Monitoring Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

Compliance Documentation Report

ESTONIA
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**Terminology**

**Gender identity** – person’s understanding and deeply felt experience of one’s gender, which may or may not correspond with the birth-sex. It includes the personal sense of the body and other expressions of gender such as dress, speech and mannerisms.

**Hate crimes** are crimes committed on grounds of the victim's actual or assumed membership of a certain group, which is most commonly defined by race, religion, sexual orientation, gender identity, nationality, ethnicity, disability etc.

**Hate-motivated incident** is any incident or act – whether defined by national legislation as criminal or not – against people or property selected because of its real or perceived connection to a group. The term is broad enough to cover a range of manifestations of intolerance: from low-level incidents motivated by bias to criminal acts.

**Hate speech** is to be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including discrimination and hostility against minorities. It covers all forms of hate-motivated expression, irrespective of means of expression used, including the Internet and any other new media.

**LGBT people or persons** – lesbians, gays, bisexuals and transgender persons.

**Sexual orientation** refers to person’s emotional, affectional and sexual attraction to individuals of different gender (heterosexual) or the same gender (lesbian, gay) or to both (bisexual).

**Transgender person** – person whose gender identity does not correspond to the birth-sex.

**Transsexual** – widely used term to refer to transgender persons.

**Transvestite (cross-dresser)** – person who wears clothes associated with the opposite gender to his or her birth gender.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
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<td>ECRI</td>
<td>European Commission against Racism and Intolerance</td>
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<td>ECHR</td>
<td>European Convention</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>ELGBTA</td>
<td>Estonian LGBT Association</td>
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<tr>
<td>ETA</td>
<td>Equal Treatment Act</td>
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<td>FCNM</td>
<td>Framework Convention for the Protection of National Minorities</td>
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<td>FRA</td>
<td>EU Fundamental Rights Agency</td>
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<td>GEA</td>
<td>Gender Equality Act</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ILDRA</td>
<td>Individual Labour Dispute Resolution Act</td>
</tr>
<tr>
<td>RT</td>
<td>Riigi Teataja (the State Gazette)</td>
</tr>
<tr>
<td>SEKÜ</td>
<td>Seksuaalvähemuste Kaitse Ühing (the Sexual Minorities Protection Union)</td>
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<tr>
<td>UN</td>
<td>the United Nations</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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</table>
Introduction

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

The purpose of this report

The purpose of this report is to assess what progress has been made by the Estonian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not, been completed, it provides a baseline against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, the political leaders and civil servants at national level who are responsible for implementing the Recommendation. Secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.
Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which the Estonian Human Rights Centre has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix 3 to this report, entitled “the Compliance Documentation Report”.

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries to letters from the Estonian Human Rights Centre listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Estonia commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, “Discrimination on grounds of sexual orientation and gender identity in Europe”.
- Research and documentation assembled by the Estonian Human Rights Centre and other non-governmental organisations.
- Information gathered in course of any other monitoring work done by the Estonian Human Rights Centre.
Recommendation

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?

There has been no comprehensive review of existing legislative and other measures. Each Ministry is responsible for ensuring respect of equal treatment principles within its area of competence. However, Sotsiaalministeerium (Ministry of Social Affairs), through the gender equality department, is tasked with coordinating the activities of other state authorities relating to equal treatment in general. New legal acts or amendments to existing acts must take this principle into account. For example, while amending the Public Assemblies Act in 2008, the parliament also included incitement of hatred, violence or discrimination on grounds of sexual orientation as one of the prohibited forms of public gathering.

Over time, the relevant institutions have recommended making amendments to several legal acts, either as a result of a complaint (see more below) from an individual or on its own initiative. Admittedly, none of these recommendations specifically involved equal treatment based on sexual orientation. However, such initiative has proved useful. For example, in 2008, the Chancellor recommended amending a regulation by a local authority, which preferred Estonian-speaking children to Russian-speaking children in admission to a local kindergarten. The regulation was amended as a result of Chancellor’s inquiries.

Are processes in place to ensure that the discrimination thus identified is redressed?

Courts are the main institutions that persons can turn to in case of disputes, including disputes over constitutionality of legal acts. Indeed, there have already been two cases where the courts have found that a provision in a legal act has violated the principle of equal treatment stipulated in § 12 of the Constitution of the Republic of Estonia. Neither of these cases concerned sexual orientation or gender identity, but are nevertheless important to note. One of the cases involved the former Police Service Act, which set the obligatory pension age for female police personnel lower than that of men. This meant that women also received lower pensions. The second case concerned the Health Insurance Act, which allowed compensation for only 90 sick days for persons over 65 years of age, while persons under 65 years were entitled to compensation for 250 days. Therefore, judicial control over legislation has proved to be effective.

Persons also have non-judicial options to check whether a particular legal act conforms to equal treatment principles or not. Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik (Gender Equality and Equal Treatment Commissioner, hereinafter: Equal Treatment Commissioner or

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4 Case no 3-3-1-41-09, 20 November 2009, Supreme Court of Estonia en banc.

5 Case no 3-4-1-12-10, 7 June 2011, Supreme Court of Estonia en banc.
Commissioner) was founded by the Equal Treatment Act (hereinafter: ETA). Before ETA, the position was called Gender Equality Commissioner and was specifically responsible for only gender equality issues. After the entry into force of ETA, the Commissioner also has competence in issues of racial or ethnic origin, colour, religion or belief, age, disability and sexual orientation (see recommendation 3 below for more extensive review of the scope of the Commissioner). She accepts applications from individuals and provides her opinion and recommendations on discrimination issues. She is also authorised to act on her own initiative.

Persons can also turn to Öiguskantsler (Chancellor of Justice), an independent institution created in accordance with the Constitution (§ 139). In addition to accepting applications on possible infringements of fundamental rights and freedoms by a public authority, he also accepts applications regarding constitutionality or legality of legal acts. According to the recent amendment of the Chancellor of Justice Act, the Chancellor (§ 15 (2)) can also act on his own initiative.

As noted above, the Chancellor of Justice Act was recently amended. One of the major amendments to the act concerned the Chancellor’s right to refuse an application. Now the Chancellor can refuse an application requesting review of legality of a legal act if there is no public interest (§ 15(2)), if it is not in accordance with the requirements, if it is clearly unfounded, if the person has the option of filing a challenge or can resort to other legal remedies, or if challenging proceedings or other non-obligatory pre-trial proceedings are ongoing (§ 25(3)). Previously, the Chancellor did not have the right to refuse such applications. Such an extensive addition of the Chancellor’s discretionary powers is somewhat worrying. The impact this has on persons’ ability to challenge legal acts through inexpensive non-judicial means is yet to be seen.

The Commissioner can also refuse to give an opinion on certain grounds, but her powers in this regard are considerably more limited: 1) provision of an opinion is impossible due to lack of facts indicating discrimination, 2) the Commissioner has previously provided an opinion on the same basis and regarding the same object, or 3) other proceedings in court, mediation etc have been initiated on the same basis and regarding the same object (ETA, § 18).

Neither the Commissioner nor the Chancellor can give legally binding opinions, neither is there an enforcement mechanism for them. They can both make recommendations to state and local authorities (see the example above). The Chancellor can also make recommendations to the parliament. More importantly, unlike the Commissioner, the Chancellor can raise matters before the Supreme Court if the adopting institution has refused to amend the act (Chancellor of Justice Act, § 18). Indeed, the Chancellor has done so on several occasions, although not in relation to LGBT discrimination. Probably because the latter has more extensive powers, the Commissioner has developed a practice of referring persons to the Chancellor when public bodies and legality of legal acts are involved.

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?
Estonian anti-discrimination legislation is based on §12 of the Constitution, which prohibits discrimination on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. It also prohibits incitement of hatred. The principle in the Constitution is applied when there is not a more specific law.\(^1\)

By adhering to the relevant EU Directives\(^1^2\) Estonia has also adopted the Gender Equality Act (hereinafter: GEA)\(^1^3\) and ETA. While the GEA deals with discrimination based on gender (including gender identity),\(^1^4\) the ETA deals with discrimination based on racial or ethnic origin, colour, religion or belief, age, disability and sexual orientation.\(^1^5\) The Employment Contracts Act\(^1^6\) and the Public Service Act\(^1^7\) refer to GEA and ETA as the underlying acts to be implemented, while the Working Conditions of Workers Posted in Estonia Act,\(^1^8\) the Child Protection Act\(^1^9\) and the Administrative Procedure Act\(^2^0\) mention principles of equal treatment, equal opportunities or equality in general.

Additionally, the Penal Code\(^2^1\) includes provisions, which prohibit incitement of hatred (§ 151, see more below in I.B.) as well as violation of equality (§ 152) in general and discrimination based on genetic risks (§ 153). Paragraph 152 provides criminal sanctions in limited cases which amount to “[u]nlawful 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”. The list of grounds for discrimination is closed.

The legal framework for equal treatment has been heavily criticised by various international and local organisations, specifically due to differences in scopes of protection provided by the GEA and the ETA.\(^2^2\) The GEA prohibits discrimination, which is based on gender (and gender identity) in all areas of life (except in professing and practising faith or in working as a minister of a religion in a registered religious association and within family or private life), while the ETA divides the protected areas depending on the basis of discrimination. It covers discrimination based on religion or belief, age, disability and sexual orientation only in the area of employment (as required by Directive 2000/78/EC), while discrimination based on racial or ethnic origin and colour is additionally covered in the areas of services and social security (as required by Directive 2000/43/EC). The two acts have effectively created a hierarchy of protection depending on the ground of discrimination. Therefore, protection from discrimination on grounds of gender identity is on the highest level of hierarchy, providing protection in nearly all areas of life.

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\(^{13}\) Soolise võrdõiguslikkuse seadus, RT I 2004, 27, 181 … RT I, 02.07.2012, 8.

\(^{14}\) Gender Equality and Equal Treatment Commissioner, Opinion no 11, 11 September 2008.

\(^{15}\) Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 6.


\(^{17}\) Avaliku teenistuse seadus, RT I 1995, 16, 228 … RT I, 2011, 1. The relevant reference was added to the Act in 2009 with the entering into force of ETA.


\(^{19}\) Eesti Vabariigi lastekaitse seadus, RT 1992, 28, 370 … RT I, 21.03.2011, 3.


while protection from discrimination on grounds of sexual orientation is on the lowest level of hierarchy covering only the area of employment.

Shadow report to the UN Human Rights Committee by the Estonian Human Rights Centre, Global Rights, ILGA-Europe and the Sexual Minorities Protection Union (Seksuaalvähemuste Kaitse Ühing – SEKÜ) in 2010 states:

“The Chancellor of Justice has pointed out the fragmentation of anti-discrimination legislation, which, according to him, is problematic in light of the Constitution and relevant international treaties. The Chancellor of Justice did not refer to any specific treaty in this context. However, previously he had noted that the anti-discrimination acts must comply with all the relevant human rights treaties, including ICCPR (he also mentioned the European Convention on Human Rights; International Covenant on Economic, Social, and Cultural Rights; Covenant on the Rights of the Child and additionally to EU Fundamental Rights Charter). Although persons can in cases not covered by the ETA rely on the Constitution, it will be more complicated for the victim and the more favorable procedural rules provided for by the ETA (e.g. shared burden of proof) will not apply. It could therefore be argued that these laws have effectively created a hierarchy of discrimination based on different grounds.”

Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?

In 2008, the Eurobarometer survey revealed that 32% of the population believed discrimination based on sexual orientation was widespread. The Eurobarometer in 2006 showed that 25% of the respondents believed in existence of widespread discrimination based on sexual orientation while in 2009 the result was 28%. The qualitative research conducted in 2007 by the University of Tartu also demonstrated that LGBT community experienced discrimination and stereotyping in all areas of life. Yet, the LGBT community is in great need of awareness-raising of their rights. At the same time, the statistics and the research show a clear need for long-term education and awareness-raising on LGBT issues among the general population as well.

Awareness-raising activities are all the more important in the light of the survey conducted among the general public during summer 2012. According to the survey, only 38% of the respondents considered homosexuality acceptable, of which only 10% considered it completely acceptable.

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28 K. Parve, Eesti Lesbi, Gei, Bi- ja transseksuaalsete (LGBT) inimeste koostöökoja loomise ettepanek (Proposal on the establishment of the Estonian chamber of cooperator for LGBT persons), Juuni - August 2011, p 3.
(57% considered it unacceptable, while 34% considered it completely unacceptable). Most common reasons for unacceptability were its unnatural nature (28%), abnormal and unpleasant (22%) and homosexuality being a taboo or it being alien (14%). It is clear from the above that awareness-raising among the general public is necessary in order to educate people on the nature of and reasons for homosexuality.

However, no strategies have been developed or implemented in order to tackle discrimination or biased attitude and behaviour towards LGBT persons. There have been several isolated actions and publications with no basis in any comprehensive strategies. The need for such programmes and actions, especially in relation to LGBT issues, was also voiced during the review of Estonia at the Universal Periodic Review by the UN Human Rights Council. Corresponding recommendations were made by several states, which the Estonian delegation agreed to. International organisations that periodically review Estonia’s situation have generally criticised Estonia for the lack of awareness-raising activities on discrimination issues. Yet, the actions of the Ministry of Social Affairs, which is responsible for general promotion of equal treatment through its gender equality department, have been far from satisfactory.

Development plan of the Ministry of Social Affairs that sets the strategic aims for the next three years acknowledged LGBT-based discrimination as its area of competence only a year ago. Although the ETA has been in force since 2009, it was not until the Development Plan for 2011-2014 that the Ministry’s task to increase tolerance towards LGBT people was stated. However the new Development Plan for 2012-2015 did not pose equal treatment of LGBT persons as one of the separate strategic aims anymore. Instead, it was stated as one of the measures under strategic aim of providing people “a long life of high quality”. It, however, maintained that awareness-raising and decrease of stereotypes regarding LGBT persons, gender, age and disability, is one of its activities. Instead of singling out LGBT issues it is now mentioned along with several others.

Even more troubling is the fact that LGBT-related activities are not mentioned in any of the annual action plans of the Ministry of Social Affairs. Action plans only include activities of larger scale that are financed from the state budget. LGBT-related activities coordinated or supported by the Ministry have mainly been funded from European Union funds, such as PROGRESS programme or the European Social Fund, as a part of the European Equal Opportunities Year 2007 activities. The latter included a qualitative research by the University of Tartu referred to above and a

31 Ibid., p 22.
37 Erlenheim, supra note 1, p 2.
Beyond the above-mentioned activities the Ministry’s involvement in LGBT awareness-raising is minimal. Few exceptions, in the form of delivering speeches by public servants at Baltic Gay Pride-related activities, can be pointed out, and only one personal appearance by the Minister himself (at the opening of the OMA keskus – centre for LGBT-people in 2011). The Ministry has also supported, financially and otherwise, the “Diversity Enriches” campaign organised by the Tallinn University of Technology. The campaign’s activities generally have to do with raising awareness of the general public and specific target groups, with special focus on LGBT issues. However, it is clear that awareness-raising of LGBT issues is not the priority of the Ministry or, rather, it is not the political priority reflected in political strategies. At the same time, on the level of public servants, some work is done for that purpose. However, without political will there is only so much the public servants are able or willing to do.

Both the Chancellor of Justice and the Equal Treatment Commissioner are tasked with promoting equal treatment. Neither have done significant work in that field. Although the Chancellor of Justice possesses sufficient political capacity and is also equipped with significant resources, the Chancellor’s actions are mostly retrospective - responding to complaints from individuals. This is the case even though the Chancellor of Justice Act expressly states that the Chancellor should promote the principle of equal treatment and equality (§ 3516). Most efforts towards promotion of equal treatment and equality are made by the Equal Treatment Commissioner. However, her activity and impact on society is substantially inhibited by the limited resources available (see further below under recommendation 3).

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

**Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?**

The GEA and the ETA refer to courts as one of the main institutions solving discrimination disputes. Courts deal with civil, administrative and criminal cases and have the scope of activity covering all areas of life, whether covered by specific acts, such as the GEA and the ETA, or only by the Constitution. Criminal courts apply just the Penal Code (§ 151-153). As noted above under recommendation 2, the discrimination cases amounting to criminal offences are limited in the grounds of discrimination covered as well as the level of severity of the action (see more below in I.A and I.B).

Another dispute resolution body referred to by the GEA and the ETA is töövaidluskomisjon (labour dispute committee). These quasi-judicial bodies solve disputes in private employment relations, including non-discrimination issues. They are created by local branches of Tööinspektsioon (Labour Inspectorate) and are composed of a Labour Inspectorate official and representatives of trade union and employers’ union (Individual Labour Dispute Resolution Act – ILDRA –, § 11(2)). They can provide decisions in cases where claims are less than 10,000 EUR (ILDRA, § 4(11)).

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The decisions of the committees are legally binding and enforceable in the same way as court decisions are (ILDRA, § 26 (2)). The decision can be appealed to a court of law.

The non-judicial institutions – the Equal Treatment Commissioner and Chancellor of Justice have already been mentioned under recommendation 1. The Commissioner supervises both the GEA and the ETA and thus her competence is restricted to the grounds of discrimination and the particular sectors listed in these Acts. She accepts applications from individuals and provides opinions and recommendations on discrimination issues. The Chancellor accepts applications from individuals regarding possible infringements of fundamental rights and freedoms by a public authority (Chancellor of Justice Act, § 19(1)). In regard to discrimination disputes between private persons, the Chancellor may only initiate mediation between them (Chancellor of Justice Act, § 35–3514). Mediation proceedings, however, can be initiated if both parties agree to the proceedings.

Neither the Commissioner nor the Chancellor can give legally binding opinions and there is no enforcement mechanism for them, except for the agreement reached in mediation proceedings, which is legally binding on the parties (§ 3514). The opinions and recommendations of the Commissioner and the Chancellor, however, can merely provide the victim support and certainty in his/her possible subsequent judicial procedures. Therefore, the possibility to turn to them with an application cannot be considered an effective remedy per se. Their effectiveness in combating discrimination in general is low.

According to the GEA (§ 13) and the ETA (§ 24) the victims can demand both that the infringing party ends the discrimination and also compensates the damages caused, both material and moral damages. For remedies under criminal law see below in I.B. There are no differences in the possible sanctions depending on the ground of discrimination. Neither the GEA nor the ETA foresee any other remedies in addition to demanding ending the discrimination and compensation for damages that the courts or labour dispute committees could prescribe. In principle, the Commissioner and the Chancellor could also make recommendations on how to redress the discrimination in non-material terms and how to avoid such situations in the future. However, their opinions are not legally binding, except for the agreement reached at the mediation proceedings, and do not amount to recommendations being made by courts or labour dispute committees.

The scope, duration and nature of the discrimination is taken into account in determining the amount of compensation (GEA § 13(3), ETA § 24(3)). In case of non-proprietary (or moral) damage, the victim can ask for ‘a reasonable amount of money’ as compensation (GEA § 13(2), ETA § 24(2)). In case of moral damages, if the exact amount of the damage cannot be established or if the establishment thereof would involve major difficulties or unreasonably high costs the court will assess the amount of compensation according to its discretion.40 The recent amendment of the Law of Obligations Act changed the system of compensation considerably, making it more effective as long as the courts make proper use of it (see more below).

Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?

There is a need for awareness-raising among the general public in regard to remedies available for victims of discrimination. Especially since both the ETA and the GEA are relatively new legal acts. It is suggested that the lack of awareness-raising is the cause for the low number of complaints submitted to various institutions dealing with discrimination complaints. The low number of complaints is one of the major concerns that several international organisations have expressed in regard to any ground of discrimination; the UN Committee on the Elimination of Racial Discrimination even talks about “near absence of complaints.”41 Several options are available,

41 CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination. Estonia, CERD/C/EST/CO/8-9 (23 September 2010), paras 6, 18; ECRI Report, supra note 22, paras 50, 53-54, 61, 63-64, 95; Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human
which could be helpful, but in practice their use has been extremely limited, even though cases of discrimination do occur. On many occasions the victims either do not recognise that they are being discriminated against (showing the need for awareness-raising in regard to discrimination in general - see recommendation 2) or they do recognise discrimination but decide, for various reasons, not to pursue the case. Many such cases are also referenced in this report.

The Equal Treatment Commissioner, which is the main institution to turn to in case of discrimination, has seen a steady rise in the number of communications, although the number is still very low when it comes to sexual orientation. The reason for that cannot be unawareness in the Commissioner’s office and role. Specifically ELGBTA, SEKÜ and Estonian Gay Christians enjoy close cooperation with the Commissioner and has also received training on the topic of equal treatment and remedies available. ELGBTA brought out the restricted scope of the Equal Treatment Act as an inhibiting factor.42 Several issues that LGBT people face fall outside the scope of the Act, eg provision of services.

Table 1. Statistics of applications received by the Equal Treatment Commissioner (2005-2011).

<table>
<thead>
<tr>
<th>Year</th>
<th>Communications/Complaints in Total</th>
<th>Communications/Complaints on Sexual Orientation</th>
<th>Communications/Complaints on Gender Identity</th>
<th>Percentage of LGBT-Related Communications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>12/10</td>
<td>0</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>2006</td>
<td>32/17</td>
<td>0</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>2007</td>
<td>78/24</td>
<td>0</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>2008</td>
<td>82/25</td>
<td>0</td>
<td>1/1</td>
<td>1.22%</td>
</tr>
<tr>
<td>2009</td>
<td>161/51</td>
<td>8/5</td>
<td>0</td>
<td>4.97%</td>
</tr>
<tr>
<td>2010</td>
<td>288/47</td>
<td>11/3</td>
<td>0</td>
<td>3.82%</td>
</tr>
<tr>
<td>2011</td>
<td>358/90</td>
<td>15/5</td>
<td>0</td>
<td>4.19%</td>
</tr>
</tbody>
</table>

The number of applications concerning discrimination by a public authority to the Chancellor of Justice is also remarkably low, especially taking into account the fact that the Chancellor’s institution is considerably older and better known than that of the Commissioner. Mediation has proved to be merely a theoretical tool against discrimination. None of the petitions for mediation resulted in commencement of mediation as one or both of the parties had refused. The statistics show that persons are not aware of the Chancellor’s role as an anti-discrimination body.43 At the same time, mediation as a dead-letter procedure might also demonstrate that persons are aware of its ineffectiveness and therefore decide to avoid it.


42 H. Talalaev, Re: LGBT inimeste õiguste analüüs (Re: Analysis of the rights of LGBT people), e-mail correspondence, 17 October 2012.

43 ECRI Report, supra note 22, paras 61, 64; FCNM Advisory Committee, Third Opinion, supra note 33, para 41.
Table 2. Statistics of procedures by the Chancellor of Justice regarding discrimination or equal treatment (2005-2011).

<table>
<thead>
<tr>
<th>Year</th>
<th>Procedures concerning legal acts or actions by public authority</th>
<th>Procedure concerning discrimination by private person</th>
<th>Percentage of LGBT-related applications in total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>in total</strong></td>
<td><strong>concerning sexual orientation</strong></td>
<td><strong>concerning gender identity</strong></td>
</tr>
<tr>
<td>2005</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2006</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2007</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2008</td>
<td>52</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>2009</td>
<td>26</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2010</td>
<td>43</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2011</td>
<td>42</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Statistics available on the website of the Labour Inspectorate also indicate a small number of cases. According to the statistics, the labour dispute committees have had no cases regarding discrimination based on sexual orientation.\(^{44}\) These statistics are interesting, considering that discrimination at workplace seems to be rather common according to different surveys (see, e.g., the statistics presented under recommendation 2).

Table 3. Statistics of cases handled by the labour dispute committees (2008-2011).

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases in total</td>
<td>8</td>
<td>11</td>
<td>6</td>
<td>13</td>
</tr>
</tbody>
</table>

Only a few cases have reached court and yet the Commissioner and the labour dispute committees have identified discrimination in many instances. The reasons for cases not being pursued are unclear. The Estonian Human Rights Centre is aware of only two cases regarding discrimination that have reached court and these only concern acts by public authority (descriptions under recommendation 1). There have been no cases against private persons, except for one wrongful dismissal case where the person who was dismissed on grounds of having sexually harassed a co-worker (he disputed it).\(^{45}\) “The provisions of the GEA had been invoked by Estonian courts at least three times since 2005.”\(^{46}\) With respect to criminal cases, no cases were initiated during the period of 2006-2009 and prior to this period there was only one case concerning incitement to hatred.\(^{47}\)

Therefore, it seems that one of the measures that could assist in regard to the problem of under-reporting of discrimination cases could be a more effective awareness-raising – firstly on the rights persons have under the ETA and the GEA and, secondly, on the different legal remedies available to them. However, such awareness-raising activities are scarce and in need of considerable improvement.\(^{48}\) There are no comprehensive strategies for introduction of the options provided by


\(^{45}\) Case no 2-09-27445/30, 15 November 2010, Tallinn Circuit Court.

\(^{46}\) Human Rights Committee, Summary record of the 2715th meeting, supra note 10, para 5.

\(^{47}\) Case no 3-1-1-117-05, 10 April 2006, Criminal Chamber of the Supreme Court.

\(^{48}\) CERD, Concluding observations, supra note 41, para 18.
the ETA or the GEA. The scale of informational activities of the Chancellor and the Commissioner has remained the same scale over the years. The Commissioner has mainly concentrated on giving presentations when asked to do so.\textsuperscript{49} Admittedly, the Ministry of Social Affairs has supported, financially and otherwise, the “Diversity Enriches” campaign by the Tallinn University of Technology, which includes several activities informing the public of the relevant institutions (e.g. the Handbook of the Equal Treatment Act). However, there is still a considerable lack of awareness-raising activities, which are organised by the state. This situation has been heavily criticised by various international organisations – they keep recommending Estonia to improve awareness-raising especially among those who are vulnerable to discrimination, but also among the general public.\textsuperscript{50}

In regard to awareness-raising of remedies in cases where a violation is committed by a person acting in an official capacity, the situation is less straightforward. Although the Chancellor seems to be generally well known, the low number of complaints concerning discrimination by public authority suggests that there is still some room for improvement in making the Chancellor’s role on this topic more visible. Options of redress available for individuals in cases of discrimination by the police are generally unknown to the public. Even the website of the Police provides no information in the matter (or the information is not easily found). The only possibility is to give feedback or, alternatively, to simply write to the general e-mail address. However, there is no information on the actual procedure.

Furthermore, awareness-raising of persons dealing with complaints of discrimination is as important as making the general public aware of the available legal remedies. The international organisations have also been critical on this issue and have found that the relevant professionals have not received proper training.\textsuperscript{51} Recommendations to train legal professionals who are essential in recognising discrimination in the claims made by their clients and helping to pursue the discrimination case have been made. Equally essential is the training of judges, prosecutors and other law enforcement personnel, in order to ensure they are able to identify discrimination and act accordingly. Admittedly, the Equal Treatment Commissioner and the Ministry of Social Affairs have organised a few of these training sessions.\textsuperscript{52} The noticeably low number of court cases in comparison to the number of complaints (which is low in itself) to relevant non-judicial institutions signifies the need for further training for these key professionals.

Indeed, it has been stated on several occasions that the lack of training and also of awareness-raising of the general public was due to insufficient funds available to relevant institutions.\textsuperscript{53} The Commissioner has now assured that for the period of 2012-2015, there will be additional funding in the amount of 700,000 euros reserved specifically for awareness-raising.\textsuperscript{54}

\textit{Are the remedies effective, proportionate and dissuasive?}

The greatest concern in relation to effectiveness of the protection mechanisms is the lack of resources available to the Equal Treatment Commissioner.

\textsuperscript{49} M.-L. Sepper, \textit{Statistika} (Statistics), e-mail correspondence, Gender Equality and Equal Treatment Commissioner, 5 October 2010.
\textsuperscript{50} ECRI Report, supra note 22, paras 11, 63-64; Committee of Ministers of the Council of Europe, \textit{Resolution CM/ResCMN(2012)9}, supra note 33; FCNM Advisory Committee, \textit{Third Opinion}, supra note 33, paras 36-38, 41.
\textsuperscript{52} Human Rights Committee, \textit{Summary record of the 2716th meeting held on 13 July 2010, CCPR/C/SR.2716} (20 July 2010), para 67.
“ETA extended the Commissioner’s mandate from gender equality to general equal treatment and, correspondingly, the need to increase the Commissioner’s resources was planned (prognosis of Commissioner’s annual budget was 4.4 million kroons (ca 281,330 EUR)). Instead the budget was significantly diminished as a result of the general cuts in State expenditure due to the economic recession. In 2008, the Commissioner’s budget was 950,000 kroons (ca 59,375 EUR) whereas in 2009 the budget was 923,254 kroons (ca 59,007 EUR).”

In 2010 (through 2012) the budget has largely remained the same (in 2010 – 51,883.67 EUR –, in 2011 – 60,136 EUR – and in 2012 – 60,786 EUR). The limited budget means that the office of the Commissioner permanently employs, in addition to the Commissioner herself, only one other advisor. Limited resources available to the Commissioner have caused several international organisations to express their concern over the Commissioner’s capacity to operate effectively under these circumstances. Estonia was also criticised in this regard during the Universal Periodic Review by the UN Human Rights Council. Their unanimous recommendation was to increase the human and financial resources available to the Commissioner.

The shadow report to the UN Human Rights Committee stated:

“The scarcity of resources influences the subject for two reasons. First, as shown, the appropriate authorities do not have enough resources to actually do effective work and, second, giving very little resources to these authorities demonstrates clearly the perspective of the government about the issues (lack of political will), which in itself also sends a message to the public (that these are unimportant issues). This inhibits the government from accurately addressing issues related to discrimination as it underfunds its own mechanisms, further diminishing its ability to meet its obligations under the ICCPR.”

Estonia has accepted the criticism and has agreed on all occasions that the budget allocated to the Commissioner must be increased. Indeed, in response to the criticism by the Advisory Committee of the European Framework Convention for the Protection of National Minorities, the government reported the allocation of 2 million euros to the Commissioner for the period of 2012-2015 from the Norwegian Financial Mechanism. Additional funding was also received from 2011-2013 European Social Fund programme and, in comparison to previous State budgets, the Commissioner’s budget was eventually also increased in the 2012 State budget. It remains to be seen whether additional resources would contribute to increased effectiveness of the Commissioner.

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56 M.-L. Sepper, RE: küsimus statistika kohta (RE: question on statistics), e-mail correspondence, Gender Equality and Equal Treatment Commissioner, 6 August 2012.
58 Human Rights Council, UPR Report, supra note 32, para 77.25.
60 Human Rights Committee, Summary record of the 2715th meeting, supra note 10, para 50; Human Rights Council, UPR Report, supra note 32, para 77.25.
The effectiveness of legal remedies for the violation of equal treatment principle is still questionable regarding compensation for damages. The aim of compensation in Estonian legal system has long been to place the victim in a situation, which would be as close to one where the victim would have been in had the violation of his/her right not taken place (Law of Obligations Act, § 127(1)). In general, compensation was never meant to have a punishing or dissuasive effect.

The ETA and the GEA both stipulate that in determining the amount of compensation, scope, duration and nature of the discrimination must be taken into account (GEA § 13(3), ETA § 24(3)). This provision does not fulfil the requirement of being “effective, proportionate and dissuasive” applied on its own. Indeed, this was the conclusion reached also by the ECRI. The ECRI further criticised the provision for being “vague and subjective”. The recent amendment of the Law of Obligations Act remedies the situation somewhat. The new regulation allows taking into account the need to persuade the violating party from future violations, i.e. compensation having a dissuasive effect (Law of Obligations Act, § 134 (6)).

Court practice is yet to develop on this new regulation. Courts have been conservative in granting non-pecuniary damages in discrimination cases so far and have concentrated on the salary of the applicant instead. Thus, for example, the court granted half of the salary of the applicant (791.35 EUR) as a compensation for non-pecuniary damages in one of its gender discrimination cases. The labour dispute committees have been more generous, granting compensations in the amount of 2000 euros. Admittedly, this amount was granted in a gender-related harassment case. Upon reviewing discrimination cases handled by the committees in 2011, no compensation for non-pecuniary damages was granted in cases concerning other forms of discrimination. It seems that applicants did not even request such compensation, which demonstrates the need for further awareness-raising among possible victims (see above).

Do the remedies include, where appropriate, adequate reparation for victims?

The fact that the mechanisms available to discrimination victims are substantially under-used (discussed in more depth above) indicates the low regard that victims have of these mechanism. They do not seem to see these mechanisms adequate as a redress to violation of their rights. Certainly the mediation procedure has remained merely theoretical. As it stands currently, it can be criticised for not being an appropriate tool against discrimination.

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

No actions required.

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible

What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?

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63 ECRI Report, supra note 22, para 49.
64 Case no 2-09-63411, 14 June 2011, Harju County Court.
65 M. Midla-Vanatalu, Ebavõrdse kohtlemise tuvastamise nõuded tõövaidluskomisjonide menetluses (Claims in the practice of the labour dispute committees requesting the identification of unequal treatment), e-mail correspondence, Labour Inspectorate, 10 January 2012.
Both Justiitsministeerium (Ministry of Justice) and the Ministry of Social Affairs claim the Recommendation has been disseminated.\(^66\) The Ministry of Justice clarifies that judges have been notified through the training department of the Supreme Court, it has been forwarded to detention facilities, and different departments of the Ministry itself have had the chance to familiarise themselves with the recommendation. The Estonian Human Rights Centre has no information to confirm or deny the statement.

**Have the Recommendation and its appendix been translated?**

Both the Ministry of Justice and the Ministry of Social Affairs claim that the Recommendation has been translated.\(^67\) Neither of them provides for the translated Recommendation and the Council of Europe is not in possession of that translation either. The Estonian Human Rights Centre translated the recommendation in the beginning of 2012 for the purposes of the present report.

**Have they been disseminated:**

- within the lesbian, gay, bisexual and transgender communities?
- throughout public administration?
- throughout law-enforcement structures, including the judiciary and penitentiary system?
- to national human rights protection structures (including equality bodies)?
- throughout the educational system?
- throughout the health-care system?
- to representatives of public and private sector employees and employers?
- to the media?
- to relevant non-governmental organisations?

The Estonian Human Rights Centre is not aware of any comprehensive strategies of dissemination of the recommendation. According to by the Ministry of Justice, public administration, judiciary and penitentiary system has been notified. Siseministeerium (Ministry of Interior Affairs) informed the centre that the recommendation had not been disseminated among the law enforcement structures within their competence (i.e. Politsei- ja Piirivalveamet – Police and Borderguard Board).\(^68\) No information is available on any other dissemination within the equality bodies, the educational system, the healthcare system, trade unions, employers’ organisations, the media or any relevant non-governmental organisations.

\(^{66}\) M. Aavik, Justiitsministeeriumi haldusalas kohustuste rakendamine vastavalt Euroopa Nõukogu soovitustele seksuaalvähemuste diskrimineerimise vastu võitlemise meetmete osas (Implementation of the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation within the area of competence of the Ministry of Justice), e-mail correspondence no 9-2/5396, 26 June 2012, p 1; Erlenheim, supra note 1, p 3.

\(^{67}\) Aavik, supra note 66, p 1; Erlenheim, supra note 1, p 3.

\(^{68}\) T. Türkson, e-mail correspondence no 2-1/188-3, 18 July 2012, p 1.
Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?

As stated above in recommendation 3, the international organisations have been critical of process made in this field and have found that relevant professionals, including law-enforcement personnel have not received proper training. 69 There have been recommendations to train them in order to ensure they are able to identify such crimes and act accordingly. The Equal Treatment Commissioner and the Ministry of Social Affairs have organised a few of these trainings but more is needed. The Ministry of Interior Affairs stated that no special training has been organised on this topic. 70 Equal treatment and vulnerable groups are issues, which are usually dealt with as a part of training of a wider scope.

Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?

As mentioned above in recommendation 3, information about situations where a violation has taken place is not easily available. The Ministry of Interior Affairs has stated that crimes conducted by police officials are investigated by the Internal Audit Bureau, while other possible violations are investigated in accordance with supervisory control and disciplinary proceedings. 71 Supervisory control is conducted by the officers' direct superior. 72 The ECRI also reported that it is the Prosecutor who handles a “complaint alleging a crime committed by a member of the police”. 73 The Prosecutor will then refer the investigation to the Internal Audit Bureau or “if the matter is serious, turn it over to the security police.” 74 It is usually the Internal Audit Bureau that investigates such complaints. The work of the Bureau has not received any public criticism and the Estonian Human Rights Centre has also not received any such complaints.

Additionally, persons can also turn to court and commence civil proceedings, or to the Chancellor of Justice who investigates violations of human rights by any public authority.

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70 Türkson, supra note 68, p 1.


72 Human Rights Committee, Summary record of the 2716th meeting, supra note 52, para 11.

73 ECRI Report, supra note 22, para 172.

74 Ibid.
The Ministry assesses the mechanism for receiving and investigating reports against police officers to be effective. However, the ECRI has recommended Estonia to establish "a body, independent of the police and prosecution authorities" to deal with discrimination and hate-motivated incidents of the police.  

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?

There is no specific law prohibiting hate crimes. Hate-motivated criminal incidents are investigated and prosecuted under the general provisions of the Penal Code. The Code does include a provision prohibiting hate speech (see below in I.B.). It also prohibits violation of equality (§ 152), which, however, does not amount to prohibition of hate crime, as it prohibits “[u]nlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her ... sex, ... sexual orientation.”

The absence of hate motivated crimes in the Penal Code, along with the restrictive nature of the provision on hate speech (discussed below in I.B.), has been under constant criticism from international organisations. The ECRI has expressed its concern in regard to crimes motivated by racism and xenophobia, which demonstrated that this is a common problem for all minorities.

The Ministry of Justice has drafted an amendment to the Penal Code, which is currently in the round of consultations with other ministries and relevant stakeholders, such as local LGBT and human rights organisations. The draft law would significantly amend the hate-related regulation in criminal law. In particular it will bring four amendments in regard to hate crimes: it (1) adds a hate motivation as a general aggravating circumstance for any crime (see the question below for further details); (2) widens protection from hate speech (see I.B. below for further details); (3) criminalises a denial of reliably attested international crime; and (4) criminalises organisations, which aim is not necessarily financial gain but could also be incitement to hatred or conducting other hate-related crimes (see the question below and I.B. below for further details). The draft law is at the time of compiling the report in its initial stage. The draft must be approved by all ministries. Then it will be sent to the Government for approval. It is a possibility that the draft would be sent back to the Ministry for further changes. Only when the Government has approved the draft, will it be sent to the parliament where it can again be changed. It is, therefore, difficult to predict in which form the amendment will be eventually adopted and when it could happen.

Does this legislation ensure that a bias motive related to (a) sexual orientation and/or (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?

Bias motive related to (a) sexual orientation and/or (b) gender identity as an aggravating circumstance when determining sanctions is not foreseen by the Penal Code. In fact, the bias motive, in general, is ignored by the Code. This has been one of the concerns raised by many international organisations on European as well as universal level. Interestingly, the authorities informed the ECRI that such bias motive is included in § 58(1) as an aggravating circumstance. 

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75 Ibid, para 174.
76 Ibid, paras 37-38, 41.
77 The draft law is available on the public database of draft laws: <http://eelnoud.valitsus.ee/>. The number of the file is 12-0999.
78 CERD, Concluding observations, supra note 41, para 12. FCNM Advisory Committee, Third Opinion, supra note 33, para 91, and ECRI Report, supra note 22, para 37.
79 ECRI Report, supra note 22, paras 38, 43.
The provision refers to “self interest or other base motives” (in Estonian: *omakasu või muu madal motiiv*). However, as the ECRI notes, so far it has never been used due to the total absence of court cases and therefore its effectiveness it yet to be tested.

The Ministry of Justice has assured on various occasions that an amendment of the Penal Code is underway. In fact, in 2010, the Ministry stated that the draft law would be ready for consultations by autumn 2010. In autumn 2012, the amendment draft law was finally been published for comments from stakeholders (see above question for general info on that). The draft version at the time of the compilation of the present report provides a bias motive when conducting a crime as an aggravating circumstance. The bias motive relates also to sexual orientation and gender in general but not gender identity in particular. It remains to be seen whether gender would be interpreted as gender identity, as the Equal Treatment Commissioner has done (see on that recommendation 2). The draft law also removes restrictive conditions for criminal responsibility for membership of a criminal organisation. While previously the condition was that the organisation is formed for financial gain – thus excluding the possibility of criminalising organisations, which aim is, for example, the spreading of hatred towards a certain group or crimes directed towards a certain group. The current draft provision allows criminal responsibility for a membership to a criminal organisation, (a) which activity is directed towards conducting second degree crimes; (b) with a sanction of at least three years of imprisonment; and (c) consisting of three or more members. It would therefore possible, upon the adoption of this draft version, that merely being a member of a neo-nazi organisation, which targets sexual minorities and transgender persons among other specific groups, could be punishable even if the organisation has not yet managed to realise its aims.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

*Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public (e.g. through police websites or leaflets distributed in the community)?*

There is no definition of hate crime with any motivation disseminated to the general public. This could be because the Penal Code does not include such a crime. The definition of hate speech, which is provided in the Penal Code, is in principle available through *Riigi Teataja* (State Gazette), a database for all legal acts. No specific effort has been made to disseminate respective definitions. Indeed, various international organisations have recommended awareness-raising of respective provisions in the Penal Code and to encourage reporting of hate-motivated incidents.

*Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

As noted above in I.A. there are no training courses specifically dedicated to hate crime, discrimination or vulnerable groups. These topics are usually covered by training of a wider scope.

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81 Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 11.

82 CERD, *Concluding observations*, supra note 41, para 18, and ECRI Report, supra note 22, paras 36, 101.
Thus, general knowledge on how to process a crime is acquired in the basic training. The latest report by the ECRI on Estonia was especially concerned with the lack of cases under criminal law and expressed an opinion that it can be explained by lack of training provided to police officers, prosecutors and judges in criminal law concerning discrimination and incitement of hatred. Other international organisations have also recommended systematic training of law enforcement officials and judiciary “in order to ensure that they are aware of their responsibility to identify and sentence” hate-motivated crimes. This is a significant issue because whether a case reaches court or not depends solely on police officers and prosecutors. This is especially important where the case concerns offences committed by law enforcement officials.

According to the Ministry of Interior Affairs, police officers are also trained to cooperate with the victim support network. The response from the Ministry of Interior Affairs indicated that the Ministry responsible for victim support, the Ministry of Social Affairs, must ensure through its victim support officials that hate crime victims are provided with adequate assistance and support.

Assistance and support to LGBT persons as victims or potential victims has been controversial. There are reports whereby the person has claimed that the police officers handling the particular situation have not increased the sense of security. For example, the police had revealed the identity of the complainant to the accused even though the complainant had asked for anonymity. On the other hand, there have also been reports of adequate police activity, which have included searching the home of the person making threats of violence and patrolling during the event that was threatened. In any event, none of the reports accuse the police of hostility or biased behaviour.

**Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?**

See above on training of police officials. The Ministry of Interior Affairs also added that based on the Constitution, the Police and Borderguard Act, the Public Service Code of Ethics and the core values of the police all persons are treated equally, without discrimination and with respect, including LGBT people.

The Ministry of Justice stated that the training programme for judges includes training about judge’s behaviour, and treatment of parties during the court proceedings and treatment of certain vulnerable participants of the proceedings (e.g. the minors). The Ministry also named specific trainings – trainings on equal treatment and discrimination by the Adacemy of European Law, and training on gender inequality and domestic violence organised by the Ministry of Social Affairs, which will take place in October 2012.

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83 Türkson, supra note 68, p 2.
84 ECRI Report, supra note 22, paras 38, 97-99, 171-176.
85 FCNM Advisory Committee, Third Opinion, supra note 33, para 82, also para 41. Also CERD, Concluding observations, supra note 41, para 18.
86 Türkson, supra note 68, p 2.
87 K. Grossthal, Interview with Lisette Kampus, in Tallinn, 3 May 2012.
88 K. Grossthal, Interview with Jaan Kroon, in Tallinn, 4 May 2012.
89 Supra note 71.
90 Principles concerning the requirement to be honest, polite, law-abiding, responsible, trustworthy etc. – Annex 1 of the Public Service Act, supra note 17.
92 Türkson, supra note 68, p 2.
93 Aavik, supra note 66, p 2.
Are units within the police tasked specifically with investigating crimes and incidents linked to (a) sexual orientation and (b) gender identity?

There are no specific units tasked with investigating crimes and incidents linked to sexual orientation and gender identity. Investigation of such incidents is conducted following the ordinary procedures.⁹⁴

Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?

There are no special police liaison officers tasked with maintaining contact with local LGBT communities. The Ministry of Interior Affairs assured in its response that the police maintains contacts with all communities, including the LGBT community, through its regional constable, youth police and the heads of territorial units.⁹⁵

Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidents and nature of these incidents?

There is no special system of anonymous complaints or on-line complaints for hate-motivated crimes. There is, however, information on telephone numbers and e-mail addresses for tip-offs on the website of the police.⁹⁶ In principle, the feedback form on the website of the police could also be used for reporting any hate-related crimes.⁹⁷ Considering the problem with under-reporting discussed extensively above in recommendation 3, any measure making such reporting easy and safe would be welcome.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?

No training has been conducted for the prison staff on discrimination in relation to sexual orientation and gender identity.⁹⁸

Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?

According to the information from the Ministry of Justice, investigating sexual violence in prisons is, equally to investigating killings, under special scrutiny of the prisons department of the Ministry.⁹⁹ This applies both to violence between prisoners and violence between prisoners and the prison

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⁹⁴ Türkson, supra note 68, p 2.
⁹⁵ Ibid.
⁹⁷ Türkson, supra note 68, p 2.
⁹⁸ Aavik, supra note 66, p 2.
⁹⁹ Ibid.
staff. The Ministry has no record of any such violence having occurred between a prisoner and a prison guard.

The Ministry also stated that the entire prison staff has received training to identify sexual abuse and is instructed on necessary activities and on nuances of processing such acts of violence. The Ministry also reported of a plan to include a chapter on sexual violence in a textbook on supervisory work directed to prison staff, which will be published soon. Security of LGBT persons in prisons is guaranteed under the same rules and procedures as that of other prisoners: location, separation, isolation from persons making threats, and dealing with the persons who make threats.

The Estonian Human Rights Centre has no information to confirm or deny the above information. No complaints have ever been received from prisoners on the topic of violation against a prisoner based on his/her sexual orientation.

Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?

The prisons department of the Ministry of Justice also includes the Internal Audit Division that is responsible for preventing and handling violations by the prison staff. The prisoners can, however, file complaints to administrative courts as well as to the Chancellor of Justice who has supervisory and monitoring powers over the prison system in Estonia. Filing of complaints to the Chancellor is easy and can be done through a simple electronic form on its website or by sending an e-mail. Prisoners are active users of complaint mechanisms available to them. For example, “[i]n 2008, 40 per cent of all the cases before the Tartu Administrative Court had been brought by prisoners” as the Tartu prison is located within jurisdiction of that court. In 2008 Estonia reported that 65 disciplinary procedures were commenced against prison staff while in 2009, the number was 70. According to the Committee, statistics show “that prisoners were fairly well informed of the remedies available to them and of how to make effective use of them.”

In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?

There is no information available as to specific procedures connected to transgender prisoners. However, once the person has been legally recognised in his/her acquired gender (see IV.21), the prison staff, in principle, cannot ignore that. According to the Ministry of Justice, there have been no transgender persons in Estonian prisons. The Estonian Human Rights Centre did receive one complaint from transvestite male prisoner claiming mistreatment (prison staff not allowing him to wear female underwear) but the complaint was not investigated upon.

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103 Human Rights Committee, Summary record of the 2715th meeting, supra note 10, para 13.
105 Human Rights Committee, Summary record of the 2715th meeting, supra note 10, para 20.
106 Aavik, supra note 66, p 2.
5. Member states should ensure that relevant data are gathered and analysed on the
prevalence and nature of discrimination and intolerance on grounds of sexual
orientation or gender identity, and in particular on “hate crimes” and hate-motivated
incidents related to sexual orientation or gender identity.

Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with
a view to developing effective policies to combat these phenomena?

There has not been any research into nature and causes of hostile and negative attitudes to LGBT
people specifically. The Eurobarometer surveys have so far been the only surveys aimed at
determining existence of homophobia (not transphobia).\(^{107}\) No such surveys have been conducted
in Estonia so far. The Tallinn University of Technology is, however, currently, conducting a survey
on the attitudes towards LGBT issues in Estonia.\(^{108}\) Previously, the Tartu University had conducted
research in LGBT community to determine their perception of the attitudes towards them.\(^{109}\)

Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?

There are no regular surveys. This fact was also confirmed by the Ministry of Social Affairs.\(^{110}\)

Is there an effective system for recording and publishing statistics on hate crimes and hate-
motivated incidents related to (a) sexual orientation and (b) gender identity?

There is no effective system for recording and publishing statistics on hate crimes and hate-
motivated incidents related to (a) sexual orientation and (b) gender identity. The database used by
the police for registration of criminal incidents – public e-file system (e-toimik) includes
classification of a motive of a crime, such as sexual orientation.\(^{111}\) However, there is no concrete
method, obligation or need to use these classifications. Registering applications on crimes might
very well occur without a motive being added to the registration and thus it is, in fact, impossible to
give exact statistics on crimes with LGBT motivation.\(^{112}\) Since such determination is not
mandatory, the e-file system is not a reliable source of statistics as to the actual number of hate-
motivated incidents. This has brought about a situation where authorities can claim a low
occurrence of hate-motivated crimes while in reality there is no reliable data to support or deny this
claim.\(^{113}\) Indeed, in regard to racially motivated crimes, the ECRI has recommended improving the
system for registering a bias motive of a crime.\(^{114}\) Similar recommendation would be appropriate in
regard to any crime based on a bias motive. This, on the other hand, presupposes a high
awareness in regard to that type of crimes on the part of the police officers, in order for them to be
able to recognise these crimes. Awareness, however, seems to be low, as is demonstrated above
in I.A.1.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression,
including in the media and on the Internet, which may be reasonably understood as
likely to produce the effect of inciting, spreading or promoting hatred or other forms of

\(^{107}\) European Commission, Eurobarometer 66 – Public opinion in the European Union. Report, published in
22 August 2012); Special Eurobarometer 296, supra note 24; and Special Eurobarometer 317, supra note
24. Eurobarometer 2006 also asked questions about same-sex marriage.


\(^{109}\) Strömpl et al, supra note 27.

\(^{110}\) Erlenheim, supra note 1, p 3.

\(^{111}\) Ministry of Justice, e-mail correspondence, 21 September 2011.

\(^{112}\) T. Kalmet, RE: EL Nõukogu raamotsus 2008/913/JSK (RE: EU Council Framework Decision
2008/913/JHA), e-mail correspondence, Ministry of Justice, 14 September 2011.

\(^{113}\) ECRI Report, supra note 22, paras 99, 101.

\(^{114}\) Ibid., para 10.
discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

**Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?**

The Penal Code prohibits activities, which publicly incite hatred, violence or discrimination on the basis of ... sex, ... sexual orientation ... if this results in danger to life, health or property of a person (§ 151). Punishment for such activities is a fine of up to 300 fine units (1200 euros) or detention (up to thirty days). If it has caused death, damage to health or other serious consequences, it was committed by a person who has previously been punished for such act or by a criminal organisation, the punishment is a pecuniary punishment (30 to 500 daily rates) or up to 3 years’ imprisonment. The provision also foresees the possibility that the incitement of hatred could be conducted by a legal person. This is punishable by a fine of up to 3200 euros or a pecuniary punishment (3200 to 16,000,000 euros).

Although the provision includes punishment of legal persons and it also includes incitement to discrimination - both are relatively novel, the positive aspects are nullified by its ineffectiveness. The provision has been widely criticised by all relevant international and national organisations. It is mainly due to the fact that the provision has rarely been implemented. In fact, since the amendment in 2006, to add the requirement to prove “danger to life, health or property” there have been no convictions. Before 2006, only one case ended up in court; it concerned incitement to hatred against Jews, Christians and democrats and called for armed terror against them. Amendment to § 151 was apparently made “to avoid liability in situations where persons publicly express their opinion.”

Yet, there are cases that would amount to incitement of hatred or hate speech if the internationally recognised definition (referred to above) would be applied. Representatives of the LGBT community have made complaints to the Police based on § 151, but no investigations have commenced based on these complaints. In fact, LGBT activists have expressed their concern that the police has been unwilling to prosecute under that provision. “Most lesbian, gay, bisexual, and transgender (LGBT) persons did not reveal their sexual orientation or gender identity and avoided reporting incidents to police.”

At the same time Estonian authorities have stated that acts with elements of incitement to hatred are “usually classified either as offences against persons or property, or as breaches of public order”. Therefore, it is clear for all stakeholders that the present regulation on incitement to hatred is deficient and needs to be amended.

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115 Calculated on the basis of the average daily income of the convicted offender. The minimum daily rate is 3.20 euros.
116 ECRI Report, supra note 22, paras 27, 99-105, 141, 171-176, 180-182; CERD, Concluding observations, supra note 41, para 11; FCNM Advisory Committee, Third Opinion, supra note 33, paras 79, 81. See also United States Department of State, supra note 41.
117 Case no 3-1-1-117-05, supra note 47 – the accused was found not guilty in the crime of incitement to hatred. There is another case concerning freedom of expression and it concerned the “distribution of a publication, which contained ununcealed hatred and was oriented at inciting hatred against the Jewish people”. However for some reason it was prosecuted under the “violation of equality” provision rather than incitement to hatred.
118 Government of Estonia, CERD report, supra note 1, para 50.
119 Lisette Kampus, complaint to the North Police Prefecture 10/2007; Reimo Mets, complaint to the North Police Prefecture 01/2009 referred to in Parve, supra note 28, p 3. Also see interview with Lisette Kampus, supra note 87.
120 United States Department of State, supra note 41.
121 CERD, Summary record of the 2038th meeting held on 19 August 2010, CERD/C/SR.2038 (25 May 2011), para 7.
As mentioned above in I.A.2, the Ministry of Justice has initiated the amendment of the Penal Code. The proposed amendment also includes changes in the provision on incitement to hatred. The aim is to lower the threshold for criminal responsibility. The draft version available at the time of compiling the present report, has removed the requirement to prove danger to life, health or property. Instead either disruption to public peace or systematic nature of incitement must be proved. Whether the amendment will be adopted with this exact wording or changes would be made, is yet not possible to predict. However, even this wording would turn the provision into considerably more effective than it is currently.

Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):

- a culture of respect, tolerance and diversity, and
- to avoid negative and stereotyped representations of LGBT people?

Estonian media is largely self-governed. Print media is completely self-governed, while audiovisual and audio media is regulated mostly in regard to the procedure of providing media services, requirements for the providers, and the procedure for issuing licences. In 1997, several media institutions agreed to the Code of Ethics, which is the main act that governs the content of media products. The Code is implemented by two different self-regulating media bodies – Avaliku Sõna Nõukogu (the Estonian Press Council) and Pressinõukogu (the Press Council of Estonia). The first Council has an individual-based membership while the second one is comprised of media companies, but both seem to conduct supervision over most of the media outlets. The Estonian National Broadcasting has additionally subjected itself to the control of the Media Ethics Ombudsman who also implements the above-mentioned Code of Ethics.

The Code of Ethics entails no mention of the need or obligation to promote a culture of respect, tolerance and diversity. The Code includes a recommendation not “to emphasize nationality, race, religious or political persuasion and gender, unless it has news value” (para 4.3), which includes no reference to sexual orientation or gender identity. It is also worth mentioning that the Code requires journalists to provide “true, fair and comprehensive information” (para 1.2) and prohibits the provision of “inaccurate, distorted or misleading information” (para 1.3). The Estonian Human Rights Centre is not aware of any attempts to train journalists on LGBT-related issues or on tolerance and diversity in general.

There have been some discussions over the media’s role in the promotion of tolerance and diversity. However, so far media has considered it more important to represent opposing views, which may well speak against tolerance and diversity, rather than promote a certain viewpoint.

“There do not appear to be any comprehensive surveys of LGBT representations in Estonian media. Qualitative research, including assessments by LGBT persons, indicate that although the media has become more positive toward LGBT issues in recent years, the use of stereotypical images is still widespread.”

The only recent case of negative stereotyping that was strongly condemned by the Media Ethics Ombudsman concerned roma-representation during a widely discussed murder case.

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127 T. Tammerk, Tartumaa mõrvade kajastamisel pole rahvus kõige tähisam (Nationality is not the most important when covering the murders in Tartumaa), 21 September 2010, available at: <http://www.err.ee/sisu.aspx?s=29&a=792> (visited at 22 August 2012).
Ombudsman found that putting emphasis on the roma-origin of the suspect was not appropriate. There have been no similar cases on representation of the LGBT community.

Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?

Paragraph 151 of the Penal Code also applies to the internet. The US Human Rights Report on Estonia noted that “[a]nti-LGBT messages did not generally appear in mainstream media reports, but anonymous online commentary on LGBT themes often included strongly hostile language, in some cases advocating violence against individuals and the LGBT community.” Several attempts have been made to apply § 151 in these cases but because of the high threshold requiring to prove “danger to life, health or property”, the cases have failed.

“In 2008, lawyer Reimo Mets filed an appeal on the behalf of MTÜ Seksuaalvähemuste Kaitse Ühing (non-profit organization Association for the Protection of Sexual Minorities) on not commencing the regulation of the Chief Superintendent of the Kesklinna Police Department of Northern Police Prefecture No. 2316,08,005604. On the website www.delfi.ee, the comment “Burn queers!” was added to the article “Five people arrested in gay parade in Latvia” published on 01.06.2008 by an individual. The police department claimed, and the court upheld, that this was not considered hate speech since there was no direct link to actions stated above, since no person had a physical attack on his or her life, health or property.”

Other cases have involved person’s nationality. For example, in 2009, the Supreme Court ruled against Delfi, one of the largest news portals in Estonia, making it responsible for the comments posted by its readers. One of the commentators posted offensive remarks about a company’s shareholder’s nationality and the shareholder brought a civil suit against Delfi. The case is now pending in the European Court of Human Rights. Because of this case the online portals and forums started to moderate comments. A year earlier a similar case had failed in criminal court because the prosecutor could not meet the high threshold. In that case, the person had used insulting and indecent language towards persons of different nationality. These two cases demonstrate the disadvantages of applying criminal law (the second case) in comparison to civil law, which has a considerably lower threshold but is not tailored to deal with hate-motivated crime and also poses a risk of considerable financial loss for the complainant.

Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?

See above on media in general. The only additional measure that could be brought out here, is the above Delfi case, which resulted in comments in online media being moderated.

If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?

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128 United States Department of State, supra note 41.
129 Case no 4-08-6789, 21 August 2008, Harju County Court.
129 Case no 4-08-6789, 21 August 2008, Harju County Court.
129 Case no 4-08-6789, 21 August 2008, Harju County Court.
129 Case no 4-08-6789, 21 August 2008, Harju County Court.
129 Case no 4-08-6789, 21 August 2008, Harju County Court.
129 Case no 4-08-6789, 21 August 2008, Harju County Court.
130 Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 11.
131 Case no 3-2-1-43-09, 10 June 2009, civil chamber of the Supreme Court.
132 Delfi AS v. Estonia, pending, ECtHR, appl. no. 64569/09.
133 CERD, Summary record of the 2039th meeting held on 20 August 2010, CERD/C/SR.2039 (31 August 2010), para 11.
133 CERD, Summary record of the 2039th meeting held on 20 August 2010, CERD/C/SR.2039 (31 August 2010), para 11.
133 CERD, Summary record of the 2039th meeting held on 20 August 2010, CERD/C/SR.2039 (31 August 2010), para 11.
Incidents of hate speech are not usually publicly disavowed by leading public officials. At the same time, they are also not encouraged. There is an overall passiveness in regard to hate speech in general and to LGBT-related hate speech in particular. SEKÜ has also stated that discussion or debate on LGBT issues is lacking in media because “both LGBT persons and politicians are reluctant to publicly discuss the topic.”\(^{135}\) The Estonian Human Rights Centre could find only one instance where a minister expressed concern over a statement allegedly made by dr Peeter Mardna, an official of the Health Board.\(^{136}\) Apparently he had said that homosexuality is a psychological disorder and that children only come from families with a mother and a father.\(^{137}\) Dr Mardna was forced to apologise.\(^{138}\)

7. **Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.**

*Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

No guidelines have been issued. The Ministry of Social Affairs referred to the Handbook on Equal Treatment Act, which was published by the Tallinn University of Technology as a part of its “Diversity Enriches” campaign.\(^{139}\) However, this handbook concentrates on the ETA and mentions the Penal Code only in passing.

*Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

It cannot be claimed that incidents where representatives of public authorities or institutions make public statements that could reasonably be understood as legitimising such hatred or discrimination occur often. There are only a few known persons representing public institutions that make homophobic comments, some of which could amount to incitement of hatred. Most of them refer to homosexuality as illness or perversion that should be suppressed, refer to discussions on LGBT-related issues as gay-propaganda or merely state that as long as LGBT persons stay in their own clubs and homes there is no problem.\(^{140}\) It is noteworthy that many such statements are by school authorities, including principals. For example, the management of Vanalinna Harduskolleegium, one of the schools in Tallinn (which is largely catholic-oriented) invited Paul Cameron, an anti-LGBT psychologist to Estonia to hold a public lecture to students as well as the general public.\(^{141}\) Eventually, after encountering some criticism for trying to influence students with

\(^{135}\) FRA, *The social situation*, supra note 126, para 32.


\(^{139}\) Erlenheim, supra note 1, p 4.


\(^{141}\) M. Vällik, ‘Vanalinna koolist saab ajutine homoviha kants’ (The old town school becomes a temporary refuge to gay hatred), *skeptik.ee*, 8 April 2010, available at:
biased opinions, the public lecture was moved to another venue. According to Meie Kirik, a conservative Christian newspaper the venue change was imposed by the Ministry of Social Affairs, however, this claim cannot be substantiated.\footnote{142}

Statements by school officials have mostly been low profile statements. Perhaps most high profile statement was made by the former Minister of Education and Research in 2010.\footnote{143} He stated at a press conference that homosexuality will not be promoted in Estonian schools, as a response to a news item in media notifying that Holland had added same-sex marriages to study materials for schools. The statement was not in response to any comments or questions from the press or other governmental officials, it was made out of context. It was ignored by the rest of the members of the government at the press conference and no public apology followed. Only young social democrats demanded his resignation from the ministerial position, a demand which was left without a response.\footnote{144}

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

Has guidance been issued to public officials and state representatives in this respect?

No guidance has been issued to public officials and state representatives in this respect. Again, the Ministry of Social Affairs referred to the Handbook on Equal Treatment Act, but as mentioned above, this handbook concentrates on the ETA and mentions the Penal Code and hate speech only in passing.\footnote{145}

If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?

No guidance has been issued, therefore this question is inapplicable.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular,
discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?

Establishing and registering of NGOs is mainly governed by two legal acts – the Non-profit Associations Act and the Foundations Act. These acts are based on the provision in the Constitution that stipulates: “Everyone has the right to form non-profit associations and federations” (§ 48). The Constitution only stipulates restriction to associations with military aims, requiring prior authorisation, and prohibits associations, which aim to change the constitutional order of Estonia by force. It also states that “only a court may terminate or suspend the activities of an association, federation or a political party for violation of a law, or order the association, federation or the political party to pay a fine.”

In line with the Constitution, neither the Non-profit Associations Act nor the Foundations Act stipulates any restrictions in regard to the subject matter of an association. Both acts also limit the right to refuse registration to cases of incorrect documentation, that is documentation that does not fulfil the requirements of law (§ 9, Non-profit Associations Act, and § 12, the Foundations Act). In case of foundations, registration can also be refused if the application is made more than a year after taking the decision to establish the foundation (§ 12, Foundations Act).

The Estonian Human Rights Centre has not received any information on problems with registering LGBT organisations.

If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?

There is no information in regard to possible discriminatory administrative procedures.

Are there examples of measures taken to:

- ensure that LGBT organisations can operate freely,
- defend their interests when necessary,
- facilitate and encourage their work?

There are no specific measures to protect, facilitate or encourage LGBT organisations. Free operation is based on the respective acts. In case of violations in regard to such organisations, they can turn to respective institutions, such as courts or the Chancellor of Justice (see more on these institutions in recommendation 3).

Although no special measures have been taken, there are numerous examples of discrimination or other problems encountered by the LGBT organisations in Estonia. The Estonian Gay Youth (now Estonian LGBT Association – ELGTA) reported a problem in finding facilities to rent. They were refused by two persons after they found out what the organisation’s name was. Once they had found rooms to rent, the owner caused a series of problems in order to encourage them to leave the premises. They have also been requested to take down the rainbow flag from the facade of the building. In a few instances they encountered problems in finding rooms for parties, while the reason why they were not successful (because the organisation is an LGBT organisation) was not always even kept secret. They did not file any complaints. Anyhow, discrimination on

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147 H. Talalaev, Aruande jaoks (For the report), e-mail correspondence, 20 September 2011.

148 Interview with Jaan Kroon, supra note 88.
grounds of sexual orientation in the provision of services is not within the competence of the Equal Treatment Commissioner, and as noted above in recommendation 3, the mediation procedure of the Chancellor of Justice is ineffective.

Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?

One of the main LGBT organisations in Estonia, the Estonian LGBT Association, has reported partnership with the state mainly in regard to the possible Cohabitation Act.\textsuperscript{149} The concept of the Act is currently being developed by the Ministry of Justice. Consultations as to the concept and the upcoming draft are scheduled to start in the autumn and the ELGBTA is expecting to be invited to participate in the drafting of it.

Gendy, the only organisation in Estonia dealing specifically with transgender issues, has not sought cooperation with state authority yet as the organisation is still trying to establish itself and to gain competence.\textsuperscript{150} The Ministries have also not, on their own initiative, sought cooperation with this organisation, which might be due to their lack of knowledge of Gendy. Gendy has previously asked to be involved on only one occasion, specifically, in regard to a possible draft law concerning transgender people.\textsuperscript{151} Although the Ministry admitted that drafting of this law is stalled for the moment, they did promise to engage Gendy if the drafting resumes.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?

The ELGBTA has not detected any discrimination in regard to public funding earmarked for NGOs. Their representative stated that such funding is scarce in general for all NGOs but the possibility to apply for it exists and there are no restrictions for LGBT organisations, at least not in an officially documented form.\textsuperscript{152} The Ministry of Social Affairs responded that no complaints as to discrimination of this kind have been received by the Equal Treatment Commissioner.\textsuperscript{153} The Estonian Human Rights Centre does not have any information to claim the existence of discrimination either.

Has such funding been made available to LGBT organisations?

The ELGBTA has applied for public funding for two projects.\textsuperscript{154} The funding comes from the Council of Gambling Tax and is distributed through different ministries. The ELGBTA’s funding was decided by the Ministry of Social Affairs. The representative of the ELGBTA stated that she is aware of only one other attempt to get funding from the Council, which was made by Gendy, the only organisation for transgender persons. Gendy did not receive funding but she suspected that the reason was the quality of the application rather than the nature of the organisation.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the

\textsuperscript{149} H. Talalaev, \textit{Re: kolm küsimust} (Re: three questions), e-mail correspondence, 23 July 2012.
\textsuperscript{150} K. Grossthal, Telephone interview with Kristel Sitz, representative of Gendy, 29 July 2012.
\textsuperscript{151} I. Normet, \textit{Vastus} (Response), e-mail correspondence, no 13.1-8/5598 (01.2012), Ministry of Social Affairs.
\textsuperscript{152} Talalaev, \textit{Re: three questions}, supra note 149.
\textsuperscript{153} Erlenheim, supra note 1, p 4.
\textsuperscript{154} Talalaev, \textit{Re: three questions}, supra note 149.
Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?

There are no special protection measures taken to protect LGBT human rights organisations. The usual means can be employed – complaints can also be made to the Chancellor of Justice or to a court. The Equal Treatment Commissioner would probably not have competence in LGBT issues, as she is limited to the employment sector (see recommendation 3 above for more information). ELGFTA assesses the protection adequate in general but is critical of the restricted scope of protection that Equal Treatment Act affords.155

Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?

One such example could be the action of Minister of Social Affairs who attended the opening of OMA Keskus, an LGBT information and activity centre, and also made a speech.156 However, the support from the Minister is somewhat clouded by the fact that there is no mention of attending this event on the Ministry’s official website.

On the other hand, the Tallinn University of Technology had a positive experience with Tarbijakaitseamet (the Consumer Protection Board) in 2010. The Board had received five complaints against the first street campaign by the Diversity Enriches project.157 The complaints claimed a violation of the general requirements for advertisement, including the requirement not to contain denigration or discrimination on the grounds of nationality, race, age, colour, sex, language, origin, religion, political or other opinion, financial or social status or other circumstances. The rationale was that anti-homophobic advertisement incites hatred towards people of different races putting homosexuals and persons of different races on the same footing. The correspondence between the organiser of the campaign, the University, and the Board was constructive and eventually none of the complaints were found to be in violation of the Advertisement Act.158

Are LGBT human rights organisations able to work with

- national human rights institutions and ombudsmen,
- the media,
- other human rights organisations?

No problems have been reported by any of the LGBT organisations in regard to cooperation with the above-mentioned organisations. There are no national human rights institutions that would be accredited according to the Paris Principles.159 Activists have used the option to file complaints with the Chancellor of Justice, an institution acting also as an ombudsman in Estonia; and all their

155 Talalaev, supra note 42.
complaints have received a response. The most recent example of that would be the Chancellor’s view on invalidity of same-sex marriages as foreseen in the new Family Law Act (see more below in IV.25).

The media has been very interested in LGBT issues: the Baltic Gay Pride event organised in 2011 received considerable amount of media coverage, which was neutral or even positive towards the event.160

LGBT organisations cooperate closely with the Estonian Human Rights Centre, which is the compiler of the present report. The LGBT organisations as well as the Human Right Centre are also members of the roundtable for human rights organisations, an informal gathering for organisations dealing with different aspects of human rights. The roundtable was gathered upon an invitation of the Estonian Human Rights Centre and the Estonian Institute of Human Rights. The second gathering, in fact, took place at the premises of the ELGBTA.

Are they able to take part in training sessions, international conferences and other human rights activities?

No problems have been reported by any of the LGBT organisations in regard to taking part in training sessions, international conferences or other human rights activities. In fact, as part of its Diversity Enriches campaign the Tallinn University of Technology has organised two conferences covering LGBT topics, one of which was fully dedicated to LGBT issues.161 There were no obstacles in organising these conferences. In fact, in 2011, the hotel where the conference was held hoisted a rainbow flag for the duration of the conference at the request of the LGBT activists. No problems were reported by the hotel as a result of that.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?

See the fourth question in II.9.

Have there been such consultations regarding the implementation of this Recommendation?

The Estonian Human Rights Centre and local LGBT organisations do not have any information on such consultations having taken place.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.


Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:

- activities that support the human rights of LGBT persons
- publication of material
- media coverage
- organisation of/participation in conferences
- dissemination/access to information on safe sexual practices?

See above in I.B.6 and the second question in II.11.

The Ministry of Social Affairs has supported several campaigns, publications and conferences related to LGBT issues through the campaign Diversity Enriches organised by the Tallinn University of Technology (see www.erinevusrikastab.ee). As part of the European Year of Equal Opportunities in 2007, the Ministry of Social Affairs supported several research projects, publications and seminars involving LGBT issues: a research report on unequal treatment of LGBT people in Estonia, which was published in 2007\(^{162}\) (its summary was published by the Ministry as one of its regular policy analysis in 2008),\(^ {163}\) handbook on LGBT issues for people working with youth\(^ {164}\) and a seminar on LGBT people in Estonia.\(^ {165}\)

In addition to activities by non-governmental entities supported by the state, there have also been publications by the Ministries themselves. In 2008, the Ministry of Social Affairs also published a policy analysis on marriage and cohabitation (or common law marriage), which also included extensive references to same-sex partnerships.\(^ {166}\) The Ministry of Justice published an analysis on so-called common law marriages in Estonia.\(^ {167}\) In conclusion, it can be said that the state has not attempted to set any obstacles to freedom to receive and transmit information and ideas relating to sexual orientation and gender identity. Indeed, in certain occasions the Ministries have published comprehensive publications on the subject-matter themselves. It is hard to predict whether the trend will continue. The LGBT topic seems to be losing its importance in the agenda of the Ministry of Social Affairs, but there is no information available, which would give reason to suspect that the Ministry will stop supporting publication and spreading of LGBT-related information (see the second question in the recommendation 2).

However, persons actively and publicly disseminating information relating to sexual orientation and the rights of LGBT persons, nevertheless, encounter significant problems, especially within religious organisations. One of the most recent cases, which was also widely covered by the media, concerned Heino Nurk who was defrocked from his clergy position due to his gay activism, specifically for establishing the Association of Gay Christians.\(^ {168}\) Later he was also dismissed from a lecturer position in the Estonian Evangelical Lutheran Church Institute of Theology for being gay.

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\(^{162}\) Strömpl et al, supra note 27.

\(^{163}\) Ibid.


\(^{168}\) K. Grossthal, Interview with Heino Nurk and Meelis Süld, Tallinn, 3 May 2012.
The reasons for the dismissal are apparently extensively documented, as none of the participants in any of the relevant meetings found it necessary to disguise them. Another member of the same Association has also encountered problems – for example, restricting his right to hold a speech at an event organised by the Association of Estonian Evangelical Students. The reason put forward was his active practice of homosexuality. He was also expelled from the Estonian Evangelical Alliances, organisation aiming to disseminate information on Christianity, for having damaged the organisation.

Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?

The Estonian Human Rights Centre is not aware of any restrictions being placed on freedom of expression.

Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?

No special effort has been made to that effect. See section I.B.6, specifically the second question.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

Have the authorities ensured freedom of peaceful assembly for LGBT people?

The topic has been discussed in detail in the Estonian national report to the EU Fundamental Rights Agency in 2008, which was compiled by the experts of the Estonian Human Rights Centre:

“In general, freedom of assembly is guaranteed according to § 47 of the Constitution. More specific regulation is provided by the [Public Assembly Act], which sets out possible restrictions for freedom of assembly. There are no rules, which would discriminate on the grounds of sexual orientation in the Act, therefore, any discrimination that may occur is a question of the application and interpretation, rather than the text, of the law.

Inciting hatred, violence or discrimination on grounds of sexual orientation is mentioned as a basis for prohibiting a demonstration. Section 3 (3) of the Public Assembly Act declares as prohibited any assembly that incites hatred, violence or discrimination also based on the grounds of sexual orientation. Therefore there is a legal basis for prohibiting anti-LGBT demonstrations.

There has been constant public debate surrounding the yearly LGBT Pride parade that has taken place in Tallinn since 2004. During the 2006 parade counter-demonstrators attacked parade participants and the police were accused of not providing sufficient protection. This also prompted Amnesty International to issue a statement calling for better protection for the freedom of assembly. In 2007 parade organizers issued a public statement that parade organization ‘has turned out to be more complicated than in previous years’ and accused the public authorities of a lack of cooperation. The organizers also submitted a complaint to the Chancellor of Justice’s office. The Chancellor concluded that although the requirement by the Northern Police Prefecture

169 Grossthall, Interview with Heino Nurk and Meelis Süld, supra note 168.
to parade organizers to use a private security firm to guarantee participants' safety is in itself legal, the refusal of the organizers to fulfill the requirement cannot be a ground for refusing to allow the parade to take place. It also established that the Northern Police Prefecture had not followed standards of good governance by not fully cooperating with the parade organizers, as well as not correctly responding to their initial e-mails.

In conclusion, as pointed out by the Chancellor of Justice in his analysis of the Police Prefecture’s actions, although the authorities seem to be well aware of their negative obligations not to disturb the parade, they are not so much aware of the positive obligation to provide an environment where freedom of assembly and related rights can be enjoyed (for example, by protecting protesters from counter-protesters). ..."

The passivity of the Police during the 2006 Gay Pride and their lack of knowledge in their positive obligations was also raised by the UN Human Rights Committee in 2010.\textsuperscript{171} The Estonian delegation admitted that the police “might not have acted appropriately to protect participants in the Gay Pride marches in 2006 and 2007” but did not agree with the “allegations that the police were unable to fulfil their positive obligation to ensure the safety of participants in those marches. Measures had been taken to improve police action”.\textsuperscript{172} However, since no marches have been organised since then, the police action has not been tested. There was a public concert in 2011 to celebrate Gay Pride but the attention it received was was as controversial as with actual marches and thus no incidents occurred. The police was present during the 2011 Pride event.

The FRA national report on Estonia, which was published in 2010, and covered the years 2008-2009 as well as the annual reports “Human Rights in Estonia” in 2010 and 2011\textsuperscript{173} did not identify any significant problems for those years.

However, it is important to note one of the recommendations from the Chancellor of Justice from 2010. The recommendation was made in regard to the refusal made by local authorities to register a demonstration by animal activists.\textsuperscript{174} One of the issues raised was the registration of a fictitious demonstration, which prevented animal rights activists from registering their own demonstration. Although the Chancellor found it “deplorable” that fictitious demonstration precluded an actual demonstration from taking place, he was resolute in saying that “the public authority should not have the right to decide over the admissibility of the content of assemblies”. Thus, even if public authorities might suspect that the demonstration is not real, they have no basis for denying its registration. The same argument could be applied to demonstrations that particular local authorities might not approve. As long as the demonstration and the notice of such demonstration correspond with the formal requirements of the Public Assemblies Act and do not constitute one of the prohibited assemblies (e.g. assemblies inciting hatred), the public authorities cannot refuse its registration.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to

\textsuperscript{171} Human Rights Committee, \textit{Summary record of the 2716th meeting}, supra note 52, para 47.

\textsuperscript{172} \textit{Ibid.}, para 51.


\textsuperscript{174} Chancellor of Justice, \textit{Soovitus õiguspärasuse ja hea halduse tagamiseks} (Recommendation for guaranteeing legality and good administration), no. 7-5/091862/1003600, 21 June 2010.
unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?

As stated above in III.14, the Police is fully aware of its negative obligation not to disturb demonstrations but is yet to learn about its positive obligations to protect protesters from counter-protesters. Fortunately, only the Pride parade of 2006 involved violence against demonstrators. “At the event, several young “skinheads” threw rocks and sticks and assaulted participants. Organizers of the event blamed the police for their lack of protection of the event.”

However, the answer to the problem in later years was the Police requiring the organisers to hire private security firms, instead of providing protection itself. It must, however, be specified that the Police has also always been present, in addition to private security firms.

In particular, have the police protected participants in peaceful LGBT demonstrations effectively?

See above.

Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?

There is no evidence to the contrary. In fact, the ELGBTA assessed the cooperation with the Police during the Baltic Pride event in 2011 as positive.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?

The only significant restriction placed on LGBT-related freedom of assembly events has been the requirement to hire a private security firm, discussed in more detail above. This in fact seems to be a routine requirement for all public events of a larger scale.

It is also interesting to note an application to the Chancellor of Justice by animal rights activists on freedom of assembly. The application concerned the 2008 amendment to the Public Assembly Act whereby the public “officials no longer have the duty to prohibit a meeting if it contradicts provisions of Public Assemblies Act, but they are given a certain amount of discretion to decide and even make proposals to the organisers of the meeting in order to bring the assembly into conformity with the law (§ 8).” The amendment was something that the officials had not yet got accustomed to and were inclined to automatically deny a registration of a demonstration if it was to take place at the same time and place. The refusal was made on grounds of public safety. The Chancellor, however, found the refusal to be unlawful. “According to the recommendation of the Chancellor of Justice, the organiser is advised to choose another time for the assembly if another public assembly has already been registered at the requested place and time. If in that case the

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175 Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 16.
176 Also see on that Ibid.
177 Talalaev, Re: three questions, supra note 149.
178 Chancellor of Justice, no. 7-5/091862/1003600, supra note 174.
public meeting loses its meaning, a new place must be chosen in the vicinity, however, not in the immediate vicinity of the assembly that had been registered earlier. It is now clear that even if a demonstration is planned for the same day and place as another demonstration, public authorities cannot automatically refuse to register it on grounds of public safety. They must try to find a compromise, which would least restrict the freedom of assembly of the persons involved.

**Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?**

The only incident that is known to the Estonian Human Rights Centre is the one reported in the 2010 shadow report to the UN Human Rights Committee. According to the report the local officials initially refused to register the Pride parade in 2007 “stating that their presence infringed on the constitutional rights of all others who wished to use the small streets [of the Old Town] during that time”. This does not seem to be an argument when other, considerably larger events are taking place, e.g. marathons that require closing of streets that are main entrances to the city centre for commuters. However, the compilers of the present report do not possess enough information to make a comprehensive assessment of the motives behind allowing one event to take place in its chosen place and time and not another event. The shadow report did state that the “organizers protested their refusal to allow the event to take place in the city’s Old Town, and the city finally agreed to permit the event to take place, on the condition that the Pride event organizers hire security guards to keep the participants from infringing on the rights of others”.

**If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?**

There are no obstacles for the organisers of LGBT-related events to challenge any restrictions to such events. The restrictions have not yet been challenged in courts, which in principle is a viable option (see above in the recommendation 1). The organisers of the Gay Pride 2007 did, however, turn to the Chancellor of Justice as discussed in section III.14. The outcome was favourable towards the complainants. The impact of the recommendation is difficult to assess since the requirement to hire a private security company is still a routine requirement for all major public events, which is how the Gay Pride is seen, since it sparks considerable public attention.

**17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.**

**If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,**

a. Has there been encouragement to public authorities to condemn such interferences?

b. Have public authorities actually condemned such interferences?

The Chancellor of Justice has clearly condemned unnecessary restrictions to LGBT-related peaceful assemblies. See above in section III.14.

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181 Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11.
182 *Ibid.*, p 16. Restrictions as to the route were also referred to by the Estonian delegation when presenting Estonian state report to the UN Human Rights Committee. – Human Rights Committee, *Summary record of the 2716th meeting*, supra note 52, para 12.
183 Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 16.
Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?

See above.

Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?

The Estonian Human Rights Centre is not aware of any such endorsement or support.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?

Paragraph 118 of the Criminal Code of the Estonian SSR foresaw a 2-year prison sentence as punishment for anal sex between men. When Estonia regained its independence, the Criminal Code was amended (on 1 June 1992) and the article dealing with homosexuality was deleted. 184

There are no differences in the age of consent; additionally there are no provisions in the current Penal Code that in its wording or extent could be implemented in a way that is discriminatory based on sexual orientation or gender identity.

Are there any criminal law provisions, which because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity?

There are no such provisions.

If so, what steps are the authorities taking to remedy this situation?

See above.

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?

Estonian public authorities are guided by § 4(2) of the Personal Data Protection Act that states that information about an individual’s sex life is sensitive personal data. 185 As such it can thus be

collected and processed only upon consent from the person.\textsuperscript{186} In addition, the person must be explained that data to be processed is sensitive personal data and the data subject's consent have to be obtained in a format that can be reproduced in writing. Law enforcement authorities working with personal data (incl. sensitive personal data) are required to comply with the requirements set by the Personal Data Protection Act. Access to information is also covered by the Public Information Act, where § 35(1.11) states that a holder of information is required to classify information that contains sensitive personal data as information intended for internal use.\textsuperscript{187}

National compliance with these laws is enforced by a public authority – Andmekaitse Inspeksioon (Data Protection Inspectorate) under the Ministry of Justice. The Inspectorate’s objective is to quickly react to all violations and suspicions of violations concerning processing of personal data and therefore, in addition to carrying out on-site audits on its own initiative, it is the Inspectorate’s duty to also act as a commissioner (ombudsman) and a preliminary court.\textsuperscript{188}

\textbf{What steps have the authorities taken to ensure that existing records are destroyed?}

Rules for storing, archiving and destroying records in databases are covered by statutes of relevant information systems. Compliance with these regulations is guaranteed by implementation of surveillance measures.\textsuperscript{189}

\textbf{Have these steps been effective?}

There is no reason to believe that the Data Protection Inspectorate is ineffective in implementing the Personal Data Protection Act. The Estonian Human Rights Centre has no information that would suggest its ineffectiveness.

\textbf{Is there any evidence of:}

- the continued existence of such records
- the continuing collection of such data?

The Estonian Human Rights Centre has no such evidence.

\textbf{20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.}

\textbf{Has a review of such prior requirements been conducted?}

Reportedly no such regular review has been conducted.\textsuperscript{190}

\textbf{Are there still requirements, which might be considered disproportionate or even abusive?}\textsuperscript{191}

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\textsuperscript{185} & \textit{Isikuandmete kaitse seadus}, RT I 2007, 24, 127 ... RT I, 30.12.2010, 2. \\
\textsuperscript{186} & \textit{Isikuandmete kaitse seadus}, RT I 2007, 24, 127 ... RT I, 30.12.2010, 2, § 12. \\
\textsuperscript{187} & \textit{Avaliku teabe seadus}, RT I 2000, 92, 597 ... RT I, 22.03.2011, 1. \\
\textsuperscript{188} & Statutes and Composition of the Data Protection Inspectorate – Andmekaitse Inspeksiooni põhimäärus ja koosseis, RTL 2007, 17, 266 ... RT I, 18.07.2012, 1. \\
\textsuperscript{189} & Türkson, supra note 68. \\
\textsuperscript{190} & Erlenheim, supra note 1. \\
\textsuperscript{191} & The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007)17 on gender equality standards and mechanisms, which affirms that “both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities.” – Council of Europe Steering Committee for Human Rights, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity – Explanatory Memorandum, 31 March 2010, CM(2010)4 add3 final, available at: \\
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such as:

- irreversible sterilisation,
- hormonal treatment,
- preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?

All the above-mentioned procedures are voluntary. There are no requirements for sterilisation, initiating hormonal treatments or carrying out surgical procedures.\footnote{192} According to the Pregnancy Termination and Sterilisation Act, sterilisation in Estonia is voluntary; § 19(1) of the same act states that an individual may be sterilized only at the individual's request.\footnote{193} The request for sterilization has to be in written form.

According to regulation 32 of the Minister of Social Affairs on Common requirements to medical acts of sex change, initiating hormonal treatments is only one of the possibilities.\footnote{194} Additionally, there are no references or requirements to preliminary surgical procedures in the legislation, neither is there a requirement of proof of a person's ability to live longer in the new gender.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

Are there procedures in operation, which ensure the full legal recognition of a person's gender reassignment?

The regulation on common requirements to medical acts of sex change is the basis for all medical and legal acts regarding gender reassignment in Estonia. According to the regulation, the Minister of Social Affairs assembles a committee of medical experts competent to decide about a person's gender, they also grant permission for medical and surgical procedures necessary for gender change.

A person applying for gender recognition must submit an application to the Ministry. The applicant must also present evidence about his/her transsexual identity during at least two years prior to the application; a psychiatrist's assessment excluding a psychiatric disorder, and the results of genetic research on compatibility of chromosomatic and gonad gender.

The decision of a committee of medical experts is the basis for a decree by the Ministry of Social Affairs, which authorises hormonal treatment and medical acts, both of which are voluntary, to change an applicant's gender. This decision will also be a basis for legal change of gender and name.

At the same time, the regulation on common requirements to medical acts of sex change is somewhat contradicting. For example, § 3(1) states that applicant may start with hormonal treatment and subsection 2 states that surgical procedures are not obligatory, whereas § 4 clearly states that at least two years must pass from the beginning of the medical treatment before the expert committee will issue a decision on gender/sex change.

\footnote{192} Erlenheim, supra note 1.


\footnote{194} Soovahetuse arstlike toimingute ühtsed nõuded, Regulation no 32 of the Minister of Social Affairs, RTL 1999, 87, 1087.
Additionally, the Population Register Act regulates formation and granting of a new personal identification code for persons who have undergone gender change. In Estonia the personal identification code is generated on the basis of the sex and date of birth of a person. According to § 52 of this Act, an authorised processor will generate and issue a new personal identification to the person who has undergone gender change based on its application and the reference by an authorized medical institution.

Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?

Change of name is possible under § 15 of the Names Act that provides assigning a new name due to change of gender of a person: “If the gender of a person is changed, on the basis of a written application of the person, the parent(s) of the minor or of the guardian of the minor ward, a new given name shall be assigned to the person and a foreign-language surname of the person may be changed if the gender feature is reflected in the surname pursuant to the national tradition of the person.”

An individual who has undergone gender change has the right to get a new personal identification code and new identity documents. Under the Identity Documents Act (§ 13(1.3)) the document is revoked, if the document or an entry or data contained therein are inaccurate (incl. data relating to gender) and a new document is issued. The new document is also the basis for making changes to other documents at the person’s request.

Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as

- diplomas,
- certificates of employment, and
- insurance or banking documents?

In case of certificates of employment and insurance or banking documents, the new identification document is the basis for making changes in the documents at a person’s request (for more details, see previous question).

The situation is more complicated for diplomas that have already been issued and getting diploma duplicates with the changed personal data. The leaving certificates for primary and secondary schools are regulated by the Estonian Government Regulation on the Statute and Formats of Primary and Secondary School Leaving Certificates and the State-examination Certificate. The duplicate is issued by the headmaster of the school where the applicant was granted the leaving certificate. The leaving certificate with changed personal data could, according to some interpretations, be issued according to § 17(1.2) of the same regulation, which states that the owner can ask for an annulment of the original document and request a duplicate if inaccuracies or errors in the formalization of the original document are established. At the same time, practice has not unequivocally favoured transgender people because the content of the provision leaves room for interpretation and there have been cases where the headmaster has not issued a duplicate with the new name.

For example, a person who takes office in a state authority is obliged to present school diplomas and in case it bears the name that the person was holding at graduation it is contrary to the principles of protection of sensitive personal data relating to gender identity and sexual orientation.
as according to § 4(2.3) and § 6 of the Personal Data Protection Act, data relating to a person’s gender identity and sexual orientation is considered sensitive personal data.

*If yes, do these procedures include the protection of the person’s private life, so that no third party can become aware of the gender reassignment?*

Generally yes, since an individual who has undergone gender reassignment treatments has the right to get a new personal identification code and a new identification document and this new document is also the basis for making changes to other documents at the person’s request. For more detailed information about protection of private life, please see question 19.

**22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

*Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

According to the Family Law Act (§ 1(1)) a marriage is contracted between a man and a woman.\textsuperscript{200} The Ministry of Interior Affairs has taken the stance that after the surgery and after a new identification document has been issued, marriage to a person of opposite sex is possible.\textsuperscript{201} The Estonian Human Rights Centre has no information regarding the day-to-day practice or the refusal of right to marry.

Legality of marriage after one spouse undergoes sex changes is unclear. The Family Law Act states that marriage between same-sex persons is invalid (§ 10(1)) but no mechanism has been created to deal with post-rectification cases.

**23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor’s pension benefits and tenancy rights.**

*Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

There is no general legal framework on rights and obligations of unmarried couples.\textsuperscript{202} Although specific pieces of legislation may include rights and obligations in regard to unmarried couples, it has been stated that the regulation is marginal.\textsuperscript{203} Policy analysis from the Ministry of Social Affairs lists regulation of corruption prevention (Public Procurement Act), court procedure (Code of Civil Procedure, Act of Criminal Procedure), conjugal visits in prison (Imprisonment Act, § 25) and gathering of state statistics as few of the examples.\textsuperscript{204} Indeed, as a result of ELGBTA address to the Statistics Office, the state census conducted in the beginning of 2012, also asked about the cohabiting partner.\textsuperscript{205} There were no obstacles to mark down one’s partner of same sex, although apparently the electronic form asked for a confirmation of that particular choice while no

\textsuperscript{200} Perekonnaseadus, RT I 2009, 60, 395 … RT I, 27.06.2012, 4.
\textsuperscript{201} Türkson, supra note 68.
\textsuperscript{202} Olm, supra note 167, p 55, and Järviste et al, supra note 166.
\textsuperscript{203} Järviste et al, supra note 166, p 12. Also see Olm, supra note 167, p 55.
\textsuperscript{204} Järviste et al, supra note 166, p 12. Also Olm, supra note 167, pp 73-80.
\textsuperscript{205} Question EL13 at p 4 on the form of the census. It is electronically available at: \texttt{<http://www.stat.ee/dokumendid/58980>} (visited at 22 August 2012).
confirmation was asked when partner was marked as one of opposite sex.\textsuperscript{206} The ELGBTA even encouraged same-sex couples to do that in order to get reliable information on the number of such couples.\textsuperscript{207}

State social assistance in Estonia is provided based on the household and not the legal status of the relationship, and rights and obligations towards children also depend on the filiation with the child and not the legal status of the relationship between parents. Certain social support schemes allow a foster parent to apply for the support.\textsuperscript{208} In principle, foster parent could be a cohabiting partner of the biological parent (§ 68). However, it is unknown whether the latter interpretation is put into use in practice. Consequently, the rights and obligations towards one’s partner are essentially unregulated.

There was one case that was widely discussed in the media, concerning a refusal of a local municipality to provide social benefit to the children of a same-sex couple.\textsuperscript{209} One of the partners applied for the benefit from Viimsi municipality (local authority near Tallinn), which had previously confirmed that marriage is not a prerequisite for receiving social benefit. However, the response from the municipality was negative, stating that same-sex cohabitations are not considered families for the purposes of this local social benefit. The Chancellor of Justice found that refusal to be void as the decree regulating social benefits did not reserve it to married couples and their common children.\textsuperscript{210} The local municipality then amended the decree so that it excluded same-sex cohabiting partnerships and rejected the couple’s application again. The applicant turned to the court and won. The local municipality also lost in the appeal. This case demonstrates how entitlement of benefits that are not state-run can differ from one local municipality to another.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?

According to the current Family Law Act, marriage is reserved for different-sex couples (§ 1). Estonian law does not foresee any other form of legalisation of one’s relationship.\textsuperscript{211} However, suggestions have been put forward to adopt a partnership act allowing registration of same-sex partnerships.\textsuperscript{212} Yet, since the Cohabitation Act referred to above in point 25 is yet to be drafted, there is no information as to whether it would include the possibility of registration.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including

\textsuperscript{206} Talalaev, supra note 42.
\textsuperscript{208} Järviste et al, supra note 166, p 12. Also see Olm, supra note 167, pp 78-79.
\textsuperscript{209} Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11. Also see FRA, Thematic Legal Study, supra note 170, p 31.
\textsuperscript{211} Olm, supra note 167, p 54.
\textsuperscript{212} Ibid., p 43.
against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?

Possible regulation of rights and obligation of unmarried couples has been under wider discussion since 2006 when the Chancellor of Justice gave his first opinion on legality of restricting the marriage institution to heterosexual partners. The Chancellor found that the distinction based on sexual orientation was justified by the argument that only heterosexual marriages can produce offspring. In 2011, the Chancellor of Justice confirmed its opinion that marriage can legitimately be reserved for heterosexual couples only. Although now the Chancellor has explicitly rejected the argument of procreation and is instead relying on the justification of protecting traditional marriage.

Over the years, discussions over recognition of same-sex relationships have intensified. The Ministry of Justice commissioned an analysis of the situation of non-married couples in Estonia, the possible need for further regulation and possible models for such regulation in 2009. Several recommendations in this regard were made to Estonia during the Universal Periodic Review conducted by the Human Rights Council in 2010. Estonia explicitly rejected these recommendations to at least “accord the same rights and responsibilities to same-sex partners as those accorded to partners of the opposite sex” if not give some type of legal recognition to such couples. This somewhat reflects the attitudes of the general public.

In 2009, ELGBTA (then titled Estonian Gay Youth) and SEKÜ gathered 2000 signatures in support of same-sex partnership legalisation. As a reaction there was also a demonstration attended by about 200 people against any recognition of same-sex relationships and a gathering of signatures to submit to the Ministry of Justice. The opinion of the general public has changed considerably in recent years. While in 2011, it was reported that only 21% of the population of Estonia support same-sex marriage then in 2012, the support was 34%. The studies were conducted by different organisations, therefore the results might not be fully comparable but the percentages are still indicative and suggest a rapid change in public attitude. The study in 2012 also demonstrated that 46% of Estonian residents support same-sex partnership. A simple survey conducted by the Estonian Human Rights Centre in the beginning of 2011 demonstrated that only one of the political parties represented in the parliament supports same-sex marriage and only two support registered partnership. However, it did indicate that three quarter of the parties represented in the parliament see the need for some sort of regulation.

A few months after the Universal Periodic Review, the Chancellor of Justice issued an opinion stating that the current legal framework in Estonia does not guarantee sufficient level of protection to the partners of factual cohabitations. He stated unequivocally that the current legislative

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215 Olm, supra note 167.
216 Human Rights Council, *UPR Report*, supra note 32, paras 80.11, 80.15, 80.16.
217 Talalaev, supra note 42.
218 Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 6.
220 Grünberg, supra note 29, p 42.
221 Ibid., p 42.
223 Chancellor of Justice, 6-1/100737/1102413, supra note 214, para 48.
framework must be amended to provide sufficient protection to same-sex couples who are opted out of the marriage institution. He did not necessarily recommend equal rights as did the Universal Periodic Review recommendations but he did recommend a higher level of protection than what these couples currently have.

The Ministry published a concept of the Cohabitation Act in August 2012, which proposes a combined solution to couples who could not or would not marry. First, it provides for a formal registration and second, it provides for a regulation of rights and obligations in certain unmarried and unregistered couples. The suggestions in the concept are very open-ended and many issues are yet to be decided. The feedback to the concept has been from one extreme to the other, which means that it is difficult to foresee what the final concept and the eventual draft law will be.

Both the analysis of the situation of non-married couples by the Ministry of Justice in 2009 and the opinion of the Chancellor in 2011 recognised differences in protection between married and unmarried cohabiting couples (couples living together de facto but not registered). Cohabitation is currently unregulated in regard to

- property rights, especially rights in regard to movable property (on housing see below in VIII);
- rights and obligations in regard to children – recognition of parental rights towards a child born into a same-sex family (e.g. through artificial insemination), adoption of the partner’s child, co-adoption of a child. Indeed, if a partner has no filiation with the child, he/she has no obligations in regard to that child, including maintenance obligation. He/she also has no right to remain the child’s factual parent if the child’s biological parent dies or otherwise falls out of the picture (see below in IV.26-28);
- maintenance obligations – towards a partner that has no income (including after break-up), towards a partner immediately before and after she has given birth to a common child, towards a partner who has no income due to having to take care of the child;
- residential lease relations – right to accommodate one’s family members, to demand recognition as a lessee and to enter into the lease contract in place of previous lessee (see below in VIII);
- right of succession – intestate succession, compulsory portion of inheritance, reciprocal will of spouses;
- taxes – common income tax return providing certain tax reductions in case one of the partners is unemployed, several preferences in regard to social tax;
- immigration – right of residence in Estonia as a spouse of a foreigner who has legal basis to stay in Estonia, recognition as a family member for international protection (e.g. asylum) purposes;
- other minor preferences to spouses, e.g. the right to refuse testimony, provide information, survivor’s pension under the Defence Forces Service Act and the Police and Border Guard Act or support under the Security Act etc.

Problems arising in regard to migration are worth discussing further. As the Chancellor noted in his opinion the status of same-sex marriages contracted abroad is currently unclear. According to the Private International Law Act, marriages contracted abroad must be recognised in Estonia if the preconditions of the validity of marriage are met, unless it is against public order (§ 55(2) and 7). Whether same-sex marriages are against public order is not clear, and the Chancellor suggested turning to a court to clarify the issue.

Another problem connected to marriages is connected to Estonian citizens wanting to contract marriage abroad. The issue has been on the agenda already since 2005 when the Chancellor stated that the certificate of the capability to marry can be refused if it turns out that the person wants to marry a same-sex partner (the person must mark the name of the future spouse on the

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form).227 This was justified because according to Estonian law, the person had no capability to enter into marriage with a person of same sex. Over the years, different attempts have been made by homosexuals to get this certificate to marry their same-sex partners abroad but with varying results.228 Finally, the issue was submitted to court in 2011 and the court took a somewhat different approach.229 Although the court confirmed that same-sex marriage is invalid under the Family Law Act, it reached the decision that the office competent to issue such certificate has no authority to check for the validity of the resulting marriage, only that the existence of preconditions for marriage are fulfilled according to Estonian law. The repercussions of this case, however, are not clear as one of the preconditions of marriage is that marriage is contracted between a man and a woman. In this particular case, the civil servant justifying the refusal had mistakenly relied on a wrong provision in the Family Law Act. Had he/she relied on § 1 stating the said precondition, the result of the case might have been different.

Same-sex couples who are in registered partnerships are definitely not recognised in Estonia for purposes of migration. If the partner is an EU citizen, he/she can freely move in and out of Estonia on his/her own right but problems arise when the partner is a third country national, i.e. an alien. In this case he/she cannot apply for a residence permit as a family member. “An alien who is in a same-sex relationship and his or her partner already resides in Estonia, has to apply for a residence permit on other grounds e.g. legal income (a residence permit may be issued, on the condition that a person’s legal income ensures his or her subsistence).”230 The annual immigration quota would then apply to that partner.231 UN Human Rights Committee was concerned of this situation and recommended Estonia to “review its legislation and practice” and grant residence permits to non-citizens in same-sex partnership.232 This demonstrates higher expectation towards Estonia in regard to current status of same-sex partnerships.

It is interesting that the above quoted official statement by the government to the UN Human Rights Committee does not refer to the notion of household, which according to the Citizen of European Union Act could also be the basis of entry and stay in Estonia (§ 3).233 The concept is habitually used by the Statistics Estonia that applies three criteria to determine whether there is a ‘household’ – (1) same address; (2) joint financial and/or food resources; and (3) individuals consider themselves to be one household.234 This could include same-sex partners, whether in registered partnership or not. The Citizenship and Migration Office has stated that, in principle, membership of the household of an EU citizen could be the basis for entry and stay but there is no practice to confirm that.235

Many of these unregulated areas could be pre-emptively avoided with a number of civil law contracts.236 The analysis commissioned by the Ministry of Justice suggested less traditional ways to regulate the rights and obligations of unmarried couples with means that are already available – e.g. regulating property questions among partners through a contract of partnership (contract

228 For one of the example, see Samasoolised perekonnad: abielu või kooseluseadus (Same-sex families: marriage or cohabitation act), Avatud Eesti Fond and SEKÜ, p 5.
229 Case no 3-11-2844, 6 December 2011, Tallinn Administrative Court.
230 Government of Estonia, Replies to CCPR, supra note 104, para 116. See also FRA, Thematic Legal Study, supra note 170, para 52.
231 Human Rights Committee, Summary record of the 2716th meeting, supra note 52, para 3.
232 Human Rights Committee, Concluding observations, supra note 57, para 10.
235 FRA, Thematic Legal Study, supra note 170, paras 44-45.
236 Olm, supra note 167.
foreseen in the Law of Obligations Act).\textsuperscript{237} However, as work on the concept of the Cohabitation Act demonstrates, the Ministry has decided to provide a separate regulation for non-married couples.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?

In practice, are such decisions taken on a non-discriminatory basis?

The Constitution provides two general principles relevant to parental rights and responsibilities: equality before law and prohibition of discrimination (§12) and for the right and duty of parents to raise and care for their children (§27). Paragraph 12 of the Constitution does not explicitly include sexual orientation or gender identity as one of the grounds for discrimination but it has been stated that the equality before law disallows all differences in treatment that cannot be objectively justified.\textsuperscript{238} The Equal Treatment Act does include sexual orientation as one of the impermissible grounds for different treatment and the Equal Treatment Commissioner has confirmed that gender identity is covered by the Gender Equality Act despite the fact that the act does not specifically mention it.\textsuperscript{239} Neither of these acts are applicable in family relations though (ETA, §2, and GEA, §2(2)). Thus the general equal treatment principle provided in the Constitution should apply.

The Family Law Act explicitly notes that the rights and obligations towards a child are determined based on the child’s filiation (§82). Parents have equal rights and obligations towards the child, regardless of whether parents are married or not (§§116-117). If parents need to solve the issue of custody then the court will take appropriate measures (§118). There are no court cases or cases processed by non-judicial institutions that have involved custody issues in the light of parent’s sexual orientation.

LGBT organisations and activists have not observed a general practice of discrimination, although a couple of isolated cases have been referred to. These cases involve an ex-husband wanting to get custody over their child after finding out that the ex-wife is lesbian\textsuperscript{240} and a wife not allowing her husband to get in contact with their child after she found out that he is a transvestite.\textsuperscript{241} Kristel Sitz, representative of Gendy, an organisation for people with alternative gender identity, talked unofficially to social workers about the latter case and was informed that the social workers would most probably not get involved. Although the law does not provide any legal basis, they would probably support the mother. Lisette Kampus noted that in cases where a lesbian couple has accepted a sperm donation from a specific man, they have usually reached an amicable arrangement, whereby the man has waived his parental rights or has remained active as the father to the child.\textsuperscript{242}

The problem is greater in instances where the same-sex couple have effectively raised a child who is a product of one of the partner’s previous heterosexual relationships or of artificial insemination or single-parent adoption (see more on artificial insemination and adoption below in IV.27-28). The

\begin{footnotes}
\footnote{Ibid., p 60.}
\footnote{Equal Treatment Commissioner, \textit{Opinion no 11}, supra note 14. Also see Albi et al, supra note 62, p 26.}
\footnote{M. Meiorg, Interview with Lisette Kampus, 26 January 2012.}
\footnote{M. Meiorg, Telephone interview with Kristel Sitz, 26 January 2012.}
\footnote{Meiorg, Interview with Lisette Kampus, supra note 240.}
\end{footnotes}
second, non-biological or non-adopting partner has no parental rights or responsibilities towards the child. This means that this partner may lose certain benefits that heterosexual parents would receive as a result of having and raising a child. Thus, it seems that such a partner may not claim additional basic tax exemption given to those with a child (only the biological/adoptive parent can). The non-recognition of parental rights also influences the right to receive family benefits. Usually such benefits are reserved for legally recognised parents or legal guardians. There is, however, one notable exception – if an employer of the partner nevertheless recognises him/her as a parent and grants him/her parental leave, which the employer has the right to do according to the Employment Contracts Act (§ 62 and 65), then the partner will also have the right to receive family benefits on behalf of the child. Partner with no biological or adoptive links to the child will, thus, have the right to family benefits only if the employer recognises the situation and is ready to accept it. In addition to usual family benefits, there are also benefits given to families with seven or more children. The precondition for such benefits is that the receiver is the mother or the father of all seven or more children. Thus if a same-sex family consisting of children who are biological children of one partner and of children who are biological children of the other partner, then neither of them has the right to receive the benefit.

If the partner with the parental rights and responsibilities dies or for any other reason falls out of the picture, the other partner has no legal rights over the child that they raised together. In cases where the child has a recognised second biological parent, he/she would be designated to that partner. In other cases, the child would be placed with his/her grandparents. Lisette Kampus reported a case whereby a grandparent took the child when the child’s biological parent died although the biological parent’s partner was still willing and able to continue parenting. There have been some instances where this has proved to be a problem but there is currently no information to conclude that the problem is systematic.

27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?

In practice, are such decisions taken on a non-discriminatory basis?

Joint adoption or an adoption of the biological child of one’s same-sex partner is not possible in Estonia (Family Law Act, § 148). Only marriage allows this type of adoption. The Family Law Act allows adoption by a single person of at least 25 years of age (§ 148, 150). Therefore, in principle, a person in a same-sex partnership may adopt a child.

The general selection criteria for an adoptive parent is also provided in the Family Law Act (§ 147): his or her personal characteristics, relationship with the child who is being adopted, his or her financial situation and ability to perform the obligations arising from the adoption relationship, and, if possible, the presumed will of the parents of the child and the need for consistency in raising of the child and his or her national, religious, cultural and linguistic origin shall be taken into account.

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245 Ibid., § 15. 
246 Ibid., § 91 (1). 
248 Meiorg, Interview with Lisette Kampus, supra note 240. 
249 Also see Council of Europe, supra note 219, pp 97-98. 
250 Olm, supra note 167, p 67.
upon making this decision. On the other hand, the Act provides that “[a]doption is not permitted if this is in conflict with weighty interests of the children of the adoptive parent or the child being adopted, or if there is reasonable doubt that the children of the adoptive parent damage the interests of the child being adopted” (§ 147). The decision whether the person is fit to adopt is made by local social workers or the psychologist. For example, the local municipality of Jõgevamaa has adopted a procedure whereby a psychologist of Tartu Child Support Center, and the local municipality of Harjumaa has delegated the examination process to Oma Pere (both are local NGOs).

There are no court cases or cases processed by non-judicial institutions that have involved adoption issues in the light of adoptive parent’s sexual orientation. However, Lisette Kampus has informed that in reality adoptive parent’s sexual orientation is an obstacle for adoption. Usually the adoption will not reach the formal stage as the social workers make it clear that the procedure will fail. This reflects the attitude of the general public towards adoption into same-sex families, whereby only 14% support the idea in Estonia. Simple survey conducted by the Estonian Human Rights Centre in the beginning of 2011 demonstrated that only one of the political parties represented in the parliament supports registered partnership with the possibility to adopt (the so-called second-parent adoption) while two specifically marked their support for such partnership with the condition that adoption would not be allowed.

LGBT organisations are not aware of any cases where a person of an alternative gender identity has tried to adopt a child (whether successfully or unsuccessfully). Representative of Gendy stated that one such case will emerge this coming Spring when a long-term couple – a man and a male-to-female – will apply for an adoption of a child of a person they know and is willing to give the child for adoption. Because the couple looks like a heterosexual couple then the outcome of this procedure is unclear.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?

In practice, is such access granted on a non-discriminatory basis?

The Artificial Insemination and Embryo Protection Act allows artificial insemination of a single woman (§ 21-22). This opportunity is widely used by same-sex couples in Estonia, as the couples do not encounter any problems in practice.

V. Employment

253 Meior, Interview with Lisette Kampus, supra note 240.
254 Council of Europe, supra note 219, p 100.
256 Meior, Telephone interview with Kristel Sitz, supra note 241.
257 Kunstliku viljastamise ja embrüokaitse seadus, RT Jr 1997, 51, 824 … RT I, 03.03.2011, 1.
258 Meior, Interview with Lisette Kampus, supra note 240.
29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

Does legislation ∗259 exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?

Employment in the public sector is mainly governed by the Public Service Act while employment in private sector is governed by the Employment Contracts Act. Both acts provide protection from discrimination, implementation of the principle of equal treatment and promotion of equality while referring to the ETA and the GEA (Public Service Act, § 361 (1), ∗260 and Employment Contracts Act, § 3). See discussion in Recommendation 2 for further discussion.

Does it cover:
- access to employment (including recruitment),
- promotion,
- dismissals,
- pay,
- harassment and other forms of victimisation?

The GEA and the ETA cover access to employment (including recruitment), promotion, dismissals, pay and harassment. Both also prohibit victimisation as a result of the person filing a complaint regarding discrimination.

Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:
- adoption of codes of conduct for both employers and employees;
- training and awareness raising programmes for both employers and employees;
- distribution to employees of materials explaining their rights, complaints mechanisms and remedies;
- recruitment efforts directed at LGBT persons;
- the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;
- co-operation with and support for employee groupings of LGBT persons?

The Ministry of Social Affairs prepared and published numerous publications on the new Employment Contract Act, including brochures on different aspects of employment relationship and a handbook on the new act. ∗261 For example, the brochure on concluding an employment contract also includes the reminder that an employer may not ask about the person’s sexual orientation (no

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∗259 Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See Council of Europe, Digest of Case Law of the European Committee of Social Rights, 1 September 2008, available at: <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> (visited at 22 August 2012), pp 19-26). The EU Employment Directive provides the following definition of indirect discrimination: “where an apparently neutral provision, criterion or practice would put persons having a … particular sexual orientation at a particular disadvantage compared with other persons …”.

∗260 The new Public Service Act, supra note 17, that enters into force on 1 April 2013 has excluded the reference to ETA and GEA but stipulates the principles in § 13.

mention of the person’s gender identity, however). They also organised a number of information days across Estonia.

The Ministry has also published the GEA with comments and supported the publication of the Handbook on Equal Treatment Act by the Tallinn University of Technology. The University has also organised different seminars and other informational events on the ETA with the support of the Ministry.

Cooperation with the Tallinn University of Technology throughout its project Diversity Enriches has been the only action by the Ministry, which involves LGBT persons and their issues. The Ministry has not made any recruitment efforts directed at LGBT persons. Cooperation with LGBT organisation has so far been limited to providing finances to two projects by the ELGBTA through the Council Of Gambling Tax. The Ministry has not adopted any non-discrimination policies in employment sector that would explicitly refer to sexual orientation and gender identity.

A more active role by the Ministry is required as the statistics show that discrimination based on persons’ sexual orientation does exist in Estonia. The state reports: “1% of the respondents (1.7% of men and 0.5% of women) noted that someone at their workplace had been treated unfairly or unequally due to their different sexual orientation. One person (out of a sample group of 1008 people) noted that they had experienced such discrimination in respect to themselves.” On the other hand, in 2009 the Eurobarometer demonstrated that 14% of the respondents believed that a candidate’s sexual orientation would influence his/her chances of getting hired by a company. It is therefore evident that the situation of LGBT persons in employment sector is in great need of a more forceful intervention. The Ministry of Social Affairs has not yet acted on the need to promote equal treatment.

Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?

Specifically in relation to the armed forces:

• Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?

• Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?

No comprehensive review has been conducted or is planned to be conducted of laws, regulations and practices. As mentioned in Recommendation 1, each Ministry is responsible for ensuring respect of equal treatment principles within its area of competence. Since the principle of equal treatment and prohibition of discrimination is stipulated in the Constitution, any actions or acts by the state must emanate from that.

264 Albi et al, supra note 62.
266 See: <www.erinevusrikastab.ee> (visited at 22 August 2012).
267 Talalaev, Re: three questions, supra note 149.
269 Special Eurobarometer 317, supra note 24.
The Estonian Human Rights Centre is not aware of any measures, codes of conduct or training that would address specific protection needs of, and discrimination against, LGBT persons. Indeed, Kaitseministeerium (Ministry of Defence) has stated that no special measures have been taken in regard to LGBT persons.\textsuperscript{270} Interestingly the response from the Ministry refers to special treatment rather than special measures, demonstrating the general tendency to misunderstand the difference between these two concepts.

The response of the Ministry of Defence to the respective questions was laconic.\textsuperscript{271} It merely stated that no differentiation is made based on person’s gender identity or sexual orientation and the principle of equal treatment applies to recruitment, promotion, dismissals, pay and working conditions.

\textit{Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?}

Although the GEA is intended to cover gender identity as well as gender, the transgender persons are not explicitly mentioned in any of the legal or political measures that cover the employment sector.

In general transgender people believe that laws protect from discrimination in employment sector but the problematic issue is the real implementation of these laws, and also capacity of the institutions responsible for monitoring and promoting non-discrimination policies. According to Gendy there is no meaningful dialogue and contacts between the transgender people community and the Equal Treatment Commissioner.\textsuperscript{272} Therefore, Gendy feels that the commissioner knows too little about the real issues transgender people tackle with, including discrimination in the labor market.

\textit{Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?}

No employment programmes focusing specifically on employment opportunities for transgender persons have been developed. This was also confirmed by the Ministry of Social Affairs.\textsuperscript{273}

\textbf{30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.}

\textit{Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?}

Once the gender modification is completed, the person can change his/her name,\textsuperscript{274} apply for the new personal identification code\textsuperscript{275} and the new birth certificate, which is also the basis for the new passport and identification card.\textsuperscript{276} Therefore, all this documentation, which would reveal the person’s gender history, can be changed with only one but significant exception. Although the relevant legislation could be interpreted to allow re-issuance of school diplomas to reflect the person’s modified gender, the practice has been contradictory (see in more detail below in section

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\bibliography{references}

\textsuperscript{270} H. Lill, \textit{Vastus päringule} (Reponse to inquiry), mail correpsondence, Ministry of Defence, no 6.1-11/12/2338, 12 June 2012.
\textsuperscript{271} Lill, supra note 270.
\textsuperscript{272} K. Grossthal, Telephone interview with Kristel Sitz, representative of Gendy, 18 October 2012.
\textsuperscript{273} Erlenheim, supra note 1, p 8.
\textsuperscript{274} Names Act, supra note 196, § 15.
\textsuperscript{275} Population Register Act, supra note 195, § 52 (1.2).
\textsuperscript{276} \textit{Ibid.}, § 52 (3).
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VI.32). This is especially problematic for persons applying for employment positions, since they are usually required to submit documentation certifying their level of education. No change in the legislation to make it a clear or official policy is currently underway.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

Have

- equality and safety policies,
- codes of conduct and
- handbooks

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

There has been little research done on education and schools in relation to LGBT issues. LGBT issues are not directly part of the curriculum and school teachers have rarely been trained on the matter.

FRA’s Sociological study states: “There have been cases of teachers preventing conversations with students on LGBT issues. On the other hand, LGBT NGOs have been contacted by teachers asking for material for educational use. Some teachers are reportedly afraid to bring up the topic, fearing consequences. SEKÜ has produced a leaflet for teachers but Haridus- ja Teadusministeerium (Ministry of Education and Research) is very reluctant to support the project.”

Another handbook for teachers and others working with youth was published in 2007 as part of the European Equal Opportunities Year and was partly supported by the Ministry of Social Affairs.

At the same time, it should be stated that the topic of sexuality is included in the 8th grade Personal and Social Education (PSE) course book, as the Estonian Gay Youth (now ELGBTA) was included in the compilation of the textbook. ELGBTA is aware of one other (older) book on PSE includes references to sexual orientation but the quality and objectiveness of the reference is poor.

ELGBTA also mentioned the civics and citizenship education textbook that includes reference to human rights in general, thus also the principle of equal treatment. However, there does not seem to be anything beyond in the textbooks for schools beyond that.

School bullying and social exclusion have seldom been the topics of academic research in Estonia. This is also the reason why there is a limited amount of information on the extent and causes of bullying and exclusion. Nonetheless, the media in Estonia has repeatedly covered the harshest instances of school and cyber bullying where young people have suffered from extended periods of humiliation or at extreme cases taken their own lives.
In a recent study carried out among Estonian students (elementary school and high school) more than 40% of the respondents stated that they have been victims of school bullying (twice the EU average).\(^\text{282}\) This 40% includes any kind of bullying. The state has not paid special attention to bullying or possible humiliating treatment based on sexual orientation and gender identity; solving the situations has been left up to teachers and schools; there is no comprehensive strategy or action plan for resolving the situations. Therefore it is important that teachers have access to a wide range of study materials on LGBT issues and, above all, in a systematic manner that would guarantee that these kinds of materials reach all of the educational staff. There is no comprehensive training, neither are there guidelines for teachers on how to recognize homophobic bullying and how to tackle it in order to guarantee the security and high quality of school life of the LGBT students.\(^\text{283}\) Even so, there are some examples of small yet much needed undertakings, for example the Education Department of the city of Tallinn has published comprehensive materials for teachers on what school bullying is and how to recognise it, briefly mentioning sexual harassment on the basis on sexual orientation on its website.\(^\text{284}\)

Despite all of that Estonians acknowledge the role and importance of education in further developments of LGBT issues and consider lack of education as one of the reasons for homophobia, since very few have had a chance to discuss these topics at school.\(^\text{285}\)

Do initial and in-service training programmes for teachers and other educational staff address the need for them to

\begin{itemize}
\item[a.] treat their LGBT pupils and students with respect
\item[b.] be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?
\end{itemize}

Teacher training in Estonia does not directly include training on LGBT issues. Future teachers and teachers who are already working come into contact with these topics only if they are considered to be important by the school authorities or through training courses organized by LGBT advocacy organizations. Therefore detecting and handling the discrimination differs greatly from school to school.

Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?

There are no direct funding opportunities in Estonia that schools could apply for in order to finance events or organize cultural activities connected to LGBT issues to fight against prejudice and phobias. Schools would need to find the sources from their already tight budgets or submit project proposals to general funding schemes by public or private actors. At the same time there are almost no suitable foundations that would deal with such topic. Only on limited instances could the topic fall under existing financial schemes, for example under funding opportunities for youth organizations.


\(^{283}\) K. Grossthal, Interview with Helen Talalaev, 9 May 2012.


The largest representative organization of the Estonian LGBT community, ELGBTA, is, however, satisfied that they are being included more and more in the activities of various roundtables and projects both on the national as well as on school level, and that an increasing number of schools has accepted their offer to cooperate with the ELGBTA. Yet, it is too early to draw any conclusions on what kind of impact the ELGBTA has had in schools and in society in general, since the organization has been working at its full capacity only for the past couple of years.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

Is information on
a. sexual orientation
b. gender identity
provided in school curricula and sex and health education classes?

The Ministry of Social Affairs has referred to the current national study curriculum set by the Ministry of Education and Science, which, in the opinion of the Ministry of Social Affairs gives a clear basis for discussion of sexual minorities.

At the same time the LGBT topic is not directly included in the abovementioned study curriculum; general humanistic principles that can be associated with LGBT issues indirectly are covered instead. The ELGBTA has reached the same conclusion and states their importance of understanding and interpreting the topic in its guidelines for teachers: “Estonian curricula and syllabuses stress the importance of designing values and attitudes and supporting student development in every way, incl. mentally, emotionally and socially. Even though the current curriculum does not directly include the topic of sexual minorities, it has to be taken into consideration that promoting tolerance and values includes mentioning different social groups incl. minorities that do exist in schools. Curricula and syllabuses state the importance of tolerant and accepting environments and the importance of teachers as models in guaranteeing all this.”

As already mentioned above, the topic of sexuality is also included in the 8th grade Personal and Social Education (PSE) course book. However, there is nothing on this topic in any other study material available for schools.

This demonstrates that the topics of sexual orientation and gender identity might not be adequately covered in the classroom if the teacher is not ready, willing or sufficiently prepared to cover this topic.

Is it provided in a respectful and objective manner?

286 K. Grossthal, Interview with Helen Talalaev, 9 May 2012.
287 K. Võik, Teemauuringu homofoobia ja diskrimineerimise kohta seksuaalse sättumuse alusel vastused (Answers to Thematic Study on Homophobia and Discrimination on Grounds of Sexual Orientation), Ministry of Social Affairs, no 15.1-1/90, January 2010.
The only textbook including the LGBT topic, mentioned above, was drafted in cooperation with Estonian Gay Youth (now ELGBTA) and can thus be considered to deal with it in a respectful and objective manner.

**Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?**

Estonia lacks any kind of systematic approach that would guarantee that LGBT pupils and students are provided with necessary information as well as protected and supported in their school lives or in situations that need intervention.

There is no protection and support specifically in the school environment. General protection mechanisms apply here (see in more detail above in Recommendation 3). This essentially means that students can only receive protection from the Chancellor of Justice, courts or if the problematic behaviour towards an LGBT student amounts to criminal offence the Police. The Equal Treatment Commissioner has no competence in the education sector when it comes to discrimination based on sexual orientation but has competence in that sector in regard to discrimination based on gender identity.

There is, however, support from NGOs, for example the ELGBTA offers support to people of all ages incl. students on the LGBT topics. Counselling is also guaranteed in situations where a LGBT person encounters problems with peers in school because of the person’s sexual orientation. The ELGBTA can be contacted by email, phone or at their offices.

**Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?**

There are no such measures directly targeting transgender students. Change of name in school documents follows the same principles as all individuals who have undergone a change of name. See for more detailed discussion above in section IV.21.

**VII. Health**

33. **Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.**

Do
- the design of national health plans,
- health surveys,
- suicide prevention programmes,
- medical training programmes,
- training courses and materials,
- the monitoring and quality assessment of health-care services,
- take into account specific needs in relation to (a) sexual orientation and (b) gender identity?

Estonian medical system operates on a general principle of non-discrimination based on the Constitution as well as the Equal Treatment Act. According to the Ministry of Social Affairs, the health care system tries to take into consideration the special needs of various target groups
including those based on sexual orientation and gender identity, but at the same time the Ministry did not provide any additional information on this subject in its correspondence.\textsuperscript{289}

The National Health Plan 2009-2020\textsuperscript{290} follows the same principles – that the right to health protection is included in the fundamental rights and every individual must be guaranteed the necessary requirements for achieving the best possible state of health. The National Health Plan does not separately cover the LGBT topic.

In other domains of national development plans, the topic of gays is included in the Estonian National HIV and AIDS Strategy for 2006-2012, where one of the objectives is to prevent the spread of HIV among men who have sex with men. Measures that are foreseen here include trainings, awareness raising and access to information booklets.\textsuperscript{291}

\textit{Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?}

Estonia’s stance is that all training programmes for health-care professionals must enable them to provide high quality health-care services irrespective of sexual orientation or gender identity.\textsuperscript{292} A more detailed overview on the training courses for specialists working in the health-care system was not provided by the Ministry of Social Affairs in reply to the request made by the Estonian Human Rights Centre.

At the same time, according to the ELGBTA, the training of doctors in Estonia is sometimes lacking because many physicians were trained several decades ago when it was still considered a taboo and there is no in-service training available. According to the ELGBTA at least the education of gynaecologists on the topic of women who have sex with women is deficient.\textsuperscript{293}

University of Tartu is the only university in Estonia where one can study to be a doctor. Generally there are no subjects dedicated solely to LGBT issues, but there is an elective course in the curriculum of Medicine titled Reproductive and Sexual Health that also includes the topic of sexual identity.\textsuperscript{294} No explanation is provided to the meaning of the term “sexual identity”.

\textit{Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?}

Estonia’s stance is that all health-care services must be available to patients and respect everyone’s needs and no distinctions are made based on sexual orientation.\textsuperscript{295} The Ministry of the Social Affairs did not issue a more detailed reply on state’s activities in relation to the topic to the request by the Human Rights Centre. ELGBTA has not received any complaints in regard to the

\textsuperscript{289} Erlenheim, supra note 1.
\textsuperscript{292} Erlenheim, supra note 1.
\textsuperscript{293} Grossthal, Interview with Helen Talalaev, supra note 286.
\textsuperscript{294} See at: <https://www.is.ut.ee/pls/ois/lttere.tulemast?leht=OK.BL_PU&id_a_oppekava=3894&systeemi_seaded=12,1,1_2,1&sesseion=0> (visited at 22 August 2012).
\textsuperscript{295} Erlenheim, supra note 1.
availability of health care services to LGBT persons and believes the situation is satisfactory. The organisation was however wary about the corresponding attitude from medical staff if patient’s sexual orientation comes out.296

The ELGBTA and Gendy are not aware of health, health promotion or prevention activities by the state specifically targeting the LGBT community and therefore NGOs themselves have tried to fill in the blanks. The ELGBTA has issued booklets on health for lesbian and bisexual women in Estonian and Russian.297 Gendy has translated, compiled and collected materials on various health topics relating to transgender individuals and published these on their homepage.298

There is also the opportunity for public funding of HIV/AIDS prevention work targeting men who have sex with men that can potentially be a source for different educational undertakings and information campaigns.299 Currently there is no information available on the extent and the effect of such opportunities.

Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?

Estonia’s stance is that the state encourages health-care and social workers to take into consideration the special needs of every individual.300 Unfortunately the authors of this report have no knowledge of specific information campaigns, methods or situations that are reassuring and open to young LGBT persons.

So far LGBT organisations have been the only ones who have tried to cover the topic of health of LGBT individuals (incl. sexual and reproductive health). The ELGBTA has published booklets on the health of lesbian and bisexual women and sent it to various Estonian women’s clinics and youth clinics. After getting these booklets, the East-Tallinn Central Hospital replied that they have no interest in receiving the booklet in question. At the same time, it is positive that most of the recipients took the time to disseminate the materials.301

Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?

Estonia does not have a specific act on patients’ rights, even though the need for one has long been discussed and a draft of the Patient’s Protection Act has been discussed in the Parliament twice already, in 1996 and in 2002.302 As the provisions pertaining to patients are currently spread between several acts, the discussion on the need of such a consolidated act surfaced again in 2011.303 Most recently the debate popped up in relation to determining the role of patient trustees and the need to put it down in writing that it can be anyone appointed by the patient. At the time

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296 Talalaev, supra note 42.
299 FRA, The social situation, supra note 126, para 29.
300 Erlenheim, supra note 1.
301 Grossthal, Interview with Helen Talalaev, supra note 286.
the sworn advocate and lecturer of medical law Ants Nõmper is stating that there is no need for a new separate law as problematic situations are covered under other laws.\textsuperscript{304}

Indeed, according to the Health Services Organization Act § 41(2) data relating to the state of health of a data subject who is in hospital may be transmitted to, or the data may be accessed by those closest to him or her, and the restriction is not connected to family or marital status, but only stipulated by the same paragraph and subsection in section 1 if the data subject has prohibited access to the data or transmission of the data.\textsuperscript{305}

Legal acts do not define persons’ next of kin for medical emergencies. It is for the individual to define. The Ministry of Social Affairs also states that no rules exist that would exclude someone as their “next of kin” based on sexual orientation or gender identity of either of them.\textsuperscript{306}

At the same time, according to representatives from Diversity and SEKÜ, same-sex partners are rarely recognised as “next of kin” and there are specific problems regarding lesbian couples expecting children. Cases include a second mother being prohibited from being present at birth and a doctor stating that it was probably good that a miscarriage occurred since the baby would have a difficult life with homosexual parents.\textsuperscript{307}

Hence the problem in Estonia partly lies not with legislation but with the daily practices that still include prejudice among the highly educated medical personnel.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

Has homosexuality been removed from the national classification of diseases?

There are currently no legal acts in Estonia that classify homosexuality as a disease.

Yet, it is still possible to find statements in the media or come across attitude in daily interaction that refers to it as such. For example, Peeter Mardna, a sexual health officer in Estonia, made a statement suggesting that homosexuality was a disease.\textsuperscript{308} Despite the fact that health authorities issued a release stating that this was not the official stance of the authorities, it is clear that discriminatory beliefs within the system are still present and some health authorities are unwilling to grant homosexuals equal treatment.\textsuperscript{309}

Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

This is highly probable, especially when it comes to documents and materials published since Estonia regained its independence in 1991, but on the national level no comprehensive review has been conducted.

Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

\textsuperscript{304} Ibid.
\textsuperscript{305} Tervishoiuteenuste korraldamise seadus, RT I 2001, 50, 284 … RT I, 04.07.2012, 1.
\textsuperscript{306} Erlenheim, supra note 1.
\textsuperscript{307} FRA, The social situation, supra note 126, para 29.
\textsuperscript{308} Hanneli, supra note 173.
\textsuperscript{309} Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 5.
According to Estonian legislation sexual orientation or gender identity is not a medical diagnosis and, therefore, medical institutions have no right to confine anyone for that reason.\textsuperscript{310}

One exception here is the regulation on common requirements to medical acts of sex change that covers the diagnosis of transsexuality as a precondition for hormonal treatment (§ 3(1)), but as sex change itself is strictly voluntary, there is no basis for forced treatment at this time.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?

The situation of transgender people especially regarding the availability of health-care services in Estonia is further complicated by the lack of legislation. For example, there is no law that regulates gender reassignment surgeries. At present matters related to gender reassignment are regulated by the regulation on common requirements to medical acts of sex change issued by the Minister of Social Affairs.\textsuperscript{311} This regulation only deals with the medical requirements and the activities of the medical expert committee that decides the admissibility of gender reassignment. The development of a more thorough draft act on transgender people is, according to the Ministry of Social Affairs, currently indefinitely on hold.\textsuperscript{312} A few years ago the Ministry of Justice admitted to problems due to lack of legislation and the need for corresponding laws, stating that several questions still remain unanswered. This includes issues such as whether someone who by the decision of the expert committee has changed their gender should be considered a man or a woman when entering into marriage, how gender reassignment affects the parent-child relationship and whether marriage becomes annulled when one of the spouses changes their gender.\textsuperscript{313}

Estonian health insurance relies on the principle of solidarity. If a person is covered by health insurance, he or she has access to all health services according to the same conditions as everyone else.\textsuperscript{314} This means that transgender people have access to services on the same basis as everyone who is covered by the Estonian Health Insurance Fund; this includes access to specialists according to the general waiting list.

In reality, according to NGO Gendy, which advocates for transgender issues and supports people with alternative gender identities and their families, there have been cases where individuals wishing to have gender reassignment surgery have been refused the procedure on the grounds that it was an aesthetic, not a medical matter.

Completing all the necessary procedures for gender reassignment requires noticeable funds in Estonia. Imre Rammul, who is also a member of the medical expert committee, explains that the Health Insurance Fund covers 50% of the expenses on medical drugs for transsexuals eligible for national health insurance. Certain preliminary surgical procedures such as castration, mastectomy

\textsuperscript{310} Erlenheim, supra note 1.
\textsuperscript{311} Supra note 194.
\textsuperscript{312} Normet, supra note 151.
\textsuperscript{314} Erlenheim, supra note 1.
etc. are fully covered under national health insurance if particular additional medical indications exist. Usually patients themselves cover the costs for surgical procedures.\textsuperscript{315}

In Estonia there are also very few specialists in the field, incl. psychologists to whom transsexual people can turn to for counselling and information. There is not one child psychologist specializing in this field, which leaves the children and parents tackling transgender issues completely alone.\textsuperscript{316}

\textit{If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?}

Yes. Visits to the psychiatrist are voluntary, except in cases of involuntary treatment when a person is deemed dangerous to others and especially to themselves.

\textit{Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?}

In Estonia no individual despite their age is forced to undergo gender reassignment surgery against their will. This practice is scarce in Estonia and it is impossible, therefore, to draw any significant conclusions from it.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?

According to § 28 of the Constitution of Estonia everyone is entitled to protection of their health. According to the Health Services Organization Act\textsuperscript{317} general medical care provided to persons covered by health insurance shall be paid for from the funds designated for health insurance in the state budget in the amount in which the Estonian Health Insurance Fund has assumed the obligation to pay for it.

At the same time, as was already mentioned above, in reality there have been problems with the interpretation of what constitutes as necessary surgery or other medical treatment.

\textit{If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?}

See question above.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

\textit{Does legislation prohibit discrimination in such areas as:}

- the sale or rent of housing;

\textsuperscript{315} K. Grossthap, Telephone interview with Imre Rammul, August 2012.
\textsuperscript{316} Grossthal, Telephone interview with Kristel Sitz, supra note 150.
\textsuperscript{317} Supra note 305.
• the provision of loans for purchase of housing;
• the recognition of the rights of a tenant's partner;
• evictions

on the grounds of (a) sexual orientation and (b) gender identity?

There is an important difference between married spouses and partners who live together but are not married in Estonian legislature. In case of spouses, their rights and obligations are stated in the legislature. Non-married partners usually have no automatic rights or obligations towards each other (see a more detailed discussion above in section IV.23). They must possess the same knowledge when dealing with their property and assets as any other participants in the legal system (i.e. contractual partners) who are not personally connected to each other.\textsuperscript{318}

The Equal Treatment Act prohibits discrimination of persons on the grounds of nationality (ethnic origin), race or colour in relation to access to and supply of goods and services, which are available to the public; this also includes housing. This protection does not extend to sexual minorities. The Gender Equality Act does cover supply of services, including housing, in its prohibition of discrimination based on gender. The Equal Treatment Commissioner has held that the GEA also covers transgender persons (see in more detail in Recommendation 2).

Contractual obligations are covered under the Law of Obligations Act. In case of leases it grants relevant legal rights only to spouses (§ 289 and 321) but in Estonia, marriage can only be contracted between a man and a woman. Hence, it is problematic how to protect the partner and children in a de facto partnership and one’s rights to continue the lease, if the partner mentioned in the lease should pass away.

Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?

Each shelter has its own internal guidelines but none of these base access or denial of entry on a person’s sexual orientation. The Estonian Human Rights Centre has no information on the actual practice.

Even though there are no provisions targeting the LGBT community in particular, to a certain extent, Estonian legislature protects people who cannot afford housing for economic reasons or who need temporary housing or shelter for socio-economic or other reasons. Under the Social Welfare Act, local government authorities are required to provide dwelling for persons or families who are unable or incapable of securing housing for themselves or their families, and to create, if necessary, the opportunity to lease social housing.\textsuperscript{319} The rural municipality council or city council establishes the procedure for provision and use of social housing. Persons who have difficulties moving about, caring for themselves or communicating in a dwelling are assisted by the rural municipality government or city government in adapting their dwelling or in obtaining a more suitable dwelling.

Paragraph 18 of the Social Welfare Act establishes types of social welfare institutions:
• shelters – temporary twenty-four hour assistance, support and protection for persons;
• substitute homes – substitute home service to children;
• youth homes – living and rehabilitation for young people 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;
• residential educational institutions – living, care, development and education for disabled school-age children.

Is information available to landlords and tenants aimed at preventing such discrimination?

\textsuperscript{318} Olm, supra note 167, p 59.

In Estonia all legal acts are available to citizens online (www.riigiteataja.ee); also the ELGBTA has uploaded relevant information to the centre’s homepage. It is, however, problematic to determine whether such information has specifically been targeted to and made easily available to landlords and tenants.

Are adequate and effective legal or other remedies available to victims of such discrimination?

General protection mechanisms apply here (see in more detail above in Recommendation 3). Such victims can turn to the Chancellor of Justice for mediation proceedings, the courts or, if the problematic behaviour amounts to criminal offence, the Police. The Equal Treatment Commissioner has no competence in this sector when it comes to discrimination based on sexual orientation but has competence in that sector in regard to discrimination based on gender identity.

Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?

There is no data on such awareness raising campaigns.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?

The Estonian Human Rights Centre has no information on the existence of such social programmes on a national or a local level.

Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?

The Estonian Human Rights Centre has no information on the existence of training and awareness-raising programmes specifically aimed at the needs of LGBT people.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

No action required.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?
The legislation on sport, the Sport Act, includes no reference to prohibition of discrimination based on sexual orientation or gender identity. No reference is made to sexual orientation or gender identity in any other context in that Act either. The same applies to the Estonian Sports Charter. The ETA does not cover discrimination based on sexual orientation in sports sector, while the GEA does cover discrimination based on gender identity (see further on that above in Recommendation 2). The Estonian Human Rights Centre is not aware of any political measures, local or nation-wide, that would include specific tools to prevent the risk of exclusion from participation in sports on grounds of sexual orientation or gender identity.

Kultuuriministeerium (the Ministry of Culture) has assured that all sports, sporting facilities, competitions and opportunities to sport are open to everyone regardless of their sexual orientation or gender identity. The Estonian Human Rights Centre has no comprehensive data to confirm or deny the statement. The Estonian LGBT Association made an inquiry to ballroom dance clubs in regard to their willingness to accept same-sex couples for training sessions. Only five out of nine clubs replied, one invited the couple to the course, two proposed individual courses, two declined explicitly. One of the clubs, in fact, referred to the Regulations of the Dance Sport adopted by the Estonian Dance Sport Association, which states that dance partners must be a woman and a man (pt 6.4). Indeed, this was a singular enquiry into one particular sport sector. It is therefore, not possible to draw conclusive generalisations from that. However, it does demonstrate the possible discrepancy between the official state policy and the actual practice in sports.

By encouraging, for example:

- the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,
- partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,
- anti-discrimination campaigns in the sports world,
- support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.

The Estonian Human Rights Centre is not aware of any special efforts made by the state authority to encourage such actions with the aim of preventing discrimination based on sexual orientation or gender identity. The enquiry to the Ministry of Culture did not produce any information to the contrary.

Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?

In particular:

- Has homophobic and transphobic chanting at or around sports events been made a criminal offence?
- Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter and ECRI’s General Policy Recommendation No.12 been implemented in respect of (a) sexual orientation and (b) gender identity?

322 M. Klaan, v: küsimustik uuesti (re: questionnaire again), e-mail correspondence, Ministry of Culture, 21 June 2012.
323 H. Talalaev, Samasooled paarid tantsukursustel (Same-sex couples on dance courses), e-mail correspondence, 15 March 2012.
324 Tantsusporti määrustik, as amended on 11 June 2012 by the general meeting of the Estonian Dance Sport Association – there is no information as to what was the regulation before that date.
325 Klaan, supra note 322.
Estonia has ratified the European Convention on Spectator Violence and Misbehaviour at Sports Events, which makes the Convention part of the Estonian legal system. Estonian legislation includes no provisions specifically dealing with discriminatory insults during and in connection with sports events or homophobic and transphobic chanting at or around sports events. The general rules on incitement of hatred apply (see more above in I.B.6). The Ministry of Culture did assure that if homophobic and transphobic chanting occurs at or around sports events, the organisers of the sporting event and the Police or security firm would interfere and the offenders would be called to order or removed from the event. The Estonian Human Rights Centre has no information to confirm or deny the statement.

The Ministry of Culture did not mention in its reply the implementation of the European Sports Charter and the ECRI’s General Policy Recommendation No.12. The Ministry did mention that the Estonian sports federations follow the principle 3.2 of the Olympic Charter, which prohibits discrimination based on race, religion, politics, gender or any other ground.

Have specific appropriate measures been taken to:

• put an end to the exclusion of transgender persons from sports activity or competitions,
• remove the obstacles encountered by them in participating in sport (dressing room access),
• recognize their preferred gender?

The Estonian Human Rights Centre is not aware of any special measures taken in regard to transgender persons in sport. The enquiry to the Ministry of Culture did not produce any information to the contrary.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in

• developing awareness-raising activities
• condemning homophobic and transphobic behaviour during and in connection with sports events?

The Estonian Human Rights Centre is not aware of any special efforts made by the state authority to encourage dialogue. The enquiry to the Ministry of Culture did not produce any information to the contrary.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognize that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?

327 Klaan, supra note 322.
328 Ibid.
329 Ibid.
The Act on Granting International Protection to Aliens states: “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 in a particular social group, is outside his/her country of nationality and is unable or, owing to such fear, unwilling to avail himself/herself of the protection of that country and with regard to whom no circumstance exists precluding recognition as a refugee” (§ 4(1)).

The Act on Granting International Protection to Aliens does not explicitly mention sexual orientation or gender identity although nothing prevents these from being included in ‘a particular social group’. Indeed, the Ministry of Interior Affairs has, on multiple occasions, confirmed that sexual orientation and gender identity are recognised as a basis for well founded fear of persecution, even though the Act itself fails to mention them.

Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?

The Ministry of Interior Affairs has informed the Estonian Human Rights Centre that the officials at the International Protection Division of the Status Determination Bureau of the Police and Border Guard Board receive continuous training on interviewing and processing the applications of vulnerable groups. They have not received any training specifically dedicated to LGBT issues.

Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?

The Estonian Human Rights Centre has no information to claim the existence of such practice.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

What procedures are in place to ensure compliance with this obligation?

The Obligation to Leave and Prohibition on Entry Act states: “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” (§ 171(1)). This is further fortified by the Act on Granting International Protection to Aliens, which sets as one of the prerequisites for a safe third country that the country “observes the principle of non-refoulement established in international legislation if he or she is threatened by torture or other cruel, inhuman or degrading treatment” (§ 8(2.3)). The Act on Granting International Protection to Aliens also provides that an alien who would be subjected to such treatment in his or her origin state is entitled to a subsidiary protection, even if he or she would not be entitled to the refugee status (§ 4(3)).

Are there documented cases where asylum seekers have been returned to such a country?

The Estonian Human Rights Centre has no information on the existence of such cases.

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331 Türkson, supra note 68, p 3. See also Estonian Human Rights Centre, Global Rights, ILGA Europe and Seksuaalvähemuste Kaitse Ühing, supra note 11, p 12; FRA, Thematic Legal Study, supra note 170, para 58.
332 Türkson, supra note 68, p 3.
44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

What measures have been taken to comply with this requirement?

As a rule, asylum seekers in Estonia are not deprived of their liberty. They are generally placed into the reception centre as soon as possible, and as residents of the centre they are relatively free in their movement. The asylum seekers may be temporarily detained. The Act on Granting International Protection to Aliens foresees such detention either in the initial reception centre (which has not been established so far) or in the offices of the Police and Border Guard Board (§ 32). Asylum seekers can also be detained at the expulsion centre, the prison or the arrest chamber if he or she was there at the time of submitting the application for asylum (§ 33). Neither the statutes of the reception centre nor those of the offices of the Police and Border Guard Board include rules on prevention of risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment. The internal rules of an expulsion centre include detailed rules on security measures, as do the Imprisonment Act and the internal rules of prisons, but none of them include specific references to LGBT groups.

The Estonian Human Rights Centre is not aware of any other measures that would be dedicated to the specific situations of LGBT asylum seekers in detention.

In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?

The Estonian Human Rights Centre has no information in regard to such training. The Ministry of Interior Affairs has also not provided any information to that end, noting merely they have not received any information on training by local trainers or by the European Union, which would specifically be dedicated to LGBT groups.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?

In practice do they
- make recommendations on legislation and policies,
- conduct awareness-raising among the general public
- examine individual complaints

334 Illuka Varjupaigataotlejate Vastuvõtukeskuse põhimäärus, Regulation no 45 of the Minister of Social Affairs (10.05.2007), RTL 2007, 41, 706.
337 Türkson, supra note 68, p 4.
There are no national human rights institutions as accredited by the United Nations under the Paris Principles. The Chancellor of Justice and the Equal Treatment Commissioner are human rights institutions created by law and mandated to address discrimination. These institutions are discussed in detail above in recommendations 1 and 3.
About the Estonian Human Rights Centre

Estonian Human Rights Centre (EHRC) was established in October 2007 in the International University Audentes which then merged with Tallinn Law School, Faculty of Social Sciences, Tallinn University of Technology (TUT). It was established with the support of the Estonian Minister of Population Affairs. In January 2011 the EHRC became independent from the university as a public interest foundation dedicated to the advancement of protection of human rights in Estonia and abroad. The non-profit foundation was founded by Kari Käasper and Marianne Meiorg, who currently serve as Members of Executive Board of EHRC.

The mission of EHRC is to actively promote respect for human rights in Estonia. EHRC advocates the improvement of policy and law concerning human rights through awareness-raising, public debate, advice, lobbying and strategic litigation. EHRC is an independent, reliable and professional partner to individuals, government, local governments, companies and non-governmental organisations both inside and outside of Estonia.

The vision of EHRC is to become a comprehensive and sustainable national human rights NGO. It will be a contact-point both inside as well as outside Estonia in human rights issues concerning primarily Estonia.

EHRC develops its activities according to thematic programmes depending on the societal need. These thematic programmes and main activities within them currently are:

- **Equal treatment and non-discrimination programme**, including providing regular advice to individuals, providing trainings, conducting thematic studies and multi-year major public-awareness campaign “Diversity enriches” (in cooperation with Tallinn University of Technology);
- **Refugee programme**, including legal clinic providing legal aid and representation in court during asylum procedures as well as participating in and initiating public debates;
- **Human rights education programme**, including Human Rights Week in November/December annually since 2007, providing trainings and human rights courses at Tallinn University of Technology, cooperation with UNESCO Associated Schools Project Network (ASPnet).
- **Access to justice programme** will be developed in 2012 to monitor and advocate better access to justice, including state legal aid, length of proceedings and provide information and advice on access to justice in the Russian language.

The activities so far have also included the following cross-cutting actions:

- **Monitoring the situation of human rights in Estonia** - eg. publication of annual human rights report on Estonia. First one covered 2007, next 2008-2009 and third one 2010, the report on 2011 is expected to be published in March 2012. Studies on specific topics (such as homophobia, child trafficking, data protection, racial discrimination, return of irregular immigrants) of fundamental rights for the EU Fundamental Rights Agency2 and participation in ELDIA (European Language Diversity for All) project on minority languages.
- **Exchange of information among different stateholders** - eg. EHRC participating in the roundtable gathering different human rights organisations in Estonia and different consultative bodies, EHRC commenting on the drafts of state reports for UN and Council of Europe, EHRC cooperating with different Estonian and international organisations acting on specific areas of human rights;
- **Topical advocacy activities** - eg. participating in public discussions with human rights aspects, supporting initiatives such as legal regulation of same-sex partnerships, compiling shadow reports to state reports where necessary and otherwise providing information on the situation of human rights to international organisations and other states.