



Assessments of international organisations on the human rights situation in Estonia

On 12 November 2012, Estonia was elected as a member of the United Nations Human Rights Council for 2013–2015. The Government of the Republic reasoned Estonian candidacy to the Human Rights Council with the fact that expanding the space of values that respect human rights, democracy and the rule of law and the promotion of international law is one of the five foreign policy priorities of Estonia. Estonia is especially focussed on supporting the freedom of expression and media and issues related to the rights of women, children and indigenous peoples¹.

Like in other countries, the human rights situation in Estonia is regularly assessed in the reports of international organisations. The Council of Europe Commissioner for Human Rights published the latest reports concerning Estonia in 2004 and 2007. The human rights situation in Estonia in recent years has been discussed in the most comprehensive manner in 2010–2011 under the Universal Periodic Review (UPR) mechanism developed in the framework of the work of the United Nations Human Rights Council. The process involves a review of the human rights situation of all the 192 UN member states in every four years. As a result of the review, the UPR Working Group prepares a report, which reflects the countries' recommendations for promoting the human rights situation. Similarly, the US Department of State prepares the annual Country Reports on Human Rights Practices, which covers the human rights situation in all countries, including Estonia².

Estonia has an international reputation of a country that respects human rights and cooperates with international organisations in an open and constructive manner to find solutions to problems. Estonia's rapid progress in leaving the totalitarian system and in adopting and instilling the European values has received recognition³. High rating has been given to the independence of Estonian media, the efficiency of the judicial power and the well-functioning democratic system, which ensures the freedom of speech and the freedom of media, including in the Internet environment, as well as everyone's freedom of association⁴.

The areas and issues pointed out to Estonia most frequently by international organisations in recent years are discussed below.

¹ Ministry of Foreign Affairs. *Human Rights and Estonia*. Available at <http://www.vm.ee/?q=node/9111>, 28 November 2012.

² United States Department of State, Bureau of Democracy, Human Rights and Labor. *Country Reports on Human Rights Practices for 2011: Estonia*. Available at <http://www.state.gov/documents/organization/186558.pdf>, 28 November 2012.

³ Council of Europe Commissioner for Human Rights. *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Estonia, 27th-30th October 2003*. (CommDH(2004)5). 12 February 2004, p 1. Available at

<https://wcd.coe.int/ViewDoc.jsp?id=112789&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, 28 November 2012.

⁴ *Supra nota* 3, p 6.



I. Absence of an institution for the protection and promotion of human rights in accordance with the Paris Principles

In 1993, the UN General Assembly adopted the so-called Paris Principles, setting the standards, which the National Human Rights Institutions (NHRI) should meet⁵. As human rights are primarily people's rights towards the state, the Paris Principles require that the financial and substantive independence of such an institution from the power of the state be given effect by an official legal act. The institution must have a mandate to handle any violations or situations of human rights and to advise the government, the parliament and other authorities in matters related to the fulfilment and implementation of international human rights conventions and other instruments. Pursuant to the Paris Principles, the institution has a key role in educating and informing in the area of human rights in the entire society, and some institutions may be given a mandate to solve complaints. In order to obtain the status of an NHRI, the institution has to pass accreditation, after which it gains special rights for participating in the work of the UN Human Rights Council and other bodies and taking part in the activities of regional and international associations of NHRIs. The NRHI status grants an international quality mark and the guarantee that the institution is acting earnestly, efficiently and independently. Estonia does not currently have an NHRI.

In the Universal Periodic Review, nine countries made a proposal to Estonia to establish and accredit an official NHRI, and Estonia supported the proposal⁶. The issue has also been raised by the UN Human Rights Council⁷, the UN Committee on Economic, Social and Cultural Rights⁸, the UN Committee against Torture⁹, the UN Committee on the Elimination of Racial Discrimination¹⁰ and the Committee on the Rights of the Child¹¹.

⁵ UN General Assembly, 85th plenary meeting. *Principles relating to the Status of National Institutions (The Paris Principles)*. Adopted by General Assembly resolution 48/134 of 20 December 1993. (A/RES/48/134). 20 December 1993. Available at <http://www.un.org/documents/ga/res/48/a48r134.htm>, 28 November 2012.

⁶ UN Human Rights Council, Seventeenth session. *Report on the Working Group on the Universal Periodic Review: Estonia*. (A/HRC/17/17). 28 March 2011, p 77.15-77.23. Available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/EEsession10.aspx>, 28 November 2012.

⁷ *Supra nota* 8, p 5.

⁸ UN Committee on Economic, Social and Cultural Rights, Forty-seventh session. *Consideration of reports submitted by States parties under articles 16 and 17 of the convention. Concluding observations of the Committee on Economic, Social and Cultural Rights: Estonia*. (E/C.12/EST/CO/2). 16 December 2011, p 7. Available at <http://www2.ohchr.org/english/bodies/cescr/cescrs47.htm>, 28 November 2012.

⁹ UN Committee against Torture, Thirty-ninth session. *Consideration of reports submitted by States parties under article 19 of the convention. Supplemented unedited version. Concluding observations and recommendations of the Committee against Torture: Estonia*. (CAT/C/EST/CO/4). 22 November 2007, p 11. Available at http://web-static.vm.ee/static/failid/407/piinamisvastase_komitee_soovitusused_EST.pdf, 28 November 2012; UN Committee against Torture, Forty-third session. *List of issues prior to the submission of the fifth periodic report of ESTONIA (CAT/C/EST/5)*. (CAT/C/EST/Q/5). 20 January 2010, p 4. Available at <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.EST.Q.5.pdf>, 28 November 2012.

¹⁰ UN Committee on the Elimination of Racial Discrimination, Seventy-seventh session. *Consideration of reports submitted by States parties under article 9 of the convention. Concluding observations of the Committee on the Elimination of Racial Discrimination : Estonia*.



II. Basic right of equality: gender equality, equal treatment and non-discrimination

Estonia has expressed its wish to contribute to the promotion of equality at the UN level. The report prepared by the United Nations UPR Working Group contains more than 30 recommendations on the topic of gender equality and equal treatment, which the Estonian state has reviewed and supported¹². The reports link ensuring gender equality and equal treatment with the achievement of the objectives of the EU2020 economic growth strategy and the United Nation Millennium Development Goals¹³.

Although Estonia's activities in enforcing the Gender Equality Act and the Equal Treatment Act and in establishing the institution of the Gender Equality and Equal Treatment Commissioner are highly valued, there is a continued concern being expressed over the fact that the Commissioner and the Office of the Commissioner are clearly underfunded in order to be able to perform their tasks and therefore the actual compliance with the said Acts may be seriously impaired¹⁴. It is thought that the Chancellor of Justice also has a relatively modest role in the active promotion of equal treatment and the proceedings of voluntary reconciliation between private persons do not work in solving disputes in the area of discrimination¹⁵. It is found that it would be important to focus more on increasing public awareness and to improve the efficiency of the system established for the submission of complaints to the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner¹⁶.

The prevailing issues among the equal treatment topics addressed to Estonia include gender equality, the prevention of ethnic and language based discrimination, and the integration of the Russian population. Mention is also made of the rights of people

(CERD/C/EST/CO/8-9) 27 August 2010, p 11. Available at http://www.vm.ee/sites/default/files/CERD-komisjoni_loppjareldused_%20EST.pdf, 28 November 2012.

¹¹ UN Committee on the Rights of the Child, Fifty-third session. *Consideration of reports submitted by States parties under article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Estonia.* (CRC/C/OPS/EST/CO/1) 29 January 2010, p 22. Available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPSC-EST-CO-1.pdf>, 28 November 2012.

¹² (A/HRC/17/17), *Supra nota* 7, p 13–18.

¹³ UN Committee on the Elimination of Discrimination against Women, Ninth session. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Estonia.* (CEDAW/C/EST/CO/4) 10 August 2007, p 34. Available at http://web-static.vm.ee/static/failid/051/CEDAW_kommentaariid.pdf, 28 November 2012.

¹⁴ (CCPR/C/EST/CO/3), *Supra nota* 8, p 6.; (CEDAW/C/EST/CO/4), *Supra nota* 16, p 9.; European Commission against Racism and Intolerance (ECRI). *ECRI Report on Estonia (Fourth monitoring cycle)*. (CRI(2010)3). 2 March 2010, p 64-67. Available at <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/estonia/EST-CbC-IV-2010-003-EST.pdf>, 28 November 2012; Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities. *Third Opinion on Estonia.* (ACFC/OP/III(2011)004). 1 April 2011, p 1. Available at http://www.vm.ee/sites/default/files/3rd_OP_Estonia_ET.pdf, 28 November 2012.

¹⁵ (CRI(2010)3), *Supra nota* 17, p 59–61.

¹⁶ (CCPR/C/EST/CO/3), *Supra nota* 8, p 6.



with disabilities and the non-discrimination of lesbian, gay, bisexual and transgender (LGBT) persons.

A. Gender equality

In the area of promoting gender equality, the need to approach the issue in a comprehensive, systemic and sustainable manner and in the form of a national strategy is pointed out¹⁷. There are concerns over the fact whether the Gender Equality Department of the Ministry of Social Affairs has sufficient authority, decision power and financial and human resources¹⁸. A link is seen between considering gender equality unimportant and the specific consequences¹⁹, which include the considerably large salary gap between men and women, the low level of representation of women in leading positions both in business and politics, and the problems related to violence against women and trafficking in human beings²⁰.

Recommendations are made to increase the efficiency of fighting against the prevalent patriarchal attitudes in the society and the deeply rooted stereotypes of the roles, rights and responsibilities of women and men²¹, and to make even bigger efforts to eliminate the horizontal and vertical segregation of women and men in the labour market and to ensure the fulfilment of the payment of equal salary for equal work both in the public sector and the private sector²².

A a. Violence against women, domestic violence, close relationship violence

The UN Committee against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have recommended that Estonia establish the elements of domestic violence in the Penal Code²³, as the Estonian law does not make a distinction between violence among mutually acquainted persons and violence among strangers. It is found that violence against women, including domestic violence, is a problem in Estonia and therefore Estonia should increase its efforts to prevent violence against women, domestic violence and intimate partner violence, as well as the efforts to impose

¹⁷ UN Committee on Economic, Social and Cultural Rights. Pre-sessional working group. *Implementation of the International Covenant on Economic, Social and Cultural Rights. List of issues to be taken up in connection with the consideration of the second periodic report of Estonia concerning articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights.* (E/C.12/EST/Q/2) 9 December 2010, p 9. Available at <http://www2.ohchr.org/english/bodies/cescr/cescrs47.htm>, 28 November 2012; (CEDAW/C/EST/CO/4), *Supra nota* 16, p 10-11.

¹⁸ (CEDAW/C/EST/CO/4), *Supra nota* 16, p 10-11 and 14.

¹⁹ For instance, the UN Committee on the Elimination of Discrimination against Women points out that increased efforts in improving the financial situation of women would help prevent the abuse of women by human traffickers. (CEDAW/C/EST/CO/4), *Supra nota* 16, p 19.

²⁰ (CEDAW/C/EST/CO/4), *Supra nota* 16 p 19-22.

²¹ (CEDAW/C/EST/CO/4), *Supra nota* 16, p 12-13.

²² (CEDAW/C/EST/CO/4), *Supra nota* 16, p 23.

²³ (CAT/C/EST/Q/5), *Supra nota* 12, p 25; (CAT/C/EST/CO/4), *Supra nota* 12, p 21; (E/C.12/EST/CO/2), *Supra nota* 11, p 20.



punishment for such offences and to help the victims²⁴ in accordance with the national development plan²⁵.

A b. Trafficking in human beings

While recognising Estonia's progress on the basis of the Development Plan for Combating Trafficking in Human Beings 2006–2009 and the Development Plan for Reducing Violence 2010–2014, the UN Human Rights Council and the Committee on the Elimination of Discrimination against Women are concerned about the human trafficking situation in Estonia, particularly in regard to trafficking in women and girls. In previous years, it has been repeatedly recommended that Estonia add a special provision on human trafficking in its Penal Code and Estonia did so in the first half of 2012²⁶. Estonia has been given recommendations to continually and consistently focus on the prevention and control of and punishment for trafficking in human beings²⁷. It has been emphasised that it is the state's obligation to provide assistance, compensation and rehabilitation services to victims and to gather statistical data on cases of human trafficking and the efficiency of the implemented measures.²⁸

B. Equal treatment and non-discrimination

Resources, intolerance

Due to insufficient resources, doubts are cast on the ability of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner to fight against discrimination on the basis of all the protected elements²⁹. There is a perceived need to actively and consistently reduce intolerance, fight against stereotypes and promote respect for diversity within the limits of freedom of speech³⁰. Particular emphasis is placed on the need to provide training to judges, prosecutors, employers, employees and officials, in order to ensure the actual implementation of the Equal Treatment Act and the basic right of equality³¹ and to extend the dialogue with civil society organisations operating in the area of human rights³².

The aim of the currently applicable Equal Treatment Act is to ensure the protection of persons from discrimination on the basis of nationality (ethnic origin), race, skin colour, religion or beliefs, age, disability or sexual orientation, but recommendations have been made to include language and citizenship in the protected elements and to

²⁴ (CEDAW/C/EST/CO/4), *Supra nota* 16, p 16-17.

²⁵ (CEDAW/C/EST/CO/4), *Supra nota* 16, p 16.

²⁶ Act to Amend the Penal Code, RT I, 04.04.2012, 1.

²⁷ (CCPR/C/EST/CO/3), *Supra nota* 8, p 9; (CAT/C/EST/CO/4), *Supra nota* 12, p 20.

²⁸ (CAT/C/EST/Q/5), *Supra nota* 12, p 22; (CAT/C/EST/CO/4), *Supra nota* 12, p 20; (CEDAW/C/EST/CO/4), *Supra nota* 16, p 19.

²⁹ (CRI(2010)3), *Supra nota* 17, p 23-24; (ACFC/OP/III(2011)004), *Supra nota* 17, p 13 and 39.

³⁰ (CERD/C/EST/CO/8-9), *Supra nota* 13, p 19; (ACFC/OP/III(2011)004), *Supra nota* 17, p 77.

³¹ (CRI(2010)3), *Supra nota* 17, p 10, 21-22 and 30-31; (ACFC/OP/III(2011)004), *Supra nota* 17, p 39-41.

³² (CERD/C/EST/CO/8-9), *Supra nota* 13, p 23.



expand the scope of application of the Act³³.

As discrimination occurs in all the countries of the world, Estonia's attention has been drawn to the need to analyse why the number of cases of discrimination is so remarkably low in the work of the Chancellor of Justice, the Commissioner, the Labour Dispute Committee and the courts³⁴. It has also been suggested that Estonia maintain statistical data on cases of discrimination and the relevant decisions³⁵.

It has been repeatedly proposed that Estonia ratify Protocol 12 of the European Convention on Human Rights, which prohibits discrimination on a wider basis, not only in the implementation of the European Convention on Human Rights³⁶. It has also been suggested that Estonia join or ratify the following conventions: the UNESCO Convention against Discrimination in Education, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on Nationality, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No 189); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families³⁷.

Racist/ethnic discrimination and integration

Estonia's efforts and achievements are valued in promoting the relations and social cohesion between ethnic-Estonians and non-ethnic-Estonians. Nevertheless, it has been consistently recommended that Estonia prevent and combat discrimination on the basis of nationality and improve the cohesion of the society³⁸.

Estonia's attention is consistently drawn to the need to reduce the number of persons without citizenship, although the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities has confirmed that all the political, civil, economic, social and cultural rights of persons without citizenship are protected equally to those of citizens, except the right to participate in parliamentary elections and be a candidate in local government elections³⁹. It is understood that obtaining Estonian citizenship may have become less attractive in recent years, as persons with the so-called 'grey' passport can travel visa-free within the European Union and the Russian Federation and they are exempt from the military service obligation⁴⁰. Estonia's efforts in reducing the number of persons without citizenship, particularly among non-citizens of less than 15 years and 15-20 years of

³³ (CRI(2010)3), *Supra nota* 17, p 51-52; (E/C.12/EST/CO/2), *Supra nota* 11, p 8.

³⁴ (ACFC/OP/III(2011)004), *Supra nota* 17, p 40; (CERD/C/EST/CO/8-9), *Supra nota* 13, p 18.

³⁵ (CERD/C/EST/CO/8-9), *Supra nota* 13, p 18.

³⁶ (CRI(2010)3), *Supra nota* 17, p 11 and 13.

³⁷ (CRI(2010)3), *Supra nota* 17, p 14; (CERD/C/EST/CO/8-9), *Supra nota* 13, p 11 and 21.

³⁸ (ACFC/OP/III(2011)004), *Supra nota* 17, p 10.

³⁹ (A/HRC/17/17), *Supra nota* 7, p 9; (ACFC/OP/III(2011)004), *Supra nota* 17, p 11.

⁴⁰ (ACFC/OP/III(2011)004), *Supra nota* 17, p 44.



age⁴¹, are recognised and it is recommended that Estonia continue that work⁴². As one measure, international organisations would introduce the automatic granting of Estonian citizenship to the children of persons of undetermined citizenship⁴³. However, the Estonian state continues to be of the opinion that obtaining citizenship on the basis of the Constitution of the Republic of Estonia must be based on the *ius sanguinis*⁴⁴ principle and the free expression of will of the person or his or her parent⁴⁵.

While recognising that the protection and promotion of the Estonian language as the state language is a lawful objective⁴⁶, both the Council of Europe and the relevant UN authorities point out the need to continually apply fair procedures in the implementation and inspection of Estonian language requirements, where the work of the Language Inspectorate is supervised and no disproportionate sanctions are imposed⁴⁷. Estonia is expected to ensure Estonian language studies for those who wish to obtain citizenship as well as for new immigrants and asylum seekers, which the country is, indeed, providing through the Integration and Migration Foundation 'Our People' (MISA)⁴⁸. Estonia is reminded that in the transition to Estonian language based studies in Russian language based schools the equally high level of education must be ensured and the identity of the students must be respected⁴⁹ and that Estonian language studies should also contribute to improving the integration of Russian-speakers in the labour market and in the society as a whole⁵⁰.

The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committee on the Elimination of Racial Discrimination recommend that Estonian authorities adopt an act on the rights of national minorities, as they are of the opinion that the National Minorities Cultural Autonomy Act is not sufficient in order to ensure the rights of national minorities in the light of the changes in the demographic situation in Estonia⁵¹. Although the Cultural Council of National Minorities advising the Ministry of Culture, the Estonian Cooperation Assembly and the Round Table of Nationalities convened by the

⁴¹ (CRI(2010)3), *Supra nota* 17, p 32-34; (ACFC/OP/III(2011)004), *Supra nota* 17, p 15.

According to the data of Statistics Estonia, the proportion of persons of undetermined citizenship has decreased from 12.4% to 6.5% compared to the 2000 census.

⁴² (CERD/C/EST/CO/8-9), *Supra nota* 13, p 15.

⁴³ (ACFC/OP/III(2011)004), *Supra nota* 17, p 15.

⁴⁴ *Ius sanguinis* is a civil law principle, pursuant to which the citizenship of a country is not obtained on the basis of the place of birth, but on the basis of the citizenship of the parent(s) or ancestors.

⁴⁵ *Comments of the Government of Estonia on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Estonia*. September 2011, p 4. Available at http://www.vm.ee/sites/default/files/FCNM_comments_of_EE_2011_ET_2_.pdf, 28 November 2012.

⁴⁶ (ACFC/OP/III(2011)004), *Supra nota* 17, p 101.

⁴⁷ (CRI(2010)3), *Supra nota* 17, p 16-17; (ACFC/OP/III(2011)004), *Supra nota* 17, p 109; (CERD/C/EST/CO/8-9), *Supra nota* 13, p 13.

⁴⁸ (CRI(2010)3), *Supra nota* 17, p 42; *Comments of the Government of Estonia*, *Supra nota* 48, p 3.

⁴⁹ (CRI(2010)3), *Supra nota* 17, p 27; (ACFC/OP/III(2011)004), *Supra nota* 17, p 144 and 154.

⁵⁰ (CCPR/C/EST/CO/3), *Supra nota* 8, p 16.

⁵¹ (CRI(2010)3), *Supra nota* 17, p 33.



Assembly are recognised, they are not considered as representative bodies of national minorities. Recommendations have been made to create an institutional channel for discussing the non-culture related problems of relevant state authorities⁵² and Estonia has admitted that need. It was recommended that in order to understand the actual situation of the population as efficient data as possible be gathered in the 2011 census on the socio-economic situation of various ethnic groups, while remaining within the limits of data protection requirements and respecting the principle of voluntary self-determination; that was done in the course of the census⁵³.

Estonia holds that cultural autonomy is just an additional possibility of cultural self-determination and that the applicable law ensures sufficient protection of everyone's right to form associations, unions and clubs, protect their interests and express their opinion⁵⁴. The Government also considers it important that the protection of the rights of minorities is covered by all the legal acts, and not just by some special laws. The Constitution and the Equal Treatment Act enforced in 2009 play a central role here.⁵⁵

It is continually recommended that Estonia introduce the culture and history and the multi-cultural nature of minority groups through the education system and facilitate contacts and joint activities among Estonian-speaking and Russian-speaking young people⁵⁶, and actively involve the representatives of minority groups and the civil society in the development of integration strategies⁵⁷. It is recommended that Estonia continue to facilitate the development of a common media environment, as it is seen that the Estonian-speaking population and the Russian-speaking population generally live in separate information environments⁵⁸.

A separate emphasis is placed on the situation of Roma who have been given special attention in recent years as the largest historical ethnic minority in Europe. In regards to Roma, Estonia is expected to provide as accurate information as possible about their number and situation, particularly regarding their education path. Estonia is expected to actively fight against negative stereotypes, prevent discrimination and value cultural diversity⁵⁹. Observations have also been made about combating anti-Semitism, which continues to be relevant in Europe and the world⁶⁰. While it is acknowledged that the representatives of the Jewish community has confirmed that

⁵² (ACFC/OP/III(2011)004), *Supra nota* 17, p167, 169 and 197. The Government has admitted the need for a representative body of forum, through which the representatives of minorities in Estonia could communicate with the representatives of the state. *Comments of the Government of Estonia on the Fourth Report of the European Commission against Racism and Intolerance (ECRI), Report: European Commission against Racism and Intolerance (ECRI). ECRI Report on Estonia (Fourth Monitoring Cycle)*. (CRI(2010)3). 2 March 2010, p 57. Available at <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/estonia/EST-CbC-IV-2010-003-EST.pdf>, 28 November 2012.

⁵³ (CERD/C/EST/CO/8-9), *Supra nota* 13, p 16.

⁵⁴ Comments of the Estonian Government (ACFC), *Supra nota* 48, p 6-7.

⁵⁵ Comments of the Estonian Government (ECRI), *Supra nota* 55, (CRI(2010)3), *Supra nota* 17, p 56.

⁵⁶ (CRI(2010)3), *Supra nota* 17, p 26; (ACFC/OP/III(2011)004), *Supra nota* 17, p 21, 73 and 132.

⁵⁷ (CRI(2010)3), *Supra nota* 17, p 36; (ACFC/OP/III(2011)004), *Supra nota* 17, p 74.

⁵⁸ (ACFC/OP/III(2011)004), *Supra nota* 17, p 95.

⁵⁹ (CRI(2010)3), *Supra nota* 17, p 129-142; (CERD/C/EST/CO/8-9), *Supra nota* 13, p 17;.

⁶⁰ (CRI(2010)3), *Supra nota* 17, p 43-44.



there is no structural discrimination at the level of state authorities, attention is drawn to the need to fight against negative stereotypes and to establish by law that it is punishable to publicly deny, normalise, justify or pardon for anti-Semitic purposes crimes of genocide committed on the basis of Jewish identity or origin and crimes against humanity or war crimes⁶¹.

B a. Rights of people with disabilities

In the process of the UN Universal Periodic Review, ten countries proposed that Estonia ratify the UN Convention on the Rights of Persons with Disabilities⁶² and ensure the efficient implementation of that convention. On 21 March 2012, the *Riigikogu* passed the Draft Act on Ratification of the Convention on the Rights of Persons with Disabilities and the Ministry of Social Affairs is currently developing a plan for implementing the convention in 2014–2020. In addition, it has been recommended that Estonia improve the efficiency of activities that help people with disabilities to find suitable employment⁶³, and ensure that the rights of persons with mental disabilities or their guardians are protected in criminal proceedings⁶⁴.

B b. Rights of LGBT persons – lesbian, gay, bisexual and transgender persons

Sexual orientation and gender identity are under special attention among the protected elements of discrimination, particularly in the Council of Europe. The UN Human Rights Committee has expressed concern over the fact that in issuing residence permits Estonia does not recognise the partnership of same-sex persons concluded in another country⁶⁵. Among others, Finland, Belgium, the Netherlands, the United Kingdom and Spain mentioned the need to efficiently protect the rights of LGBT persons in the course of the Universal Periodic Review⁶⁶.

B c. Penal law provisions, incitement of hatred, hatred as motive

It has been repeatedly recommended that Estonia review and amend the provisions of the Penal Code concerning the incitement of hatred and the violation of equal treatment requirements⁶⁷. It is considered as problematic that pursuant to section 151 of the Penal Code a person can be brought to justice for inciting hatred on the basis of nationality, race, skin colour, language, origin or religion only if such activities pose a threat to the life, health or property of any persons. In addition, there are no separate punishments for hate-speech or hatred-inciting expression, as recommended by the European Commission against Racism and Intolerance (ECRI), and racist,

⁶¹ (CRI(2010)3), *Supra nota* 17, p 169–170.

⁶² (A/HRC/17/17), *Supra nota* 7, p 77.

⁶³ (E/C.12/EST/CO/2), *Supra nota* 11, p 15.

⁶⁴ (CCPR/C/EST/CO/3), *Supra nota* 8, p 12.

⁶⁵ (CCPR/C/EST/CO/3), *Supra nota* 8, p 10.

⁶⁶ (A/HRC/17/17), *Supra nota* 7, p 23, 26, 34, 43 and 44.

⁶⁷ (CRI(2010)3), *Supra nota* 17 p 19–20; (CERD/C/EST/CO/8-9), *Supra nota* 13, p 11.



homophobic or other discriminating motives are not expressly aggravating circumstances in the punishment of certain crimes⁶⁸. There are no official statistical data on the commitment of misdemeanours and crimes on racist, homophobic or other discriminating motives and the police have no obligation to determine such motives in investigating offences⁶⁹. It is separately pointed out that there is a need to take measures to fight against racism and racist discrimination among the police forces, inter alia through more efficient training in the area of human right⁷⁰. The Ministry of Justice has prepared the Draft Act Amending the Penal Code, which is aimed at taking into account the aforementioned observations and recommendations of international organisations.

IV. Torture and other cruel, inhuman or degrading treatment of punishment

Definition of torture

According to the assessment of the UN Human Rights Committee and the UN Committee against Torture, the definition of torture established in section 122 of the Penal Code is too narrow, particularly because it includes continuous *physical* abuse or *physical* abuse which causes great pain, and not mental abuse. Due to that, the definition of ‘torture’ is not in accordance with the provisions established in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Article 7 of the UN International Covenant on Civil and Political Rights⁷¹. The committees hold that the punishments established in the Penal Code are too mild and do not take into account the serious nature of torture as a crime⁷².

Although Estonia is of the opinion that the cumulative effect of the provisions of the Penal Code ensures the conformity of Estonian law with the requirements of the conventions, the Government has announced that the Ministry of Justice is preparing an amendment to the definition and elements of torture, which would more closely correspond to the requirements of international law⁷³.

Situation in prisons, ensuring the human rights of detained persons

Estonia has received recognition for major progress in bringing the situation in prisons into conformity with international human rights standards. Nevertheless, the report of the United Nations UPR Working Group points out the need to continue implementing efficient measures to ensure the rights and improve the living

⁶⁸ (ACFC/OP/III(2011)004), *Supra nota* 17, p 78 and 81.

⁶⁹ (CRI(2010)3), *Supra nota* 17, p 31, 46; (CERD/C/EST/CO/8-9), *Supra nota* 13, p 12.

⁷⁰ (CRI(2010)3), *Supra nota* 17, p 12.

⁷¹ (CCPR/C/EST/CO/3), *Supra nota* 8, p 7; (CAT/C/EST/Q/5), *Supra nota* 12, p 1; (CAT/C/EST/CO/4), *Supra nota* 12, p 2.

⁷² (CAT/C/EST/CO/4), *Supra nota* 12, p 2.

⁷³ (CAT/C/EST/CO/5), *Supra nota* 7, p 4.



conditions of detained persons⁷⁴. In its report of 2007, the European Committee for the Prevention of Torture operating under the auspices of the Council of Europe has also given Estonia a number of recommendations on providing training to police officers, prison officers and doctors and other healthcare employees, on ensuring basic rights in misdemeanour and criminal proceedings and on improving the availability of free legal aid, in order to ensure the legal rights of suspected persons, accused persons and detained persons in reality. Several recommendations are related to the overcrowding of detention facilities, the insufficient possibility of detainees to be outdoors, to work and to spend free time in a substantive manner, as well as to the availability, quality and confidentiality of healthcare service⁷⁵. A large part of the problems has been alleviated in the course of the prison reform, including by the merger of the Ämari and Murru prisons, the closure of the Pärnu and Viljandi prisons and the opening of the Jõhvi detention house and the Viru prison in 2008. The situation is expected to improve even further in the course of the ongoing prison reform and the construction of the new Tallinn prison.

Psychiatric institutions and coercive treatment

It has been recommended that Estonia improve the living conditions of patients in psychiatric hospitals and increase the protection of their human rights. It is of particular importance to ensure efficient and independent supervision over institutions providing coercive treatment of patients with mental disorders⁷⁶ and over the notification of patients and their guardians of the patient's rights in granting informed consent, ordering coercive treatment and submitting complaints⁷⁷.

V. Right to personal liberty and security, right to a fair trial

As at 31 December 2011, the European Court of Human Rights had given the total of 26 rulings in regards to Estonia since 1993, and in 22 of those ruling the violation of at least one article of the European Convention on Human Rights was determined. Statistical data show that 32% of the violations were related to Article 5 (right to liberty and security), 16% to Article 6 (right to a fair trial), 16% to Article 6 (duration of proceedings) and 16% to Article 7 (no punishment without law). It is therefore clear that Estonia is mainly brought to the Court of Human Rights in connection with criminal proceedings⁷⁸. At the same time, it is not surprising considering the fact that more than a half of all the rulings made by the European Court of Human Rights from 1959 to 2010, in which the Court determined violations, are related to Article 6 of the

⁷⁴ (A/HRC/17/17), *Supra nota 7*, p 77.52–77.57.

⁷⁵ (CAT/C/EST/CO/4), *Supra nota 12*, p 9.

⁷⁶ (CAT/C/EST/CO/4), *Supra nota 12*, p 24.

⁷⁷ (CAT/C/EST/CO/5), *Supra nota 7*, p 4.

⁷⁸ 98% of the claims filed against Estonia have been either unacceptable or deleted from the list of court cases and only 2% have been awarded a ruling. European Court of Human Rights.

Statistics on Judgments by State 1959-2010. February 2012, p 3. Available at http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique_violation_en.pdf, 28 November 2012.



Convention (right to a fair trial) either in the issue of the fairness or duration of court proceedings⁷⁹.

The UN Human Rights Committee has also recommended that Estonia review the Code of Criminal Procedure in order to ensure faster proceedings in situations where the accused person has been detained⁸⁰. In addition, the Human Rights Committee has expressed concern over whether persons with mental disabilities or their guardians are sufficiently informed of charges brought against them in criminal proceedings and whether the experts appointed to assess the need for the coercive treatment of patients are entirely impartial. It is recommended that Estonia continue to provide training to judges and lawyers in the area of the human rights of persons with mental disabilities brought to court with criminal charges⁸¹.

VI. Rights of children

By today, Estonia has implemented the recommendations to create the institutions of the Ombudsman for Children, the tasks of which are fulfilled by the Chancellor of Justice and the Office of the Chancellor of Justice. As the next important step, it is recommended that Estonia follow the example of many other countries and prohibit any violence against children, including any kind of physical punishment⁸².

Estonia last submitted a report on the implementation of the UN Convention on the Rights of the Child in 2002, on the basis of which Estonia received recommendations in March 2003. The majority of the recommendations have by now become irrelevant⁸³. There are more up-to-date recommendations related to the report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on which the UN Committee on the Rights of the Child presented its observations at the beginning of 2010⁸⁴. In connection with that, emphasis has been placed on the principle that the

⁷⁹ European Court of Human Rights. *Overview 1959-2011*. February 2012, p 5. Available at http://www.echr.coe.int/NR/rdonlyres/8031883C-6F90-4A5E-A979-2EC5273B38AC/0/APERCU_19592011_EN.pdf, 28 November 2012.

⁸⁰ (CCPR/C/EST/CO/3), *Supra nota* 8, p 13.

⁸¹ (CCPR/C/EST/CO/3), *Supra nota* 8, p 12.

⁸² (A/HRC/17/17), p 77.58; Council of Europe Commissioner for Human Rights. *Memorandum to the Estonian Government: Assessment of the progress made in implementing the 2004 recommendations of the Commissioner for Human rights of the Council of Europe* (CommDH(2007)12) 11 July 2007. (Including Annex: Comments by the Estonian Government), p 86.16. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1163131>, 28 November 2012.

⁸³ UN Committee on the Rights of the Child, Thirty-second session. *Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: Estonia*. (CRC/C/15/Add.196) 17 March 2003. Available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/4fa837b7e657d671c1256d19004dcd5a/\\$FILE/G0340834.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/4fa837b7e657d671c1256d19004dcd5a/$FILE/G0340834.pdf), 28 November 2012.

⁸⁴ UN Committee on the Rights of the Child, Fifty-third session. *Consideration of reports submitted by States parties under article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Estonia*. (CRC/C/OPS/EST/CO/1) 29 January 2010. Available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPSC-EST-CO-1.pdf>, 28 November 2012.



interests of the child must be of primary consideration, also in court and administrative proceedings⁸⁵. It has been recommended that Estonia increase the efficiency of gathering statistical data in matters related to the Optional Protocol, in order to improve the monitoring of its implementation⁸⁶.

VII. Rights of asylum seekers and refugees

Estonia has been reminded that it is important to ensure fair proceedings, in the course of which asylum seekers are aware of their rights, have access to competent legal aid and interpretation services and are deprived of liberty only when there are no alternatives. It is considered that it is necessary to provide further training to border guards and improve the capability of conducting asylum proceedings at the border, as the number of asylum applications is currently small and border guards therefore lack practical experience in processing applications. It is also recommended that Estonia introduce international monitoring of asylum proceedings. Estonia is reminded that it is prohibited to extradite or return a person to a region where he or she may be persecuted or tortured or where his or her life may be in danger (non-refoulement principle), which should be assessed separately in every individual case⁸⁷.

⁸⁵ (CRC/C/OPS/EST/CO/1), *Supra nota*, p 8.

⁸⁶ (CRC/C/OPS/EST/CO/1), *Supra nota*, p 6.

⁸⁷ (CAT/C/EST/CO/4), *Supra nota* 12, p 12; (CRI(2010)3), *Supra nota* 17, p 153-156. .



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