, foster care allowance, start in independent life allowance, adoption allowance and allowance for families with seven or more children. If a person is entitled to several types of family benefits, these benefits are granted and paid at the same time. Family benefits are financed from the state budget.

546. Family benefits are paid to all children until they attain 16 years of age. Children enrolled in school are entitled to receive family benefits until they attain 19 years of age. Child allowance is paid to families raising one or two children at twice the child allowance rate and to families raising three or more children at six times the child allowance rate.

547. A child care allowance is paid to one parent:

(1) Raising one or more children of up to three years of age;

(2) In addition to raising one or more children of up to three years of age, raising children between three and eight years of age;

(3) In a family with three or more children, raising three or more children at least three years of age and receiving child allowance.

A person receiving a child care allowance is entitled to an additional child care allowance with respect to each child less than one year of age.

548. A child in whose birth registration no entry has been made concerning the father or an entry has been made on the basis of a statement by the mother, or whose parent has been declared to be a fugitive pursuant to the procedure provided for by law is entitled to a single parent's child allowance.

549. Children of conscripts in the Defence Forces of Estonia are entitled to conscript's child allowance.

550. Children without parental care who are in foster care and for whom guardianship has been established or with respect to whom a written foster care contract has been entered into are entitled to a foster care allowance.

551. Allowance for families with seven or more children shall be paid to one parent or guardian raising seven or more children in the family.

552. A school allowance is paid to a child for the commencement of each school year.

553. A childbirth allowance is paid to one of the parents after birth of a child. The amount of the childbirth allowance is 5,000 kroons. In the case of multiple birth, childbirth allowance is paid in the sum of 5,000 kroons with respect to each child. An adoption allowance is paid to an adoptive parent permanently resident in Estonia or residing in Estonia on the basis of a temporary residence permit or temporary right of residence, from whom the adoptive child does not descend and who is not the step-parent of the child, provided that childbirth allowance has not been paid to the family with respect to the same child. Adoption allowance is paid in the sum of 5,000 kroons with respect to each child adopted.

554. A start in independent life allowance is paid to a person without parental care who has lived in a children's home or school for the disabled or with respect to whom guardianship has been established or a written foster care contract has been entered into, if the person starts independent life in a new place of residence within two years after exclusion from the register of the children's home or school for the disabled, termination of guardianship, or expiry of the foster care contract.

555. Table: family benefits (mill. kroons), 2003-2007

Family benefits (mill. kroons), 2003-2007

	2003	2004	2005	2006	2007
Family benefits paid	1 386.4	1 664.7	1 643.2	1 643.6	1 677.4

556. Table: recipients of family benefits, 2003-2007

Recipients of family benefits, 2003-2007

	2003	2004	2005	2006	2007
Number of children	293 880	290 281	287 459	274 985	270 087

557. Table: sums of family benefits (sum in kroons), 2003-2007

Sums of family benefits, 2003-2007

Type of benefit	2003	2004	2005	2006	2007
Childbirth allowance (single)					
• First child	3 750	3 750	3 750	5 000	5 000
• From second child	3 000	3 000	3 000	5 000	5 000
Adoption allowance (single)	3 000	3 000	3 000	5 000	5 000
Child allowance					
• First child	150	300	300	300	300
• Second child	300	300	300	300	300
• From third child	300	300	300	300	900
Childcare allowance					
• To a parent of a child of up to 3 years of age	600	600	600	600	600
• To a parent of a child of 3-8 years of age, if there is one more child of up to 3 years of age in the family	300	300	300	300	300
• To a parent of a child of 3-8 years of age, if there are three or more children in the family	300	300	300	300	300
• Additional childcare allowance to a parent of a child of up to 1 year old	100	100	100	100	100
Allowance for families with seven or more children	-	-	2 400	2 520	2 640
Child's school allowance (for the commencement of the school year)	450	450	450	450	450
Single parent's child allowance	300	300	300	300	300
Foster care allowance	900	900	900	900	1 500
Conscript's child allowance	750	750	750	750	750
Start in independent life allowance (single)	6 000	6 000	6 000	6 000	6 000
Allowance for families with three or more children*	150	150	-	-	-
• Per child, if there are 3 children in the family	-	-	150	300	-
• Per child, if there are 4-5 children in the family	-	-	300	450	-
• Per child, if there are 6 or more children in the family	-	-	375	450	-
Allowance for families raising triplets	600	600	900	1 350	-

* *Note*: The allowance for families with three or more children (quarterly allowance) was discontinued on 1 January 2007, when the child allowance paid with respect to third and each consecutive child was raised to 900 kroons per month.

558. Table: recipients of family benefits, 2003-2007

Recipients of family benefits, 2003-2007

Type of benefit	2003	2004	2005	2006	2007
Childbirth allowance	13 100	14 402	14 245	14 917	15 624
Child allowance	293 880	290 281	287 459	274 985	270 087
• To first child	190 670	189 007	187 397	180 096	176 512
• To second child	78 311	76 872	75 994	72 476	71 571
• From third child	24 899	24 402	24 068	22 413	22 004
Childcare allowance	58 800	48 543	50 517	48 355	50 331
• To a parent of a child of up to 3 years of age	39 039	28 601	29 628	27 722	28 742
• To a parent of a child of 3-8 years of age, if there is one more child of up to 3 years of age in the family	11 000	11 219	11 722	12 076	12 927
• To a parent of a child of 3-8 years of age, if there are three or more children in the family	8 761	8 723	9 167	8 557	8 662
For families raising 4 or more children, or triplets	23 670	-	-	-	-
For families raising 3 or more children, or triplets	-	68 061	69 982	67 836	60 039
For families raising 7 or more children	-	-	195	198	185
Child's school allowance	205 509	200 097	190 479	180 594	172 624
Single parent's child allowance	28 432	28 540	28 126	27 258	26 287
Foster care allowance	2 949	2 835	2 507	2 262	2 087
Adoption allowance (single)	30	32	29	42	28
Conscript's child allowance	9	11	14	30	25
Start in independent life allowance	71	108	123	110	155

559. Table: family benefits (kroons), 2008

Type of benefit	Benefit sum (kroons)
Childbirth allowance (single)	5 000
Child allowance	
• First and second child	300
• From third child	900
Childcare allowance (sums per child)	
• To a parent of a child of 1-3 years of age	600
• To a parent of a child of 3-8 years of age (if there are more children of up to 3 years of age in the family)	300
• To a parent of a child of 3-8 years of age, if there are three or more children in the family (if there are at least three children of more than 3 years of age in the family receiving child allowance)	300
• Additional child care allowance for a child of less than 1 year of age	100
Single parent's child allowance (paid if no entry has been made concerning the father in the birth registration of the child or an entry has been made on the basis of a statement by the mother, or if a parent of the child has been declared to be a fugitive)	300
Conscript's child allowance	750
Child's school allowance (at the commencement of each school year)	450
Foster care allowance	3 000
Start in independent life allowance (paid to children who have lived in a children's home or in foster care upon commencement of independent life) (single)	6 000
Allowance for families with seven or more children (for families raising seven or more children entitled to child allowance, paid to one parent once a month)	2 640
Adoption allowance (single)	5 000

560. Tax incentives are granted to families with children in three ways. Firstly, inhabitants of Estonia can deduct from their annual income the education costs (including state educational loan interests) of children or dependent children less than 26 years old. Secondly, one parent or guardian of a child or other person maintaining a child may deduct increased basic exemption from his or her income in the period of taxation for each child of up to 17 years of age, starting

with the second child. Thirdly, and as a measure supporting birth rate, the state partly writes off a study loan of a parent who has graduated from an institution of higher education or vocational institution and is raising a child of less than three years of age.

Right to marry and to found a family

561. After submission of the Second Report, the Government of the Republic Regulation of 9 October 2001 "**The Conditions and Procedure for the Transfer of the Functions of a Vital Statistics Office to a Minister of the Church, Congregation or Union of Congregations with Regard to Contraction of Marriage, and Performance of the Functions by Them**" has been amended. Since 2005, the Minister of Regional Affairs may grant the right to perform the functions of a vital statistics office which are related to the contraction of marriages to a minister who has received the appropriate training. Until 2005, this right belonged to the Minister of the Interior. From the same time, the form of the certificate confirming completion of the training and the composition of the evaluation committee are also established by the Minister of Regional Affairs.

562. The forms for application for contraction of marriage, marriage registration forms and forms for marriage certificates are issued to the ministers by the vital statistics office of the location of the congregation, which office will also provide guidance to the ministers in matters related to filling in of documents associated with contraction of marriage. The minister will draw up the marriage registration in two copies and will issue the prospective spouses the marriage certificate. The minister will forward either in real time or within three working days both copies of the marriage registration form, documents submitted by the prospective spouses and application for contraction of marriage to the vital statistics office of the location of the minister's congregation, where the compliance of drawing up the marriage registration form with the procedure provided for in the legislation is verified.

563. Pursuant to the **Family Law Act**, a minister has the right to refuse to contract marriage. A minister of religion of a church, congregation or association of congregations who has been granted the right to contract marriages has the right to refuse to contract a marriage if a prospective spouse does not meet the requirements for the contraction of marriage according to the religion of the church, congregation or association of congregations.

564. Table: marriages and divorces, 2003-2006

Marriages and divorces, 2003-2006

	2003	2004	2005	2006	2007
Marriages	5 699	6 009	6 121	6 954	7 022
Divorces	3 973	4 158	4 054	3 811	3 809

565. Of the total number of marriages, the numbers of marriages contracted by ministers were as follows: 407 marriages in 2003; 447 marriages in 2004; 440 marriages in 2005, and 499 marriages in 2006.

566. Table: average age of prospective spouses, 2003-2006

Average age of prospective spouses, 2003-2006

	2003	2004	2005	2006	2007
Men	28.2	28.7	28.8	29	29.4
Women	25.7	26.1	26.3	26.5	27

567. *Free and full consent of intending spouses.* No amendments in this respect.

Equality of rights and responsibilities of spouses

568. Pursuant to the **Name Act**, upon contraction of marriage, a person shall choose a new surname or keep the current surname. A new surname may be a joint surname with the spouse which is the last surname of the spouse before marriage, or consist of the surname last borne before marriage and the surname of the spouse following it (§ 10). Upon a divorce, the previous surname of a person shall be restored on the basis of his or her application, otherwise the surname borne during marriage shall be preserved. A restored surname may be the surname last borne before the marriage being divorced or the surname last borne before the first marriage (§ 11). Upon annulment of a marriage, the surname of a person last borne before the marriage being annulled shall be restored (§ 12).

569. As compared to the previous report submitted, no amendments have been made in the regulations concerning personal or proprietary rights of spouses. Also, no amendments have been made regarding maintenance of spouse or rights and duties of parents.

Children, work and family. Combining work and family life

570. Women are increasingly more often unwilling to stay away from the labour market for a long time while caring for children. Proceeding from family needs, the need for flexible integration of the work and family life is apparent. More flexible division of work and family life is necessary from the viewpoint of caring small children, schoolchildren and the elderly alike.

571. In addition to searching for more flexible full-time jobs, people consider possibilities for part-time working and home-working as well. Some flexible work forms accounting for family life are, for example, shortened work week for full-time workers, flexible work time (the number of working hours per week/month is agreed upon), and contract work.

572. An important precondition to combining work and family life is accessible day care for children complying with the family's requirements. Parents often feel the need to participate in work life before the child reaches three years of age. According to a study conducted in Estonia in 2004, one-half of the parents would like to return to work as soon as the child is one year old, but lack the possibilities required for this.

Child care

573. The childcare services and requirements set for it have been regulated since 1 January 2007 by the **Social Welfare Act**. The purpose of legal regulation of childcare services is to increase the safety of children in situation where a child is being temporarily looked after by a person not living with the child on daily basis. **Pre-school Child Care Institutions Act** regulates the activity of pre-school child care institutions (nursery schools) and pre-school education.

574. "Childcare service" means a service supporting the ability of the parent to work, study or cope during the provision of which the care, development and safety of a child is guaranteed by a provider of childcare service. Therefore, this service is intended for supporting working parents if the child does not go to nursery school. The childcare service can also be used by parents of a child with severe or profound disability. The parents can leave their child with a childminder. In order to act as a childminder, a person shall hold childminder's professional certificate, for acquisition of which completion of childminders' training and passing of related examination is required. Childcare services may be provided both in the child's place of residence and in other premises which must comply with requirements provided for by law.

575. Childcare services are financed from the rural municipality or city budget and each rural municipality and city establishes the persons entitled to receive childcare service, the volume of financing of childcare service and the conditions and procedure for the provision childcare service. In Estonia, the main problem is lack of creche vacancies. Therefore, upon supporting of flexible childcare, the emphasis is laid mainly on creation of childcare possibilities for children less than 3 years old.

576. The childcare services of a child with severe or profound disability is financed from the state budget. For this, funds are accrued in the rural municipality or city budget from the state budget. Every child of less than 18 years of age with severe or profound disability is entitled to the service. 2007. In 2007, it was possible to use the services at the cost of 2,580 kroons per year; in 2008, at the cost 5,800 kroons per year.

577. Surveys have shown that for e.g. children less than three years of age and children with special needs, the best care is ensured in a small group (family daycare) by use of childminder's services. A small group ensures learning of socialising skills by children, while limiting the stress caused by a large group and reducing the risk of spreading infectious diseases. Individual approach to all children and development of affection between the children and the childminders are considered the main advantages of family daycare and childminder's services.

578. A professional qualification system for childminders has been created on the initiative of the Office of the Minister for Population and Ethnic Affairs. 18. On 18 April 2005, the professional standard for childminders was approved (childminder II and III). At first, the body providing childminder's qualifications was Institute Of Family Care (Perekasvatuse Instituut). Since 2 August 2006, the body providing childminder's qualifications is the Tallinn Pedagogical Seminar. The first professional childminders have established an umbrella organisation - the Professional Association of Estonian Childminders. The objective of the Professional Association is to unite, support, inform, represent, and consult professional childminders in Estonia. Supervision over childcare service is exercised by the county governor of the place of business of the service provider or by an official authorised by the county governor.

579. According to Regulation No. 1 of the Government of the Republic of 3 January 2008, Information System for Rendering Childcare Services shall be established by the Ministry of the Interior. The purpose of the database is improvement of the availability of childcare services, improvement of the efficiency and transparency of childcare services provision, prompt notification of service providers and users of the vacancies in nursery schools, alternative possibilities of childcare and qualified childminders on both national and local governments level.

Parental benefit

580. The purpose of parental benefit is to avoid sudden decrease in family income in connection with childbirth. The main aim of the Act is to avoid the situation where families postpone having children indefinitely. The parental benefit provides working parents with the possibility of spending more time with their children without the need to hurry back to work and supports non-working parents and students as well.

581. A parent raising his or her child, adoptive parent, step-parent, guardian or caregiver residing in Estonia permanently or on the basis of a temporary residence permit.

582. The **Parental Benefit Act** entered into force in December 2003. From 1 September 2007, the father of the child has the right to receive benefit only after the child attains seventy days of age. The parents have the right to receive the parental benefit in turn. Parental benefit is paid from the day following the last day of the maternity benefit payment period. From the year 2008, the total duration of the parental benefit payment period together with pregnancy leave and maternity leave is 575 days, on the condition that the pregnancy and maternity leave of the mother of the child commences at least 30 calendar days before the estimated date of delivery as determined by a doctor. If the pregnancy and maternity leave of the mother commences less than 30 days before the estimated date of delivery as determined by a doctor, the number of the days by which the pregnancy and maternity leave of the mother commences later shall be deducted from the benefit payment period.

583. The amount of parental benefit is calculated on the basis of the parent's income which is subject to social tax in the calendar year preceding the calendar year during which the right to receive the benefit arises. The amount of the benefit is 100 per cent of the income which is subject to social tax, but not larger than three times the average income in Estonia in the year preceding the previous year. 2007. In 2007 and 2008, the upper limit of parental benefit was 21,624 kroons and 25,209 kroons, respectively. If the parent did not work in the year preceding the year during which the right to receive the benefit arises, the parental benefit is paid equal to the benefit rate, which in 2008 is 3,600 kroons. If the parent worked in said year, but his or her average income was smaller than the minimum wage, the parental benefit is paid equal to the minimum wage rate. 2008. In 2008, the minimum wage is 4,350 kroons. Benefit already granted at the minimum or maximum rate is not recalculated at the turn of the calendar year. If the parent benefit is paid on the basis of minimum wage rate and the minimum wage increases at the turn of the calendar year, or if the benefit granted on the basis of wage becomes less than the minimum wage, payment of the parental benefit shall continue based on the new minimum wage.

584. If the next child is born to the family within 2.5 years and if the average income per calendar month of the parent in the period between the two births is smaller than the previous monthly parental benefit, the benefit shall be paid in the sum of the previous parental benefit. The parental benefit is also paid if the recipient of benefit works at the time of receiving benefit.

585. 2006. The survey “Impact of Parental Benefits on Female Labour Force Participation and Fertility Behaviour” ordered by the Ministry of Social Affairs and the Office of the Minister for Population and Ethnic Affairs in 2006 shows that in 2004, the number of first, second and third births increased alike. The share of women with higher education and women previously employed among all women giving birth started to increase from 2004. The survey also indicated that the prior wage of women who had given birth to children was higher as compared to women who had not given birth, i.e. women with higher than average income started having children. Therefore, the possible beneficial influence of parental benefit on the willingness of highly paid women to give birth to second and third child could be observed.

Article 24. Rights of children

586. As compared to the previous Report, no fundamental amendments have been made in the legislation.

587. The relevant §s of the **Family Law Act** discussed in the previous Act have not been amended.

588. In 2008, Estonia submitted its first report regarding the compliance with the Optional Protocol to the United Nations Convention on the Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography. The next report regarding the compliance with the United Nations Convention on the Rights of Child will be submitted by Estonia in 2008.

589. According to the Census of 2000, 312,027 children less than 18 years of age live in Estonia, of whom 159,736 are male and 152,291 female.

590. On 16 October 2003, the Government of the Republic approved the Strategy for the Protection of Child Rights, which establishes objectives and measures until 2008 in order to ensure better compliance with the UN Convention on the Rights of Child. The objectives and activities of the strategy are aimed at practical development of specific domain; activities arranged within the framework of various state programmes have been described, which exert direct influence on improvement of the situation of children.

Short-term objectives of the Strategy for the Protection of Child Rights

591. In Part I of the strategy, emphasis is laid on the objectives associated with satisfaction of the basic needs of children.

1.1 The well-being and possibility for development is ensured to every child through family-centred approach and development of intersectional and systemic co-operation network.

1.2 Equal possibilities are ensured to every child for access to adequate and high-quality education.

1.3 Each child is supported upon the achievement of better health and mental, emotional and physical well-being.

1.4 Possibilities and conditions are created for every child for developing activities outside of family, level studies and work.

592. In Part II of the strategy, emphasis is laid on the objectives associated with satisfaction of the special needs of children.

2.1 Reduction of the number of children in poverty or poverty risk.

2.2 Creation of measures for involvement of disabled children in society.

2.3 Children with educational special needs have equal possibilities for participation in the society.

2.4 Creation of possibilities for integration of children belonging to ethnic minorities and/or other marginal groups.

2.5 Creation of measures for rendering the necessary help and support to children without parental care.

2.6 Creation of measures for prevention of child abuse and rendering comprehensive assistance to abused children.

593. The objectives of Part III of the strategy are concentrated on development of well-functioning systems for ensuring the well-being of children:

3.1 A possibility for growing up in a family environment is guaranteed for every child.

3.2 Safe and child-friendly environment.

3.3 Efficient system for arrangement of protection of children.

594. Every year, an activity plan for the Strategy is composed within the framework of co-operation between the Ministries of Social Affairs, Education and Research, Justice, Interior, Finance, and Culture for the next year, in which the objectives, measures for their achievement, persons responsible, means for achievement of the objectives, results, and possible co-operation partners are specified. Also, reports regarding the compliance with the previous year's activity plan are annually submitted to the Government of the Republic.

595. On 27 January 2005, the Government of the Republic approved the Child Protection Concept. The purpose of the Child Protection Concept is creation of a complete system for organisation of the protection of the rights of child and submission of proposals regarding the required amendments to legislation providing for and regulating the rights and protection of child. One of the objectives is drafting of a new Child Protection Act allowing practical application. The Child Protection Act in force has been criticized as too declarative and lacking

implementing provisions. Another objective of the Child Protection Concept is harmonisation of the child protection work on the national level, in order to ensure high-quality help compliant with the applicable standards for the child and the entire family in Estonia.

Right of minor to receive protection from his or her family, society and the State

596. Pursuant to Subsection 6 (2) of the **Local Government Organisation Act**, the functions of a local government include the organisation, in the rural municipality or city, of the maintenance of pre-school child care institutions, basic schools, secondary schools, hobby schools, libraries, community centres, museums, sports facilities, shelters, care homes, health care institutions and other local agencies if such agencies are in the ownership of the local government. Payment of specified expenses of such agencies from the state budget or other sources may be prescribed by law. The functions of a local government also include the organisation, in the rural municipality or city, inter alia, of social assistance and services and youth work.

597. There are 227 local government units in Estonia. 162 child protection officials were employed by the local governments; in the rest of the local governments, the tasks of a child protection official are fulfilled by social worker. According to the Child Protection Concept, the target level is 1 child protection official per 1,000 children.

598. Figure 1. Number of child protection officials in 1998-2006 (statistics by the Ministry of Social Affairs)

599. To some extent, the fact that not all child protection officials have professional education poses a problem. However, the state arranges in-service professional training on permanent basis, through which most of the child protection officials have acquired the necessary professional competence.

600. In addition to the maintenance obligation discussed in the previous Report, we hereby point out that the monthly support payment for one child shall not be less than half of the minimum monthly wage established by the Government of the Republic (Subsection 61 (4) of the **Family Law Act**). In 2008, the minimum monthly wage rate in the case of full-time work is 4,350 kroons.

601. Pursuant to the **Penal Code** in force since 1 September 2002, a parent who intentionally evades payment of monthly support ordered by a court to his or her child of less then 18 years of age or to his or her child who has attained the age of majority but is incapacitated for work and needs assistance shall be punished by a pecuniary punishment or up to one year of imprisonment (§ 169 of the Penal Code).

602. *Separation from parents*. As compared to the previous Report, no amendments have been made in the legislation.

603. Table: children separated from family by court judgment, 2003-2007

Children separated from family by court judgment, 2003-2007

	2003	2004	2005	2006	2007
Number of children	110	124	94	121	123

Children separated from family

604. Table: reasons for staying in shelter, 2003-2007

Reasons for staying in shelter, 2003-2007

	2003	2004	2005	2006	2007
Number of children in shelters	1 798	1 354	1 237	1 156	1 237
Negligence at home	217	211	196	194	214
Other/reason unknown	310	279	240	236	205
Domestic violence	180	174	136	129	186
Homelessness	292	127	138	138	162
Vagrancy	327	265	230	152	153
Abuse of alcohol by parents or other relatives	210	132	137	151	153
Drug abuse	166	94	77	45	77
Drug abuse by parents or other relatives	24	28	27	45	52
Abuse of alcohol	48	36	51	59	31
Other violence	24	8	5	7	4

605. The types of social services are established by the **Social Welfare Act** (§ 10). These are, for example: social counselling, childcare service, foster care, substitute home service, care in social welfare institutions and other social services needed for coping.

606. Table: children placed to foster families and under guardianship, during the year, 2003-2007

Children placed to foster families and under guardianship, during the year, 2003-2007

	2003	2004	2005	2006	2007
Children placed to foster care	403	344	238	180	127
Children placed under guardianship	257	203	221	242	259

607. Table: adopted children, 2003-2007

Adopted children, 2003-2007

	2003	2004	2005	2006	2007
Adopted children	130	165	152	158	142

608. Upon provision of social services in the course of which the person directly providing the service comes personally into contact with the child under the service, working with children is prohibited for a person who has been punished or who has been subjected to coercive treatment for a sexual offence if information concerning the punishment has not been expunged from the punishment register pursuant to the **Punishment Register Act** or information concerning the punishment has been expunged from the punishment register and has been entered in the archives of the punishment register (§ 10^1 of the **Social Welfare Act**).

609. § 18 of the **Social Welfare Act** establishes the types of social welfare institutions. These are, for example:

(1) Day centres - institutions providing daytime care;

(2) Shelters - institutions offering temporary twenty-four hour assistance, support and protection for persons;

(3) Substitute homes - places for the provision substitute home service to children;

(4) Youth homes - institutions established for living and rehabilitation for youth over the age of fifteen who are from substitute homes, schools for students with special needs, residential educational institutions or have been left without parental care;

(5) Residential educational institutions - institutions established for living, care, development and education for disabled school-age children.

Twenty-four hour social welfare institutions are, in general, separate for children, the elderly, persons of unsound mind, adults with mental disabilities and other socially incapable persons.

610. Substitute home service (§ 15[1] and subsequent §-s) means ensuring family-like living conditions to a child for meeting his or her basic necessities, the creation of a secure physical and social environment promoting his or her development and preparation of the child for coping in accordance with his or her abilities as an adult.

611. The rural municipality government or city government of the residence of the child shall make a decision concerning the referral of a child to substitute home service. A substitute home family consists of up to six children referred to substitute home service.

612. The service provided to a child entitled to substitute home service is funded from the state budget.

613. Table: children in substitute homes, 2003-2007

	2003	2004	2005	2006	2007
Children in substitute homes	1 539	1 549	1 567	1 505	1 409

614. Supervision over substitute home service is exercised by the county governor of the place of business of the service provider or by an official authorised by the county governor (§ 38[3]).

615. *Children belonging to risk group*. The main risk group in Estonia consists of children without parental care or with insufficient parental care. People working directly with risk group children have claimed that by 2006 there were no longer children in Estonia who could be defined as street children. Children belonging to risk group attract the attention of child protection or the police rather soon.

616. *Child abuse*. Article 8 describes the working conditions of children. Article 10 specifies the special conditions regarding the treatment of children in custodial institutions.

617. The child shall be protected from all forms of sexual exploitation; the following is prohibited for adults:

- Inducement of a child to engage in sexual activity
- Exploitative use of children in prostitution
- Exploitative use of children for pornographic purposes. (§ 33 of the Republic of Estonia Child Protection Act)

A legal representative of a child has the right to receive information regarding the sexual offences record of another person, if the legal representative has legitimate interest for this based on the need to protect the child. Legitimate interest exists mainly in the case if the child is under supervision of another person without the presence of the legal representative.

618. Minors shall not consume alcoholic beverages (§ 46 of the **Alcohol Act**), minors shall not obtain alcoholic beverages and it is prohibited to transfer alcoholic beverages to minors (Subsections 47 (1) and (2) of the Alcohol Act). In order to observe the above-mentioned prohibition, a seller may demand identification from the buyer and refuse to sell alcoholic beverages if the buyer fails to present such identification. Adults are prohibited from buying

alcoholic beverages for, offering alcoholic beverages to and handing alcoholic beverages over to minors. A seller shall not knowingly serve any person who buys alcoholic beverages for the purpose of offering or handing the alcoholic beverages over to minors. Minors do not have the right to send or receive alcoholic beverages in postal consignments.

619. Supervision over compliance with these requirements is exercised, inter alia, by the officials of a rural municipality or city government (Subsection 49 (1) (8) of the Alcohol Act). Violation of the age limit upon the handling of alcoholic beverages is punishable by a fine of up to 300 fine units; the same act, if committed by a legal person, is punishable by a fine of up to 50,000 kroons (§ 67 of the Alcohol Act). Rural municipality or city governments, inter alia, have right to impose misdemeanour punishments (Subsection 73 (2) (9) of the Alcohol Act). An adult person who sells alcohol to or purchases alcohol for a person of less than 18 years of age shall be punished by a pecuniary punishment or up to one year of imprisonment if a misdemeanour has been imposed on the offender for the same act. The same act, if committed by a legal person, is punishable by a pecuniary punishment (§ 182^1 of the Penal Code). An adult person who induces a person of less than 18 years of age to consume alcohol shall be punished by a pecuniary punishment or up to one year of imprisonment (§ 182 of the Penal Code). Inducing minors to illegally consume narcotic drugs or psychotropic substances or other narcotic substances is punishable as well (§ 187).

620. In 2005, the Minister of Justice and the Minister of the Interior established uniform principles in the Laulasmaa declaration, proceeding from the need to set out common objectives in combating crime: to reduce the influence of organised crime, prevent juvenile delinquents from committing new unlawful acts and avoid crimes against children.

621. The Ministers consider it necessary to regard combating against the following as common preferences of the Prosecutor's office and of the police:

1. Crimes committed by minors and against minors, above all, crimes of violence and sexual offences committed against children;

2. Organised crime, above all:

    2.1 Crimes associated with narcotic and psychotropic substances;

    2.2 Crimes associated with trafficking of persons.

622. The Laulasmaa declaration was renewed in 2005 and 2006. In July 2007, a meeting of the Minister of the Interior and the Minister of Justice took place for discussion of the implementation of the Laulasmaa declaration. At the meeting it was decided that the priorities established by the declaration need not be changed.

623. *Victims of offences against minors (school violence, domestic violence, sexual violence)*. As regards school violence, it is possible to proceed from the results of the survey "Deviant Behaviour of Estonian Children", according to which 24% of the respondents (on average) had suffered from school violence: 40% of 12-13 years old males and nearly 30% of 14 years old females had encountered school harassment.

624. According to the information system of the police, in 2007, 192 cases of school violence were registered, and criminal proceedings were initiated with respect to 118 of these cases. However, since it is unclear what cases are to be considered specifically as cases of school violence, the indicator is of indicative nature. No data is available concerning school violence from the earlier years.

625. Table: number of victims who are minors in 2006-2007

Type of criminal offence	2006	2007
Rape (§ 141)	58	37
Satisfaction of sexual desire by violence (§ 142)	22	22
Compelling person to engage in sexual intercourse (§ 143)	-	2
Compelling person to satisfy sexual desire (§ 143)	-	4
Sexual intercourse with descendant (§ 144)	-	2
Sexual intercourse with child (§ 145)	10	7
Satisfaction of sexual desire with child (§ 146)	18	35
Disposing minors to engage in prostitution (§ 175)	-	-
Aiding prostitution involving minors (§ 176)	-	-
Use of minors in manufacture of pornographic works (§ 177)	3	1
Manufacture of works involving child pornography or making child pornography available (§ 178)	8	1
Sexual enticement of children (§ 179)	7	5
Employment of person who is prohibited by law from working with children (§ 179)	-	-
Exhibiting violence to minors (§ 180)	-	4
Involving minor in commission of criminal offence (§ 181)	-	-

626. *Youth work.* Youth work is the creation of conditions for young people for activities which facilitate their development and enable them to be active outside their families, formal education and work on the basis of their free will. The content of youth work is the social, cultural and health education of young people which promotes the mental and physical development of young people.

627. The Estonian Youth Work Centre is a national centre under the authority of the Ministry of Education and Research (MER) that performs tasks arising from legislation and assigned by MER upon directing and arrangement of youth work. At present, there are 8 areas of youth work: special youth work, education of sphere of interests, information on/for the youth, counselling and research, training, further training and retraining in youth work, healthy and developing recreation for youth, work education for the youth, international youth work, and youth work structures and youth participation.

628. *Registration after birth and choice of name.* As compared to the previous Report, the §s 46-48 of the Family Law Act referred to in it have been repealed. The right of child to have a name is regulated from 31 March 2005 by the **Names Act** (§s 8, 9, 13).

629. A birth shall be registered within one month after the date of birth of the child; the birth of a foundling shall be registered within one month after the date of finding the child; and the birth of a stillborn child shall be registered within one month after the date of stillbirth. A birth certificate is issued by the vital statistics office regarding the child's birth. Registration of birth and issue of original birth certificate by the vital statistics office are exempt from state fees (compared with previous Report, new version of **State Fees Act**, entered into force 1.01.2007, 47). Issue of certificate is also exempt from state fees if this is caused by amendment of the birth registration due to adoption or changes in data concerning parentage. Pursuant to § 282 of the Penal Code, failure to give notice of birth within the term prescribed by law is punishable by a fine of up to 100 fine units or by detention.

630. A child born alive shall be assigned:

(1) The surname of the parents if the parents have a joint surname;

(2) If the parents have different surnames, the surname of one of the parents, except in the case if the surname of the parent is a surname consisting of two names assigned to the parent upon marriage;

(3) The surname of the mother if paternal filiation is not established.

631. A given name shall be assigned to a child upon agreement between the parents or on the proposal of the single parent of the child. If the right of guardianship regarding a child belongs to only one of the parents, a given name shall be assigned to the child on the proposal of the parent. If there is no agreement or no proposal is made, a guardianship authority shall decide which given name is assigned to the child. A surname and a given name shall be assigned to a foundling on the basis of an application of a guardianship authority. A surname and, at the request of a parent or parents, also a given name shall be assigned to a stillborn child.

632. Upon adoption, a new given name and the surname of the adoptive parent(s) may be assigned to the child on the basis of the application of the adoptive parent(s). Upon assigning or application of a personal name to a child who is ten years of age or older, his or her consent is required. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

633. A given name may consist, upon assigning, of not more than three names written as several words or two names linked by a hyphen and must comply with good morals. The spelling of a non-Estonian personal name shall be in accordance with the rules of orthography of the relevant language. A name which contains numbers, non-alphabetical signs or single letters shall not be assigned as a given name.

634. *Right to nationality*. Citizenship-related matters are still regulated by the Citizenship Act that entered into force 1 April 1995. As compared to the previous Report, the regulations of the Citizenship Act regarding acquisition of Estonian citizenship by birth have been amended (§ 5).

635. An adopted child shall be deemed to have acquired Estonian citizenship by birth if the adoptive parent was an Estonian citizen at the time of the birth of the child and if the child is not a citizen of another state or it is proven that the child will be released from the citizenship of another state in connection with his or her acquisition of Estonian citizenship. If the adoptive parent was not an Estonian citizen at the time of the birth of the child but acquires the citizenship afterwards, the adopted child shall be deemed to have acquired Estonian citizenship as of the date when Estonian citizenship was granted to the adoptive parent. In both cases, the adoptive parent is required to submit a written application for acquisition of citizenship.

636. A person who is less than 18 years old is exempt from payment of a state fee for the review of an application for Estonian citizenship (§ 36 of the State Fees Act).

637. In its previous concluding observations, the Committee recommended to encourage the parents to apply for Estonian Citizenship on behalf of their children. In accordance with the Committee's recommendations, the Office of the Minister for Population and Ethnic Affairs arranged conduct of a study (a qualitative study in the course of which 10 in-depth interviews were conducted in families where both of the parents are persons with undetermined citizenship), the purpose of which study was to determine why parents raising children less than 15 years of age entitled to the right of applying for Estonian citizenship pursuant to a simplified procedure have not done so. The study was completed in 2008; in short, results of the study indicated that the efficiency of notification activities must be improved, together with additional explanation of the established requirements (regarding applying for citizenship for children pursuant to a simplified procedure) and of the resulting advantages. The last direct mailing to all persons with undetermined citizenship took place in 2006. The state must periodically re-send information on the conditions for application for citizenship.

638. On the initiative of the Office of the Minister for Population and Ethnic Affairs, the Ministry of the Interior issued a brochure within the framework of a project aimed at reduction of the number of persons with undetermined citizenship, in which brochure the conditions for application for citizenship for children pursuant to a simplified procedure is explained. The brochure is distributed, via county governments, by local government units upon the registration of childbirth. A respective returnable notification sheet has been provided in the brochure, by which the person can confirm the receipt of the information and authorise the state to contact him or her and give advice on how to draw up the necessary documents. According to the Office of the Minister for Population and Ethnic Affairs, the initial feedback has been positive, and some parents have decided to apply for Estonian citizenship after successful completion of the procedure in the case of their children.

639. 9,619 persons have acquired Estonian citizenship under Subsection 13 (4) of the Citizenship Act (data by Citizenship and Migration Board as at 14 January 2008). The Subsection covers minors under 15 years of age who were born in Estonia after 26 February 1992, for whom Estonian citizenship has been applied for by their parents or single or adoptive parent who have legally resided in Estonia for at least five years at the time of submission of the application and are not deemed by any other state to be citizens of that state on the basis of any Act in force. In 2006 and 2007, for example, citizenship was granted on this basis to 1,111 and 1,407 children, respectively. According to the statistics of the Citizenship and Migration Board, as at 14 January 2008, there were 3,417 children less than 15 years of age of undetermined citizenship living in Estonia.

640. Table: minors who have acquired citizenship (age 0-15 years), 1996-2007

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
2 346	5 627	6 512	2 445	2 032	1 700	1 673	1 895	2 899	2 332	1 492	1 733

641. In all, 32,686 minors have acquired Estonian citizenship (data by CMB as at 1 January 2008). These numbers also include citizens of other countries and do not show acquisition of citizenship based on Subsection 13 (4) of the Citizenship Act only.

Article 25. Right to participate in public affairs

642. The following amendments have been made in legislation as compared to the previous Report submitted by Estonia.

643. According to the **European Parliament Election Act** that entered into force in 2002, an Estonian citizen and a citizen of the European Union who has attained 18 years of age by day of polling shall have the right to vote. A citizen of the European Union who has attained 21 years of age by day of polling shall have the right to stand as a candidate. The Act regulates the election of Members of the European Parliament in Estonia. In Estonia, six Members of the European Parliament are elected for a term of five years and each voter has one vote.

644. All persons whose permanent residence is located in the corresponding rural municipality or city have the right to vote at local government council elections. Pursuant to the **Local Government Council Election Act**, Estonian citizens and citizens of the European Union who have attained 18 years of age by election day and whose permanent residence is located in the corresponding rural municipality or city have the right to vote. An alien has the right to vote if he or she meets the same conditions and resides in Estonia on the basis of a permanent residence permit or permanent right of residence.

Elections in Estonia 2002-2007

	2002 Local Government Councils	2003 Parliament	2004 European Parliament	2005 Local Government Councils	2007 Parliament
Number of voters	1 021 439	859 714	878 863	1 059 292	897 243
Estonian citizens	856 845	859 714	873 809	886 741	897 243
Incl in foreign country	-	2 768	1 509	-	2 146
EU citizens	-	-	5 054	4 704	-
Aliens	164 594	-	-	167 847	-
Voted	536 044	500 686	234 485	502 504	555 463
Participation, %	52.5	58.2	26.8	47.5	61.9
Electoral districts	251	12	1	240	12
Polling divisions	656	681	654	660	694
Incl in foreign country	-	35	35	-	37
Political parties	13	11	9	11	11
	874	963	95	912	975

Article 26. Equality before the law

645. Relevant provisions of the **Constitution** (Articles 9, 12, 15, 24), **Chancellor of Justice Act**, and the **Constitutional Review Court Procedure Act**, see Articles 987-990 of the Second Report. Relevant provisions of the **Gender Equality Act**, see Articles 40-51 of this Report.

646. A draft **Equality of Treatment Act is** currently in the legislative proceeding of the Riigikogu, the purpose of which is to ensure protection to persons against discrimination on the basis of race, nationality, colour, religion or beliefs, age, disability or sexual orientation. The draft Act establishes the principles of equal treatment, tasks upon implementation and promotion of equal treatment principles, and procedure for resolution of discrimination disputes. The draft Act has been drawn up mainly based on the Constitution of the Republic of Estonia, international law and Council Directives 2000/78/EC and 2000/43/EC.

Article 27. Rights of ethnic, religious or linguistic minorities

647. As at 2 July 2008:

Total number of population registered in Estonia: 1,363,770

Number of Estonian citizens: 1,143,452

Additionally, 48,808 Estonian citizens live abroad

Number of residents of undetermined citizenship: 109,637

Number of residents-citizens of another state: 110,591 (of whom 92,439 are citizens of the Russian Federation, 4,839 of Ukraine, 2,484 of Finland, 1,762 of Latvia, 1,379 of Belarus, 1,488 of Lithuania)

Source: Ministry of the Interior, Population Register.

648. In 2008, 83.8% of the population are Estonian citizens and 8.2% citizens of some other country. 8% of the population are persons with undetermined citizenship.

649. In 1992, approximately one-third of Estonian population had not determined their citizenship. Citizenship cannot be imposed upon anyone; everybody has the right to choose the country of nationality. The Government of the Republic of Estonia encourages persons with undetermined citizenship to apply for Estonian citizenship. In the course of a campaign arranged from 1993 to 1998, many of these residents acquired Estonian citizenship, while others became the citizens of some other country. As a result of this, the share of persons with undetermined citizenship in Estonia has decreased from 32% in 1992 to 8.2% in July 2008.

650. During the period 1992-2008, 147,559 persons have acquired Estonian citizenship through naturalization, using the various possibilities provided for this. Most of these persons acquired Estonian citizenship in the 1990s (more than 110,000 persons in 1992-2000).

651. As a result of Estonia's accession to the European Union in May 2004, Estonian citizens automatically also became the citizens of the European Union. This significantly increased interest in Estonian citizenship, especially among the youth. At the same time, the Citizenship Act was amended and a shorter term for processing of applications for citizenship provided for. As a result of mutual influence of these factors, in 2004, the number of persons who acquired Estonian citizenship by naturalization increased nearly twofold as compared to the previous year.

652. Number of persons who acquired Estonian citizenship by naturalisation:

1992 - 5 421	2000 - 3 425
1993 - 20 370	2001 - 3 090
1994 - 22 474	2002 - 4 091
1995 - 16 674	2003 - 3 706
1996 - 22 773	2004 - 6 523
1997 - 8 124	2005 - 7 072
1998 - 9 969	2006 - 4 753
1999 - 4 534	2007 - 4 228

653. A survey conducted within the framework of the project "Support for the Integration of Persons with Undetermined Citizenship in Estonia" indicated that 61% of the persons with undetermined citizenship wished to become the citizens of Estonia, 13% preferred the citizenship of the Russian Federation, and 6% the citizenship of some other country, while 17% of the persons were not interested in the citizenship of any state and were content with the existing situation. According to the survey, the citizenship-related preferences of a person depended to a significant extent on his or her place of birth. Thus, 73% of the persons born in Estonia also wanted to become the citizens of Estonia, while less than one-half of the persons born elsewhere preferred Estonian citizenship. The older a person was, the greater was the possibility that he or she was not interested in acquisition the citizenship of any state. The survey was conducted within the framework of the European Union Transitional Facility Programme.

654. By Decision No. 297 of the Tallinn City Council of 12 January 2005, the Advisory Council of Ethnic Minorities was established under the Tallinn City Government. The Tallinn Advisory Council offers advice in matters associated with ethnic minorities, the tasks of the Council include analysis of the situation of ethnic minorities in Tallinn and submission of proposals for improvement thereof.

Cultural life

655. Pursuant to recommendation No. 16 of the Committee, the State party is invited to ensure that, pursuant to article 27 of the Covenant, minorities are able to enjoy their own culture and to use their own language. It is also invited to ensure that legislation related to the use of languages does not lead to discrimination contrary to article 26 of the Covenant.

656. Estonia has laid great emphasis to integration of the society. Already a second integration programme has been approved. The first programme „Integration in Estonian Society 2000-2007" included the sub-programme „The Education and Culture of Ethnic Minorities", the purpose of which was to support and protect the personality and culture of the minorities. The integration programme includes all inhabitants of Estonia, since integration is a two-way

process. Pursuant to the aim of the state programme, the nature of the integration of Estonian society is shaped by two processes: on the one hand the social harmonisation of society on the basis of knowledge of the Estonian language and the possession of Estonian citizenship, and on the other hand the enabling of the maintaining of ethnic differences on the basis of the recognition of the cultural rights of ethnic minorities. The harmonisation of society also means the integration of both Estonians and non-Estonians around a unifying common core. The enabling of the preservation of ethnic differences means the existence of conditions in society for the promotion of one's ethnic identity by interested individuals who belong to ethnic minorities.

657. The objective of the sub-programme "The education and culture of ethnic minorities" of the Integration Programme was to ensure that minorities have opportunities to acquire education in their mother tongue and preserve their culture.

Tasks of the sub-programme:

- To increase awareness of cultural differences in the Estonian society, extend the possibilities of ethnic minorities living in Estonia for maintenance of their language-related and cultural differences, and increase their knowledge in Estonia

- To support the preservation of the languages and cultures of ethnic minorities through the activities of ethnic cultural societies, art collectives and Sunday schools

- To promote co-operation between ethnic cultural societies and co-operation with the state

- To support the activities of new elementary schools operating in the ethnic language

658. Successful implementation of the integration programme is absolutely necessary for maintenance and development of the language and culture of ethnic minorities. Implementation of the Integration Programme was based on the activity plans of the Integration Programme 2004-2007 sub-programmes, which the Government initially approved on 6 May 2004 and subsequently every following year.

659. Financing for the years 2004-2007 (in th. kroons)

Source of financing	2004	2005	2006	2007	Total
State budget	4 489	4 533	6 250	7 200	22 472
Incl. Integration Foundation	1 110	300	900	900	3 210
Ministry of Education and Research	595	400	1 500	1 650	4 145
State Chancellery	2 700	3 500	3 700	4 500	14 400
Office of the President	80	150	150	150	530
Total	4 489	4 533	6 250	7 200	22 472

Activity plans of the Integration Programme 2004-2007 sub-programmes

660. There exist no restrictions for participation in cultural life and cultural creation based on nationality, race or other characteristics. All associations and collectives of ethnic minorities may apply for supporting of their activities on equal basis. The state supports ethnic cultural societies from its budget.

661. Estonia supports cultural activities of ethnic minorities on regular basis. Until 2004, the financing of cultural societies, unions, associations, arts groups and societies of ethnic minorities mainly took place from the budget of the Ministry of Culture. Since 2004, the means for ethnic cultural societies have been provided in the state budget under the budget line of the Minister for Population and Ethnic Affairs. All cultural societies of ethnic minorities that have been entered in register may apply for support. Upon granting of support, preference is given to the organisations that have submitted their application through an umbrella organisation of ethnic cultural societies. The umbrella organisations assist the support committee in making the most objective decisions, through initial assessment of the applications for support of their member organisations, and the problems of the member organisations reach local governments and governmental authorities more efficiently. At the same time, it may be noted that support has also been granted to very small cultural societies and groups of ethnic minorities.

662. In 2007, basic financing was ensured through the Integration Foundation. 35 051 313 kroons allocated for basic financing were assigned based on two-round application procedure. Pursuant to assessment by the Integration Foundation, basic financing was granted to 155 organisations. Similarly to the previous years, a significant share of the basic support funds were allocated. 18 umbrella organisations received support. In 2007, 29 projects were supported by the Integration Foundation under two project submission rounds in the total sum of 600,000 kroons. The purpose of the application procedure was to support the preservation of the languages and cultures of ethnic minorities through the activities of ethnic cultural societies and arts groups.

663. Irrespective of the efforts of governmental authorities to encourage ethnic minorities to (re)establish their cultural autonomies, the application of the National Minorities Cultural Autonomy Act has been problematic owing to different reasons. Only in 2004 the first group of ethnic minorities - Ingrian Finns - were granted cultural autonomy. In February 2007, elections to the Estonian Swedish Cultural Council took place, after which the Estonian Swedes established their cultural autonomy.

664. The language and culture of ethnic minorities are also supported by local governments - Tallinn, for example, is developing an integration strategy. In connection with this, a project contest has been announced, within the framework of which both the activity of societies and auxiliary activities upon the development of Tallinn's integration strategy are supported. Ethnic minorities are also supported by private foundations and through respective embassies.

Projects and publications

665. Every year, projects submitted by ethnic cultural societies are supported that both promote their culture and introduce it to Estonians. Different possibilities are selected for introduction of culture - public events, lectures, exhibitions and seminars are arranged, programmes and

information brochures prepared, web pages created. Through these activities, the awareness of the Estonian society of cultural differences is improved and tolerance toward different cultures increased.

666. In addition to supporting of the activity of ethnic cultural societies, the Integration Foundation has arranged activities aimed at reminding Estonians about the existence of ethnic minorities and introduction of their culture, language and traditions.

667. Issue of the series “Nationalities in Estonia” has commenced. Publications introducing different nationalities are published under the series, which will be sent to all schools in Estonia. In April 2005, the first part of the series “Nationalities in Estonia. Lithuanians” was published. The publication provides an overview of the history, national insignia and natural environment of Lithuania, as well as of the Lithuanians themselves. Information on Lithuanians in Estonia and elsewhere in the world is provided as well. In 2006, “Nationalities in Estonia. Kazakhs” was published, followed by publishing of “Nationalities in Estonia. Russians” in 2007.

668. These materials are intended for use in basic school and the publications have indeed reached every school in Estonia. In 2008, the part introducing Uzbeks was published, and the part introducing Azerbaijanis is being prepared.

669. On the initiative of the Union of Estonian Peoples, with support of the Office of the Minister for Population and Ethnic Affairs and in co-operation with the Estonian Television and Integration Foundation a project was implemented resulting in a TV series “Ethnomosaic” (20 episodes) introducing ethnic minorities in Estonia. The project was commenced in 2004, when 9 films were produced (Ethnomosaic I), followed by 6 films in 2005 (Ethnomosaic II) and 5 films in 2007 (Ethnomosaic III). In all, 20 short documentary films were produced, which provided a comprehensive overview the history, cultural and educational life and daily activities of Estonian ethnic minorities for the first time. Video cassettes with the films were sent to all schools in Estonia, where they are used as instruction materials.

Economic life

670. Pursuant to recommendation No. 14 of the Committee, the State party is encouraged to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion (articles 24 and 26 of the Covenant).

671. All of the measures introduced in the recent years for improvement of the situation on the labour market have been intended for all ethnic groups. Nevertheless, some of the labour market measures have been elaborated in particular for the counties of Eastern Estonia, where the number of persons belonging to ethnic minorities exceeds that of ethnic Estonians and where the unemployment rate has been relatively higher.

672. In January 2004, the Government of the Republic adopted the Estonian National Development Plan for the Implementation of the EU Structural Funds - Single Programming Document for 2004-2006 which, inter alia, paid attention to unemployment issues.

673. Since the year 2004, Estonia has the possibility of applying for support from EU Structural Funds for prioritized activities. Pursuant to the Estonian National Development Plan for the Implementation of the EU Structural Funds - Single Programming Document, the European Social Fund supports development of human resources. Although there are no specific direct measures for supporting of ethnic minorities, the improvement of their situation, above all, takes place through the measure Educational System Supporting the Flexibility and Employability of the Labour Force and Providing Opportunities of Lifelong Learning for All. The objective of the measure is development of human resources and improving its competitiveness in the labour market through improving the education and training system, creating the necessary environment for life-long learning and providing training. Another such measure is „Equal opportunities for all in accessing the labour market", which is intended for prevention and alleviation of unemployment, poverty and social exclusion by way of increasing social inclusion.

674. Within the framework of the state integration programme, one of the objectives of the activity plans of 2004-2007 was improvement of the vocational Estonian skills of the unemployed and employed persons of other nationalities in combination with general official language skills, in order to improve their ability to cope on the labour market.

Second Integration Programme (2008-2013)

675. A new Integration Programme for the years 2008-2013 has been prepared by the Minister of Population and Ethnic Affairs in co-operation with civil society and experts. The Government of the Republic adopted the Programme 10 April 2008.

676. The Integration Programme considers integration as an important issue covering the entire society. The objective of the Programme is to arrive at a situation where all people permanently residing in Estonia, irrespective of their nationality, feel themselves securely in Estonia, are proficient in the official language, share the value judgments provided for in the Constitution, and are capable of participating in the social, economic and cultural life of the country. The right to maintain and develop their language and culture is ensured to everyone.

677. The objective of integration is strengthening of the identity of the single Estonian state, development of the common meaning of the state among people permanently residing in Estonia, which is based on the constitutional values of Estonia as a democratic state based on the rule of law, valuing of Estonian citizenship, and acknowledgement of everyone's contribution to development of the society, while accepting the difference of cultures.

678. Integration is regarded as a bilateral process. Successful integration depends on the level of contacts between Estonians and other ethnic groups represented in Estonia. So far, integration has mainly remained in the area of activity of the state and the role of local governments has been modest. The objective is specification of the regional particularities of integration and enhancement of co-operation with local governments.

679. The corner-stone of integration policy is the need for more active encouraging of ethnic minorities for participation in social and political life; greater emphasis is laid on equal treatment.

680. According to the Programme, by 2013, a situation should be reached where:

(a) Estonian skills among individuals whose mother tongue is not Estonian have improved on all levels. *For comparison: in 2005, 22% of 15-74 years old non-Estonian residents were of opinion that their language skills are good (modest - 25%, poor - 29%, lacking - 24%);*

(b) Contacts and communication between individuals of different ethnic groups have increased and the differences between Estonians and non-Estonians in civil associations and the public sphere of life have decreased. For comparison: *in 2007, 65% of Estonians and 39% of non-Estonians had practically no contacts outside their ethnic groups; 12% of Estonians and 1% of non-Estonians were members of citizens' associations;*

(c) The share or persons with undetermined citizenship in the population of Estonia is decreasing on constant basis. *For comparison*: *in 2007, persons with undetermined citizenship amounted to 9% of Estonian population;*

(d) The majority of residents of Estonia of different nationalities trust each other and the Estonian state *For comparison: in 2007, 28% of Estonians and 82% of non-Estonians were of opinion that greater participation of individuals of other nationalities in economy and politics is beneficial for Estonia;*

(e) The majority of individuals whose mother tongue is not Estonian regularly receive information through media in Estonian language and trust the information. *For comparison*: *in 2005, 26% of non-Estonians used Estonian media.*

(f) Differences in employment and income between employees of different nationalities have decreased. *For comparison*: *in 2007, the share of managers and chief specialists was 31% among Estonians and 19% among other nationalities, while the share of skilled and unskilled workers was 35% among Estonians and 53% among other nationalities. In 2005, the equivalent net income of other nationalities was 14% smaller than that of Estonians.*

Transition to partial bilingual instruction

681. Promotion of partial bilingual instruction in Russian-language schools supports the education policy of the Republic of Estonia which, inter alia, provides for commencement of transition to bilingual upper secondary school education from 2007. The transition does not involve vocational education institutions and private upper secondary schools. The transition to partial bilingual instruction is co-ordinated by the Ministry of Education and Research. The transition to bilingual instruction is supported by the language immersion programme, since language immersion as a technique for studying in another language has already been introduced by more than one-third of Russian-language schools.

682. Transition to partial bilingual instruction in the upper secondary stage of Russian-language schools will commence in the first year of upper secondary studies (in form 10). Every year, the teaching of one subject in Estonian is added to the curricula starting from form 10. The transition in the upper secondary stage is flexible; by the end of the reform, 60% of the subjects will be taught in Estonian. The transition does not concern basic education.

683. In 2007, one subject was taught in Russian-language schools in Estonian - Estonian literature. This will be followed by civic education (2008), music and geography (2009) and Estonian history.

684. The procedure and schedule for transition shall be provided for in school curricula; it is important that the students have an overview of the entire upper secondary stage curricula by the time of commencement of upper secondary studies.

685. Methodological in-service training has been arranged for teachers of Estonian literature for the teaching of Estonian literature and for teaching in another language. A special manual, CD, dictionary and methodical materials have been issued for teachers; special worksheets are currently being prepared regarding newer Estonian literature.

686. Training for the improvement of Estonian skills has been and will be arranged for civil education teachers, as well as in-service training and re-training regarding civil education and methods for teaching in another language. Training materials and materials for teachers are being published; one of the objectives is to enhance contacts between the teachers of Estonian-language and Russian-language schools.

687. The state organises and finances teaching of Estonian to teachers of specific subjects lacking the required level of language skills. The training is free of charge. Teachers lacking the required language skills for teaching in Estonian have the possibility of teaching in the basic stage of study.

688. Government of the Republic Regulation „Requirements to Estonian Language Skills of and Use of Estonian Language by Public Servants, Employees and Sole Proprietors" of 26 June 2008 specifies the language skills requirements to public servants and private sector employees. The purpose of the Regulation is harmonisation of the language skills levels with the Common European Framework of Reference for Languages adopted by the Council of Europe. The Regulation ensures uniformity and transparency in assessment of foreign languages and facilitates comparison of one's language skills with other European Countries. The Regulation can also be regarded as a part of European integration.

Teaching of native language and ethnic culture to children of ethnic minority groups

689. Estonian general education school is a multinational school. The number of children studying in Estonian schools whose native language is not Estonian or Russian is rather modest, but increases gradually, especially in regions where the concentration of non-Estonian population is higher. The possibilities for learning a home language (native language) other than Estonian or Russian are mainly provided by the family, with support of ethnic cultural societies, especially through Sunday schools.

690. Acknowledgement of the need for language and culture-related instruction for students whose native language is not Estonian on the formal education level brought along amendment of the Basic Schools and Upper Secondary Schools Act with a provision concerning the possibilities of language and cultural studies in Estonian-language schools. In 2003, amendments were made in the Basic Schools and Upper Secondary Schools Act, according to which in co-operation with the state and the relevant rural municipality or city, schools shall offer students

who are acquiring basic education and whose mother tongue is not the language of instruction at the school the opportunity to learn their mother tongue and to learn about their national culture with the objective of preserving their national identity.

691. In the context of allowing children of ethnic minorities to study their mother tongue, Government of the Republic Regulation no. 154 "Conditions and procedure for offering students who are acquiring basic education and whose mother tongue is not the language of instruction at the school an opportunity to learn their mother tongue and to learn about their national culture" should be highlighted. The regulation applies to students who speak a language at home which is the mother tongue of at least one of the parents. Schools have the obligation to enable basic school students at least two elective lessons in language and cultural studies every week if the parents of at least ten students who share the same mother tongue have submitted applications to this end.

692. At present, language and cultural studies are currently organised by the Sillamäe Kannuka School, where the City of Sillamäe provides such studies for Ukrainians. Lithuanians residing in Tartu are also applying for two lessons of mother tongue and cultural studies as an elective subject. The Italian students at the Tallinn Lilleküla Upper Secondary School have expressed their will to study their mother tongue as well.

693. At the same time, several factors interfere with more extensive study of the language and culture of ethnic minorities. Thus, for example, the population pattern of representatives of national minorities is dispersed, children of members of cultural societies do not study at the same school, and it is difficult to have the necessary number of students for organising the selective subjects in any given area. Moreover, there are not enough qualified teachers capable of teaching the culture of the respective nationalities.

Sunday schools

694. Most of the language study activities for various minority groups have been organised so far by the Sunday schools operating within ethnic culture societies.

695. The creation of a base-line funding scheme for Sunday schools rose to the agenda again in the autumn of 2006, when new efforts were made to develop a funding scheme for the Sunday schools of national culture societies. Base-line funding gives running Sunday schools greater confidence for continued study. In 2007, 12 Sunday schools had a valid education licence issued by the Ministry of Education and Research. The following languages were represented: Kirghiz, Russian, Ukrainian, Uzbek, Finnish, Hebrew, Turkish, Chuvash, Azerbaijani, Armenian and Russian. The Ukrainian, Russian and Uzbek languages were represented in several schools and regions. The majority of the Sunday schools of ethnic majorities are located in Tallinn, a few in Narva and one in Sillamäe, Kohtla-Järve, Viljandi, and Jõhvi.

696. In 2004-2006, at total of 1,951,775 kroons was granted to Sunday schools of ethnic cultural societies under the Integration Programme. Since autumn 2007, base-line funding of Sunday schools takes place directly through the Ministry of Education and Research. Funding is

granted on the basis of relevant education licence and application. 12 Sunday schools with total of 178 students received funding. 2007. In 2007, the funding was allocated as follows: 454,000 for operating subsidies and 608,039 for teachers' training (in-service training for Sunday school teachers in the homeland).

697. Sunday schools have the possibility of applying for additional funding for development of their activities from the local government, the educational programmes centre of the Integration Foundation, and the Office of the Minister for Population and Ethnic Affairs.

698. Since Estonian legislation does not define the concept of Sunday schools, but mentions it in the Education Act as an institution of further education, a Sunday school cannot be a general education school or perform its functions.

699. The emergence of Sunday schools in Estonia is related to the development of national culture societies, and Sunday schools are usually founded in the second or third year of activity of these societies. Almost all Sunday schools in Estonia have been in a crisis; some have even halted their activities for a year or two. Resources are not always the reasons for this. Jaak Prozes, President of the Nationalities Association of Estonia, has pointed out the change of generations and/or changes in the management of the ethnic cultural societies as a problem.

700. Referring to the concept of hobby education, it can be seen that education contributes to personal development, helps people cope with life and work, and develops and shapes the knowledge, skills, proficiency, values, and behaviour standards of persons. Sunday schools have not emerged under the pressure of students or parents; they can be viewed as schools providing hobby education.

701. Analysis of the curricula of Sunday schools of ethnic cultural societies shows that the knowledge and skills of persons are directly developed throughout the academic year, whether it takes place in the form of celebrating Pikkujoulu or Kalevala Day in the Ingrian Finns' Sunday School, the freedom party, the adulthood rituals of Bar Mitsva and Bat Mitsva or the Hanukkah in the Jewish Sunday School, or the Pyssanka in the Ukrainian Sunday School.

702. The first Sunday school of a national culture society, which was registered in February 2004, was the Ukrainian Sunday school "Vodograi" in Sillamäe. "Vodograi" is now cooperating with the City of Sillamäe in organising Ukrainian language and cultural studies at the Sillamäe Kannuka School.

703. The Uzbeks teach their mother tongue and culture at Sunday schools in Narva and Tallinn; the Russian children of Viljandi attend the Sunday school of the Estonian-Russian Culture Society; Ingrian Finns have their Sunday school called "Lemminkäinen" in Ida-Virumaa, and there is a Jewish Sunday school in Ida-Virumaa. Dagestani, Azerbaijani, and Russian Chuvash Sunday schools have also been registered.

704. It is clear that the Estonian state cannot provide language teachers for all national minorities. Where a prospective teacher for a national minority is a speaker of the respective language, but has no pedagogical background, he or she can undergo complementary pedagogical training at the University of Tartu and participate in practical study seminars on teaching, psychology, etc., under the national integration programme. All Sunday schools of

national culture societies that hold an education licence have been able to apply for support for complementary training of Sunday school teachers in their ethnic homeland under the project competition. Also, the national minorities themselves have the option to educate their teachers by way of agreements with their homeland. For example, Lithuania supports its Sunday school teacher who teaches Lithuanian language and culture in Estonia. At the Ukrainian Sunday school "Vodograi" in Sillamäe, teachers' exchange programmes have been implemented, in the course of which students from the Dragomanov Pedagogical Institute of Kiev have worked at the Sunday school as trainees to gain experience.

705. Besides the above, the Estonia national integration programme has extended project-based support toward the wages of Sunday school teachers and the purchase of textbooks in the mother tongue since 2004.

706. Democratic multicultural societies support and cultivate the understanding that multicultural society makes life more diverse. A multicultural society emerges better where there are many groups carrying different cultures and where the political system supports freedom of expression and facilitates the development and mutual introduction of the cultures constituting the multicultural society. Estonian society's current attempts to handle its multicultural aspects, and support for Sunday schools as a part of this effort, is underpinned among other reasons by the wish to use this as a positive resource.