

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX



REPORT
ON THE MEETING WITH THE ESTONIAN GOVERNMENT
ON PROVISIONS OF THE REVISED SOCIAL CHARTER NOT
ACCEPTED BY ESTONIA

(Tallinn, 5 April 2005)

Document prepared by the Secretariat

Situation of Estonia on 5th April 2005

Ratifications

Estonia ratified the Revised European Social Charter on 11/09/2000 and has accepted 79 of the Revised Charter's 98 paragraphs.

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1	
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2	
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1	
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3	
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22	
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1	
31.2	31.3								= Non -Accepted provisions			

Estonia has not agreed to be bound by the "collective complaints" procedure.

Reports

Between 2002 and 2004, Estonia submitted 2 reports on the Revised Charter.

Deadline for the submission of the 3rd report on the hard core provisions of the Revised Charter: before 30/06/05.

Deadline for the submission of the 4th report on part of the non-hard core provisions of the Revised Charter: before 30.03.06

MEETINGS ON PROVISIONS NOT ACCEPTED BY ESTONIA

The Tallinn meeting was the fourth such meeting under the new procedure examination of non-accepted provisions – Article 22 of the 1961 Social Charter – agreed by the Committee of Ministers in December 2002¹.

The Deputies had decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the case of Estonia the European Committee of Social Rights had agreed with the Estonian authorities that it would meet representatives of various ministries in Tallinn on 5 April 2005.

The delegation comprised Mr Matti MIKKOLA former President of the Committee, Ms Csilla KOLLONAY-LEHOCZKY, Mr Andrzej SWIATKOWSKI and Mr Lauri LEPPIK, and Mr Régis BRILLAT, Executive Secretary of the European Social Charter, and Ms Niamh CASEY, administrator.

The meeting had been organised by Ms Merle MALVET, Head of the Social Insurance Department at the Ministry of Social Affairs and the Estonian delegate to the Governmental Committee of the European Social Charter.

¹ Committee of Ministers decision of 11 December 2002.

OUTCOME OF THE MEETING

The first part of the mission consisted of a meeting with members of the various relevant Estonian ministries. Detailed presentations were made by members of the delegation on the provisions which have not been accepted by Estonia, and a representative of the Ministry for Social Affairs gave an explanation of the national situation with regard to the provisions in question of the Revised Charter. This was followed by discussions on the situation in Estonia vis a vis certain provisions.

The delegation met with the Estonian Parliamentary Social Affairs Committee. The conclusions of the seminar were discussed as well as findings of non-conformity by the ECSR in respect the provisions accepted by Estonia. The Chairwoman of the Committee stated that the Committee would continue to discuss the provisions of the Revised Charter which could further be accepted by Estonia.

Finally the ECSR delegation met with the then Minister for Social Affairs who reiterated Estonia's commitment to the Revised Social Charter and to increasing the number of provisions accepted by Estonia.

The delegation had at its disposal a report prepared by the Estonian authorities on the provisions not accepted by Estonia (Appendix II to this report) this was supplemented by information presented during the meeting. The delegation's views were based on this information; information on the current situation in law and in practice or on intended changes to legislation or current developments in the law and practice, in light of the case law of the ECSR.

The delegation concluded that there were certain provisions of the Revised Charter that Estonia could accept immediately (see below) and other provisions which posed more difficulties for Estonia and therefore their acceptance was a more long term goal. An opinion by the delegation that Estonia could accept a provision does not mean that the situation will automatically be found to be in conformity with the revised Charter; it simply indicates that there are no major obstacles to ratification of and compliance with the provision.

Provisions which could be accepted by Estonia

Article 2§4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

Article 3§4 – Right to occupational health services

Article 7§6 – Right of young workers to protection

Article 10§2 – Right to training and apprenticeship

Article 13§4 – Right to emergency assistance for non-residents

Article 18§§1-4 – Right to engage in a gainful occupation in the territory of other Contracting Parties

Article 26 – The right to dignity at work

Article 30 – The right to protection against poverty and social exclusion

Provisions which could not be accepted by Estonia

Article 4§1 – Right to a decent wage

Article 7§5 – Right to fair pay for young workers

Article 10§5 – Right to higher education and training- measures to facilitate access

Article 23 – Right of elderly persons to social protection

Article 31 – Right to housing

A survey of the ECSR case-law, the report provided within the framework of Article 22 of the Charter submitted by Estonia as well as additional comments are appended.

APPENDIX I

SURVEY PROVISION BY PROVISION

The first Appendix has been drafted on the basis of the European Committee of Social Rights Case-Law Digest, May 2005 (document prepared by the Secretariat), it also refers to the report on non accepted provisions (Article 22 report) a document prepared and submitted by the Ministry of Social Affairs of Estonia which is contained in Appendix II. It also takes into account the additional information provided and comments made during the meeting.

■ Article 2§4 (Right to annual holiday with pay)

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.²

ECSR Case-law presented by Mr R.BRILLAT

Article 2§4 requires States to eliminate risks in inherently dangerous or unhealthy occupations and is therefore closely linked to Article 3 of the Revised Charter. Where the sufficient elimination or reduction of risks has not yet been achieved, workers concerned should be guaranteed a right to additional paid holidays or reduced working hours. States are required to identify the dangerous or unhealthy occupations in question; this is subject to review by the Committee.

Sectors such as mining, quarrying, steel-making and ship-building have always been and are still regarded as dangerous or unhealthy. This provision also applies to occupations involving for example, ionising radiation, extreme temperatures, noise, working on computer screens, etc. Scientific progress has revealed certain illnesses or risk factors, such as stress, which were previously not recognised as such.

The Committee has pointed out that, while Article 2§4 calls for the reduction of working hours or additional paid holidays in dangerous and unhealthy occupations where the sufficient elimination or reduction of risks has not yet been possible, other means of reducing the length of exposure to risks may, in view of the overriding health and safety aims of this provision, also be in conformity with the Charter.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§4 is enjoyed by at least 80% of workers. However:

² Article 2§4 of the 1961 Charter reads as follows : With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed.

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of paragraph 4, even if it affects less than 20% of workers in practice.
2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally it was pointed out that if Estonian legislation was compatible with EU law it would *prime facie* be in conformity with the revised Charter.

Conclusion

In view of the current case law and the current legal situation and practice the provision could be accepted by Estonia.

■ **Article 3§4 (Right to safe and healthy working conditions: occupational health services)**

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations

- 4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.**

ECSR Case-law presented by Mr. R. BRILLAT

According to Article 3§4, workers in all branches of the economy and every undertaking must have access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally it was stated that as is the case for Article 2§4, where domestic legislation was compatible with EU legislation – the relevant directives transposed – it is likely there is no problem of conformity with the revised Charter, however one area where Estonia could have difficulties is that self employed persons are not currently covered by occupational health regulations, although this situation could be amended.

Conclusion

In view of the current case law, the current legal situation and practice as well as the developments underway in law and practice, the provision could be accepted by Estonia.

■ Article 4§1 – (Right to fair remuneration)

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake

1. to recognise the right of workers to remuneration such as will give them and their families a decent standard of living;

ECSR Case-law presented by Mr M. MIKKOLA

Article 4§1 guarantees the right to a remuneration such as to ensure a decent standard of living.

To be considered fair within the meaning of Article 4§1, a wage must not fall too far short of the national average wage. The threshold adopted by the Committee is 60%. Wages must in any event be above the poverty line in a given country.

The concept of remuneration, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities.

The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry. When a national minimum wage exists, its net value is used as a basis for comparison with the net average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement or the lowest wage actually paid..

A net wage which falls below the 60% threshold is not automatically considered unfair within the meaning of the Charter. If the wage lies between 50% and 60%, a state may be asked to indicate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living. However, a net wage which is less than half the net national average wage will be deemed to be unfair. The situation of the State concerned will hence be considered not in conformity with Article 4§1.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Although there had been substantial increases in the minimum wages between 2000 and 2004 (5%), according to the rough calculations made on the available date the minimum wage only amounted to 42% of the average wage in 2004. The ECSR did in practice look at social transfers, and although there was an active family policy in Estonia, social transfers would not be enough to increase the rate of the minimum wage to 60% of the average.

Estonia would not be in conformity with Article 4§1 of the revised Charter.

Conclusion

In view of the current case law as well as the current situation in Estonia this provision could not be accepted.

■ **Article 7§5 (Right of young workers and apprentices to a fair wage or other appropriate allowance)**

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

ECSR Case-law presented by Mr. M MIKKOLA

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

The “Fair” or “appropriate” character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%.

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally the link between Article 4§1 and 7§5 was emphasized, a precondition for compliance with Article 7§5 was compliance with Article 4§1, as Estonia was not in conformity with Article 4§1, it could not be in conformity with Article 7§6.

Conclusion

In view of the current case law as well as the current situation in Estonia this provision could not be accepted.

■ Article 7§6 (Right of young workers to protection)

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake

6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

ECSR Case-law presented by Mr A. SWIATKOWSKI

In application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work.

Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally it was stated that there was no apprenticeship system in Estonia as such although this was something that is being developed and there were currently pilot projects underway. Likewise vocational training was being developed. Legislation does not expressly provide that time spent on training must be considered as working time and paid as such although this was the practice. Therefore there were no real obstacles to ratifying this provision.

Conclusion

In view of the current case law, and practice as well as the developments underway in law and practice, the provision could be accepted by Estonia.

■ **Article 10§2 (Right to apprenticeships and other systematic arrangements for training)**

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake

2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

ECSR case law presented by Mr. A SWIATKOWSKI

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. These types of training must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people in, the total spending on these types of training and the availability of places for all those seeking them.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

There is no apprenticeship system in Estonia, however the text of Article 10§2 refers also to “other systematic arrangements”, these may be sufficient if they fulfil criteria akin to apprenticeships. Furthermore the obligation is also to “promote” training and apprenticeships. Estonia is currently creating systems for training including apprenticeship systems.

Conclusion

In view of the current case law, and practice as well as the developments underway in law and practice, the provision could be accepted by Estonia.

■ **Article 10§5 (Right to higher education and training measures to facilitate accessibility)**

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake

- 5. to encourage the full utilisation of the facilities provided by appropriate measures such as:**
 - a reducing or abolishing any fees or charges;**
 - b granting financial assistance in appropriate cases;**
 - c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;**
 - d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.**

ECSR case law presented by Mr. A. SWIATKOWSKI

States must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are reduced.

All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy, are treated under paragraph 4. States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. At any event, it shall be at least available for those in need and it shall be adequate. It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.

Equal treatment with respect to fees and contributions, and financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

The time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aiming at increasing their skills. It does not imply any previous training. The term "during employment" means that the worker shall be currently under a working relationship with the employer requiring the training.

States must proceed to the evaluation of their vocational training programmes for young workers, including apprenticeship. In particular, it is required the participation of employers' and workers' organisation in the supervision process.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

The issue under this provision for Estonia is one of equal treatment; non-EU nationals are not currently guaranteed equal treatment for access to loans, the requirements are permanent residence status and language skills. In order to obtain permanent residence status an individual must have been resident in Estonia for 5 years. This would pose a problem of conformity under Article 10§5. It was recalled that this provision does not require non-nationals who come to the country for the purpose of studying to be granted equal treatment, but requires those who are already lawfully within the jurisdiction to be granted equal treatment.

Conclusion

In view of the current case law and the current legal situation this provision could not be accepted by Estonia.

■ Article 13§4 (The right to urgent social and medical assistance)

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake

4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

ECSR Case-law presented by Mr R. BRILLAT

Article 13§4 applies to nationals of the other Parties who are lawfully present in a Party's territory, but do not reside lawfully or work regularly there. Since their presence is temporary, appropriate forms of social and medical assistance do not necessarily include all the benefits available under the general scheme. Temporary assistance in an emergency is sufficient (food, accommodation, clothing, emergency medical care). In such cases, assistance must be given, regardless of local or national resources.

Persons covered by this provision may be repatriated, but the relevant provisions of the 1953 European Convention on Social and Medical Assistance must be respected.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Estonia has now ratified the European Convention on Social and Medical Assistance provision is made for short term emergency assistance, repatriation is also provided for.

Conclusion

In view of the current case law, the current legal situation and practice, the provision could be accepted by Estonia.

■ **Article 18§§1-4 (Right to engage in a gainful occupation in the territory of other parties)**

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;
and recognise
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

ECSR case-law presented by Ms C. KOLLONAY- LEHOCZKY

Article 18§1

Article 18 applies to employees and the self-employed who are nationals of Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.

Article 18 covers not only workers already on the territory of the Party concerned, but also those in their country of origin.

This article also covers foreign workers who have obtained employment but subsequently lose it.

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.

Article 18§2

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers covered by paragraph 3 but are dealt with specifically in this provision.

With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered in a reasonable time.

Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

Article 18§3

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

- Access to the national labour market

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.

– Right to engage in an occupation:

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.

– Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.

Article 18§4

According to Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter.

The only permitted restrictions are those provided for in Article G of the Revised Charter, i.e. those which are “prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.”

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II) which, on the whole, indicated the liberal application of relatively rigorous rules regarding formalities and substantive requirements of employment.

Additionally it was considered that on certain points the Estonian report submitted within the frame work of the Article 22 procedure did not provide enough information; for example where a migrant worker loses his job, can he apply for another residence permit or what were the pre-conditions of a work permit for the self-employed.

It was also pointed out that the time frame for decisions on whether to grant a residence/work permit could be considered lengthy.

Overall it was considered that, as the provisions were largely dynamic in nature, the obligation to demonstrate progressive liberalization the provisions could be accepted.

Conclusion

In view of the current case law, the current legal situation and practice, the provision could be accepted by Estonia.

■ Article 23 (Right of elderly persons to social protection)

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:

a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

- to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

b the health care and the services necessitated by their state;

- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

ECSR Case-law presented by Ms N. CASEY

Article 23 recognises the right of elderly persons to social protection in the wide sense. It contains a list of measures/objectives to be pursued and specific rights to be protected in order to ensure the social protection of elderly persons, however it is clear from the explanatory report that this list is non exhaustive.

Article 23 is dynamic in the sense that the appropriate measures that are called for may evolve or change over time in response to new developments or needs.

On a general level the Committee has requested information on national policies for the elderly and on the level and development of national expenditure for social protection and services for the elderly. As well as measures to allow/encourage elderly persons remain in labour force.

Non-discrimination legislation (or similar) should exist at least in certain domains protecting persons against discrimination on grounds of age.

Elderly persons sometimes have reduced capacity making powers or no such powers or capacity therefore there should exist a procedure for 'assisted decision making.'

The main objective of the first paragraph of Article 23 is to enable elderly persons to remain full members of society, it then provides two means that may help to achieve this goal-adequate resources and information on services and facilities. According to the explanatory report the expression "full members" means that elderly persons must suffer no ostracism on account of their age, since the right to take part in

society's various fields of activity is not granted or refused depending on whether an elderly persons has retired or is still vocationally active or whether such a person is still of full legal capacity or is still subject to some restrictions in this respect (*diminutio capitis*).

As regards the right to adequate resources the primary focus is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a 'decent life' and play an active part in public social and cultural life. Information is sought on average wage levels in order to compare these with pension levels and the overall cost of living, as well as data on the income levels of elderly persons. Pensions must be linked index linked.

Information on the cost of transport as well as on the cost of medical care and medicines is also sought under this provision, as is information on the existence of a carer's allowance for family members who look after an elderly relative.

Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers 1§b of Article 23 as presupposing the existence of services and facilities, elderly persons have the right to certain services and facilities. Therefore the Committee examines information not only relating to the provision of information about these services and facilities but about these services and facilities themselves under this provision. In particular information is sought on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons

The needs of elderly persons must be taken into account in national or local housing policies, the supply of adequate of appropriate housing for elderly person must be sufficient Housing law and policy must take account of the special needs of this group. National policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist as well as guidelines on healthcare for elderly persons. In addition there should be mental health programmes for persons with dementia and related illnesses and adequate palliative care services.

Article 23§3 is concerned with the rights of elderly persons living in institutions. It provides that certain rights in this context must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property and right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.

There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions must be licensed or approved and an independent inspection mechanism must exist to examine, in particular, the quality of care delivered.

Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally it was stated while services for elderly persons were under development, it would take some time before real progress was made.

The level of the old age pension could be an issue, as could availability of health care service, housing, and other services for elderly persons as well as the situation in certain institutions caring for the elderly. Therefore it was concluded that Estonia could not accept this provision.

Conclusion

In view of the current case law as well as the current situation in Estonia this provision could not be accepted.

■ Article 26 (Right to dignity at work)

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations,

- 1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;**
- 2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.**

ECSR Case-law presented by Ms C. KOLLONAY- LEHOCZKY

Article 26§1

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment determined by a preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature which may harm their dignity or their career.

There is no need for a state's legislation to make express reference to harassment where that state's Act encompassed measures making it possible to afford employees effective protection against the various forms of discrimination.

From a procedural standpoint, effective protection of employees requires somewhat of a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

This provision requires that employers be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or at premises under their responsibility from persons not employed by them such as independent contractors, self-employed workers, visitors, clients etc.

Victims of sexual harassment must be given effective legal remedies. These remedies must include reinstatement, where the employee has been dismissed in the context of a sexual harassment case, and appropriate damages, which should be sufficiently reparatory for the victim and sufficiently deterrent for the employer.

Furthermore, States are required to conduct awareness-raising campaigns to promote the protection against sexual harassment among social partners and the general public.

This provision affords protection against harassment at work other than sexual harassment. The triggering element for the harassment may be based on race, colour, religion, gender or any other specific quality of a person.

As far as legal protection and awareness raising are concerned the requirements are the same as under Article 26§1.

Article 26§2

This provision affords protection against harassment at work other than sexual harassment. The triggering element for the harassment may be based on race, colour, religion, gender or any other specific quality of a person.

As far as legal protection and awareness raising are concerned the requirements are the same as under Article 26§1.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally it was difficult to assess the impact of the relevant legislation at this stage as it had only recently entered into force, but several indications were that the legislation may have the potential to fulfil the requirements of Article 26.

Conclusion

In view of the current case law, the current legal situation and practice as well as the developments underway in law and practice, the provision could be accepted by Estonia.

■ Article 30 (Right to protection against poverty and social exclusion)

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b to review these measures with a view to their adaptation if necessary.

ECSR Case-law presented by Mr M. MIKKOLA

By introducing into the Revised Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.

The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive listing of the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena. The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realize social rights.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally there were a significant number of measures in Estonia in place to assist those at risk of poverty, and there were sign of improvements, long-term unemployment has been reduced, the employment rate of persons with disabilities has increased etc. Estonia could accept this provision.

Conclusion

In view of the current case law, the current legal situation and practice as well as the developments underway in law and practice, the provision could be accepted by Estonia.

■ Article 31 (Right to housing)

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed

- 1. to promote access to housing of an adequate standard.**
- 2. to prevent and reduce homelessness with a view to its gradual elimination.**
- 3. to make the price of housing accessible to those without adequate resources.**

ECSR Case-law presented by Ms N. CASEY

Article 18§1

States must guarantee the right to adequate housing.

The notion of adequate housing must be defined in law. Adequate housing means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law.

The criteria for adequate housing are:

- a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and if specific dangers such as the presence of lead or asbestos are under control.
- over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.
- security of tenure means protection from forced eviction and other threats (dealt with under paragraph 2 of Article 31).

The standards for adequate housing should be applied not only to new constructions, but also gradually, in the case of renovation, to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners. The situation in practice is also assessed.

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.

The effectiveness of the right to adequate housing implies its legal protection. Adequate procedural safeguards are required. Tenants or occupiers must have access to affordable and impartial judicial remedies.

Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

Article 31§2

Homeless persons are those individuals who do not have at their disposal a legal dwelling or other form of adequate shelter.

With regard to the reduction of homelessness, states must take measures to assist persons who are without a home or shelter and take preventive measures. States must gradually reduce homelessness, towards its elimination. Reducing homelessness implies the introduction of emergency and longer-term measures, such as the provision of immediate shelter and care for the homeless as well as measures to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness. The temporary supply of shelter, however adequate, cannot be considered satisfactory in the long term. Individuals considered as being homeless should be provided with adequate housing within a reasonable period.

States must also take action to prevent categories of vulnerable people from becoming homeless. To this purpose they must implement a housing policy for all disadvantaged groups of people to ensure access to social housing or provide housing benefits (access to social housing is primarily examined under Article 31§3).

States must establish procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties effected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions from being carried out at night or during the winter period, provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Procedural safeguards are of great importance. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Equal treatment with respect to housing must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

Article 31§3

An adequate supply of affordable housing must be ensured.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.

It is incumbent on states to:

- adopt appropriate measures for the construction of housing, in particular social housing;

ensure access to social housing or subsidised housing for all disadvantaged groups of people. Measures to reduce waiting times which are very long must be adopted. Legal remedies must be available in the event of excessive waiting times.

- introduce housing benefits (or similar benefits) for low-income and disadvantaged sections of the population. Housing allowance must be an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

The situation in Estonia

Reference is made to the report on non-accepted provisions submitted by Estonia (appendix II).

Additionally it was highlighted that there was a shortage of public housing, a certain percentage of existing housing fell below what was deemed decent housing and although Estonia was taking measures to address these problems it would take some time before the situation improved therefore it was considered that Estonia could not at this time accept this provision.

Conclusion

In view of the current case law as well as the current situation in Estonia this provision could not be accepted.

APPENDIX II

EUROPEAN SOCIAL CHARTER

(REVISED)

Report

provided within the framework of article 22

of the Social Charter

by the Republic of Estonia

2005

FORM FOR REPORTS

For the period from 1 November 2000 to 31 December 2005 made by the Government of the Republic of Estonia in accordance with Article 22 of the European Social Charter concerning provisions which were not accepted at the time of ratification in 2000.

In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this report have been communicated to Estonian Central Federation of Trade Unions (EAKL), Estonian Employees' Unions' Confederation (TALO) and Estonian Confederation of Employers (ETTK).

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ARTICLE 2 PARA. 4

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or sufficiently reduce these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations."

LEGISLATION³

- ILO Convention No 13. White Lead (Painting) Convention.
- ILO Convention No 174. Prevention of Major Industrial Accidents Convention.
- ILO Convention No 144. Tripartite Consultation Convention.
- ILO Convention No 81. Labour Inspection Convention.
- ILO Convention No 129 Labour Inspection (Agriculture) Convention.
- ILO Convention No 147. Merchant Shipping (Minimum Standards) Convention and the appropriate protocol of 1996.
- ILO Convention No 182. Worst Forms of Child Labour Convention.
- Constitution of the Republic of Estonia § 29: Working conditions are supervised by the state.
- Occupational Health and Safety Act.
- National Policy on Working Environment. Decision of the Government from 30.06.1998 No. 31.
- List of underground works, health-hazardous works and works of specific nature for which additional holidays are given; length of additional holidays. Regulation of the Government of Republic No. 406 of 18 December 2001.
- List of underground works, health-hazardous works and works of specific nature for which reduced working hours apply; the number of reduced working hours. The regulation of the Government of Republic No. 405 of 18 December 2001 amended by regulation No. 318 of 01 November 2004.

³ Legal texts are available in English: <http://www.legaltext.ee/>.

Question A

Please indicate the policies and the legislative measures taken to eliminate or to reduce the inherent risks of dangerous or unhealthy occupations. Please also describe the procedures for periodic review and evaluation.

The **Occupational Health and Safety Act** is the basis for numerous regulations by the Government of the Republic and Minister of Social Affairs. The regulations touch upon various occupational health and safety requirements for different fields, such as the use of dangerous substances (construction sites, asbestos works, computer screen, dangerous chemicals and lead, working in explosive atmosphere), working conditions for pregnant women, lifting weights by hand, first aid provision and training, maximum levels of risk factors in different working environments, list of occupational diseases, registration of occupational accidents and diseases, rules for medical examination of employees, provision of occupational health services, etc.

The national body supervising adherence to the requirements established by the Occupational Health and Safety Act and its implementing provisions is the Labour Inspectorate. Local agencies of the Labour Inspectorate operate in each county (15). There are 75-78 labour inspectors altogether.

According to the Occupational Health and Safety Act, the main functions of the Labour Inspectorate are:

- Supervision over companies' adherence to the requirements of legal acts regulating occupational health and safety and labour relations. Supervision is carried out in the form of routine checks, targeted checks and checks on the observation of rules;
- Investigation of lethal occupational accidents and, when necessary, occupational diseases and severe occupational accidents;
- Supervision over the investigation of occupational accidents and implementation of measures for the prevention of occupational accidents and diseases;
- Prohibition of the hazards to workers or third persons; prohibition of the use of life-threatening work equipment.

The Labour Inspectorate has the right to implement necessary measures for ensuring strict adherence to legal acts, including the right to access a company, interviews with employers (with or without witnesses) on issues concerning occupational health and safety and labour relations, access to records employers have to keep and the right to make copies and statements of documents. Labour inspectors have the right to require the performance of working environment measurements from employers. In case of violation of the requirements of the Occupational Health and Safety Act and of legal acts established on the basis of the Occupational Health and Safety Act, labour inspectors have the right to issue a precept. In case of non-adherence to rules, labour inspectors have the right to demand penalty payments.

The table below shows the number of checks on adherence to occupational health and safety and other labour laws by the Labour Inspectorate from 2001 to 2003.

Table 1: Checks carried out by the Labour Inspectorate 2001-2003.

	2001	2002	2003
Total checks	6083	4734	5843
Incl. checks on occupational health and safety		4137	4542
Checks on labour relations		597	1301
Total follow-ups	535	583	1335
Companies checked	5548	4151	4508
Total of companies in operation	33179	35164	37454
% Of companies checked	16,7	11,8	12,0

Source of table and schemes: Final report of the project of mapping the processes and functions of the Labour Inspectorate by Business Grain, 2004.

Question B

Please state the occupations regarded as dangerous or unhealthy. If a list exists of these occupations, please supply it.

Estonia does not have a specific list of health-hazardous occupations. However, the following working conditions are considered health-hazardous:

- Working in an atmosphere that contains dangerous substances classified as poisonous (symbol T) or extremely poisonous (symbol T+)+);
- Working in an atmosphere that contains noise, vibration or electromagnetic field;
- Working in an atmosphere that contains ionising or non-ionising radiation, including UV, laser and infrared radiation;
- Working in an atmosphere that contains mineral or organic dust, paper dust, metal dust, wood dust or soot;
- Working in an atmosphere with low or high atmospheric pressure;
- Working in interiors with air temperature, relative atmospheric humidity or air velocity below or above the permitted level.

Question C

Where it has not yet been possible to eliminate or reduce sufficiently these risks, please state what provisions apply under legislation or collective agreements or otherwise in practice as regards reduced working hours or additional paid holidays in relation to this provision of the revised Charter.

The reduction of working hours is enforced by the regulation of the Government of Republic No. 405 of 18 December 2001, amended by regulation No. 318 of 01 November 2004 “**List of underground works, health-hazardous works and works of special nature for which reduced working hours apply; the number of reduced working hours.**”

According to the regulation, reduced working hours (less than 8-hour working day and 40-hour working week) apply to the following works:

Underground works

As to underground mining and mine construction, the following workers work up to 7 hours a day or up to 35 hours a week:

- Workers who work underground full day;
- Underground medical and communications workers and other workers who provide full day services to other underground workers.

Health-hazardous works

Reduced working hours (up to 7 hours a day or up to 35 hours a week) apply to workers who do health-hazardous work in the following conditions:

- Working in an atmosphere that contains dangerous substances classified as poisonous (symbol T) or extremely poisonous (symbol T+)+);
- Working in an atmosphere that contains noise, vibration or electromagnetic field;
- Working in an atmosphere that contains mineral or organic dust, paper dust, metal dust, wood dust or soot;
- Working in an atmosphere with low or high atmospheric pressure;
- Working in interiors with air temperature, relative atmospheric humidity or air velocity below or above the permitted level.

Reduced working hours (up to 6 hours a day or up to 30 hours a week) apply to workers who do health-hazardous work in the following conditions:

- Working in an atmosphere that contains ionising or non-ionising radiation, including UV, laser and infrared radiation.

Working hours are reduced for health-hazardous work if a danger factor's indicators exceed the established maximum levels and damage to health due to the danger factor cannot be avoided or reduced to the required level. Working hours are reduced until the danger factor's indicators reach the required level.

Works of special nature

Reduced working hours apply to the following medical workers:

- Up to 7 hours a day or up to 35 hours a week;
- Anaesthetists, anaesthetist-intensive care nurses and surgery nurses;
- Pathology unit workers;
- Intensive care unit medical workers;

- Up to 6 hours a day or up to 30 hours a week;
- Workers directly involved in forensic pathology autopsy;
- Radiology workers (radiologists, radiology nurses and technicians, biometric engineers, orderlies).

Other professions, up to 7 hours a day or up to 35 hours a week:

- Civil aviation flight operators, pilots and radar surveillance workers;
- Divers and caisson workers;
- Workers directly involved in drilling and blasting in pits.

Working hours are reduced for underground works, health-hazardous works and works of special nature provided that workers work in those conditions for at least 30 hours a week.

Giving additional holidays is enforced by the regulation of the Government of Republic No. 406 of 18 December 2001 “**List of underground works, health-hazardous works and works of special nature for which additional holidays are given; duration of additional holidays**”.

Underground works

14 calendar days of additional holiday is given to workers who work underground in mines or mine construction:

- Workers who work underground full day;
- Workers who work underground 50% and more of the total working hours per year (within accounting period);
- Underground medical and communications workers and other workers who provide full day services to other underground workers;
- Workers involved in the construction, reconstruction, readjustment or heavy repairs of mines, underground channels, tunnels and other underground facilities;
- Mine rescue service workers.

Health-hazardous works

7 calendar days of additional holiday is given for health-hazardous work to workers who work full day in the following conditions:

- working in an atmosphere that contains dangerous substances classified as poisonous (symbol T) or extremely poisonous (symbol T+)+);
- Working in an atmosphere that contains noise, vibration or electromagnetic field;
- Working in an atmosphere that contains ionising or non-ionising radiation, including UV, laser and infrared radiation;
- Working in an atmosphere that contains mineral or organic dust, paper dust, metal dust, wood dust, soot;
- Working in an atmosphere with low or high atmospheric pressure;
- Working in an atmosphere that contains biological danger factors of danger.

5 calendar days of additional holiday:

- Work in interiors with air temperature, relative atmospheric humidity or air velocity below or above the permitted level;
- Work involving constant lifting of weights by hand.

Additional holidays for health-hazardous works are given if the works pose a threat to health that cannot be avoided or reduced to the required level. Additional holidays are given on the basis of one danger factor.

Works of special nature

Workers who work on marine, river and harbour vessels are given additional holidays as follows:

- Workers of floating establishments – 7 calendar days;
- Rescue service workers – 7 calendar days;
- Port and marine pilots – 7 calendar days;
- Divers – 14 calendar days.

The following civil aviation workers are given 7 calendar days of additional holiday:

- aircraft crew;
- Paratroopers (landing fire-workers, instructors, rescue and search paratroopers, testers, subunit leaders doing parachute jumping or decent from copter, using special equipment);

- Workers of technical services participating in test flights (research) and owning aviation licence and permit to participate in test flights.

Railway transport workers are given additional holiday as follows:

- Drivers and assistant drivers of diesel, steam and electric engines and (diesel and electric) multiple unit trains – 7 calendar days;
- Engine drivers-instructors – 5 calendar days;
- Railway operators and shunting operators – 5 calendar days;
- Station managers – 3 calendar days.

Fire and rescue service workers are given additional holiday as follows:

- Up to 5 years of employment or service - 7 calendar days;
- 6-10 years of employment or service - 10 calendar days;
- 11-15 years of employment or service - 12 calendar days;
- Over 15 years of employment or service - 14 calendar days.

The following mine workers are given 7 calendar days of additional holiday:

- Workers mining natural resources and minerals and workers recultivating land; natural resource deposit and refuse workers; drilling and blasting workers;
- Workers responsible for supervision over works listed in the previous clause and workers responsible for handling explosives.

Question D

If some workers are not covered by provisions of this nature, whether contained in legislation, collective agreements or other measures, please state what proportion of all workers concerned is not covered (see Article I of the revised Social Charter).

Occupational health and safety requirements do not apply to sole proprietors.

According to the Statistical Office, in 2003 there were 21,464 registered sole proprietors in Estonia, of whom 11,961 were active in agriculture, hunting and forestry; 1,314 in fishery, 574 in processing industry and 194 in construction.

ARTICLE 3 PARA. 4

“With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations:

to promote the progressive development of occupational health services for all workers with essentially preventative and advisory functions”.

LEGISLATION

- Occupational Health and Safety Act;
- Regulation of the Minister of Social Affairs No. 159 of 28 December 2001;
- Arrangement of medical examination of workers. Regulation of the Minister of social Affairs No 74 of 24 April 2003;
- Tasks of occupational health specialists in providing occupational health services. Regulation of the Minister of Social Affairs No. 89 of 20 June 2003;
- Development plans of the specialties of medical doctors.

For legislation, please see also article 2 paragraph 4.

Question A

Please indicate whether occupational health services (health, security and occupational health services) exist in all companies and in all sectors. If not, please state whether plans have been made to establish them, when they will be implemented in practice and/or whether provision is made for inter-company services.

The **Occupational Health and Safety Act** (hereinafter *OHSA*) establishes the occupational health and safety requirements for persons working on the basis of an employment contract and public servants (hereinafter *workers*), the rights and obligations of employers and workers in creating and ensuring safe working environment, organisation of occupational health and safety on company and state

level, challenge procedure rules and responsibility for violation of occupational health and safety rules.

According to OHS § 13, which establishes the rights and obligations of employers, employers are required to:

- Conduct risk assessment of the working environment to ascertain the risk factors present in the working environment, measure their parameters as necessary and assess the possible effect of the risk factors on the health of workers, taking into account the gender and age characteristics of the workers;
- Organise the provision of occupational health services and bear the costs related thereto;
- Organise the provision of medical examinations for workers whose health may be affected, in the course of the work process, by risk factors present in the working environment or the nature of work, and bear the costs related thereto;
- Organise medical examinations for workers who work during night time before they start work and with regular intervals during employment;
- Designate workers in the enterprise for the provision of first aid and arrange training for them at the employer's expense;
- Ensure access by all workers to first aid equipment;
- Implement measures provided by employment contracts and collective agreements for prevention of damage to workers' health and for neutralization of negative influence of physical, chemical, biological, physiological and psychological hazards;
- Before a worker commences work or changes job, arrange for the worker to receive occupational health and safety instructions and training corresponding to the worker's position and occupation.

According to the Estonian legislation, companies need not have their own occupational health service providers; the services must be available for the employers at request.

Occupational health services are provided by legal persons or sole proprietors registered at the Health Care Board or licensed by the Health Care Board.

Outpatient occupational health services are provided in three forms:

- The company owns an independent occupational health service – occupational health doctor;
- The company orders a working environment risk analysis and medical examination of workers from the occupational health service by enabling temporary use of its facilities for the particular activities;
- The occupational health doctor provides outpatient health service outside the company.

Complicated and arguable cases of occupational diseases are directed to expert examination at a regional hospital.

In practice, the most frequently provided health care service is medical examination on the basis of single contracts.

The medical examination procedures (health requirements, frequency of checks, etc) of boat crews, flight specialists, engine drivers, motor vehicle drivers, fire and rescue workers, police officers, divers, blasters and radiation workers are established by the regulations of the Government of Republic and Minister of Social Affairs.

According to the Regulation of the Minister of Social Affairs No. 159 of 28 December 2001 **“Development plans of the specialties of medical doctors,”** one of the priorities is to ensure the provision of occupational health services to workers at greater risk. By 2005 up to 25%, by 2010 up to 35% and by 2015 up to 50% of the working population must be covered by the service of occupational health doctor.

Providers of occupational health services are located all over Estonia. Industrial regions are covered more densely. There are 81 occupational health doctors, 27 occupational health nurses and 2 occupational sanitation workers registered in Estonia. 37 licences have been issued for the provision of occupational health services.

The "Development plans of the specialties of medical doctors" aim at increasing the number of occupational health doctors to 95 by 2005, i.e. 1.6 doctors per 10,000 workers. This aim can be achieved if resident doctors and specialising doctors are added to the list of the current 81 occupational health doctors.

In 2005 it is planned to prepare the development plan of occupational health and modernise the development plan of the specialty of occupational health, list of

occupational diseases, diagnosing system and the procedures of workers' medical examination. An analysis for the comparison of the level of general diseases with the general working environment situation is also to be carried out. This will help to make conclusions on whether working environment has a negative effect on worker's health.

Question B

Please describe the functions, organisation and operation of occupational health services.

According to OHSA, occupational health service is the performance of tasks by an occupational health doctor, nurse, sanitation worker, psychologist or ergonomist (hereinafter *occupational health specialist*) aimed at creating a safe working environment, preventing occupational diseases and maintaining and improving worker's health and working ability.

Occupational health services are provided by legal persons or sole proprietors registered at the Health Care Board or licensed by the Health Care Board.

Providers of occupational health services are allowed to provide the following services:

- Risk assessment of working environment, including measuring the hazards;
- Medical examination of workers and evaluation of workers health;
- Rehabilitation of workers;
- Counselling employers on adaptation of working environment according to the abilities and health conditions of workers;
- Counselling employers on the selection and use of work equipment and personal protective equipment and improvement of working conditions;
- Psychological counselling of employers and workers.

According to the "Development plans of the specialties of medical doctors," occupational health is a field aimed at diagnosing, treatment and rehabilitation of occupational diseases, researching the influence of working conditions and work processes on the health of workers, determining the chemical, physical, biological, ergonomic and mental health risks posed by working environment and doing preventive work by improving working environment.

The regulation of the Minister of Social Affairs No. 89 of 20 June 2003 "**The tasks of occupational health specialists in the provision of occupational health services**" establishes the tasks of occupational health doctors, nurses, sanitation workers, ergonomists and psychologists in the provision of occupational health services.

An occupational health doctor has the following tasks:

- Conducting risk assessment of the working environment to ascertain the risk factors present in the working environment and assessing the possible effect of the risk factors on the health of workers, taking into account their gender and age characteristics;
- Medical examination of workers and evaluation of workers health;
- Advising employers on adaptation of working environment according to the health conditions of workers;
- Counselling of employers on the improvement of working conditions and selection and safe use of work equipment and personal protective equipment;
- Rehabilitation of workers.

Occupational health nurses assist occupational health doctors.

An occupational health sanitation worker has the following tasks:

- Conducting risk assessment of the working environment to ascertain the risk factors present in the working environment and assessing the possible effect of the risk factors on the health of workers;
- Counselling employers on the improvement of working conditions, including avoidance and reduction of danger factors in the working environment, and the selection and safe use of work equipment and personal protective equipment.

An occupational health ergonomist has the following tasks:

- Conducting a risk analysis of the working environment to ascertain the physiological and psychological risk factors present in the working environment and assessing the possible effect of the risk factors on the health of workers;

- Counselling employers on the ergonomic design of working places and adaptation of working places according to the physical and mental abilities of workers and their gender and age characteristics;
- Counselling of employers on the selection and safe use of work equipment.

An occupational health psychologist has the following tasks:

- Psychological counselling of employers, including advice on how to reduce work stress;
- Psychological counselling of workers.

The provision of occupational health services is based on various models:

- Large-scale enterprise model – the enterprise has its own occupational health doctor who ensures the availability of all necessary occupational health services. A multidisciplinary occupational health team is employed by the enterprise or the service is procured;
- Group services model – an occupational health doctor serves a number of companies and also ensures the provision of other necessary occupational health services (occupational health sanitation worker, ergonomist, etc). This model suits particularly medium and small enterprises;
- Regional model - an occupational health doctor (together with a multidisciplinary occupational health team) provides services on a certain territory;
- Field (economic sector) model – an occupational health doctor specialised e.g. in textile or construction industry (a multidisciplinary occupational health team) provides services for the whole sector.

A **working environment survey** conducted by AS Emor in 2000 showed that:

- In 1999, the average number of different costs by employers in relation to working environment and workers' health was 4.2; the most common costs were related to improving working and non-working conditions and purchasing work clothing and personal protective equipment; enterprises of the primary and secondary sector, i.e. enterprises that were less satisfied with their working environment, spent more on various aspects of working environment than the average costs;

- In 1999 (with 95% certainty) companies spent 2.4-4.5 billion EEK on working environment and workers' health. Companies spent most on the improvement of working environment (1.13-3.06 billion EEK), non-working conditions (0.49-0.72 billion EEK) and on work clothing (0.22-0.4 billion EEK); as to health, the most money was spent on the provision of sporting facilities (113-215 million EEK per year).

Please see also answers to question A.

ARTICLE 4 PARA. 1

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;"

"...The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions."

LEGISLATION

- ILO Convention No. 100. Equal remuneration for men and women workers for work of equal value.
- Constitution of the Republic of Estonia § 29: the right to choose profession, job and employer.
- Republic of Estonia Employment Contracts Act.
- Wages Act.
- Working Conditions of Workers Posted in Estonia Act.

Question A

Please state what methods are provided and what measures are taken to provide workers with a fair wage, having regard to national living standards and particularly to the changes in the cost of living index and in national income.⁴

⁴ If your country has accepted Article 16, there is no need to give information here concerning family allowances, etc.

The **Republic of Estonia Employment Contracts Act** (hereinafter *ECA*) establishes remuneration conditions as a compulsory component of employment contracts. It also establishes the requirement of fair treatment, *inter alia*, in remuneration (Wages Act § 26 (1) clause 6 and §§10-10³).

According to ECA, the legal rights of workers can be extended by collective agreements or employment contracts. Restricting working conditions or impairing workers' situation by employer's unilateral decision, law, administrative act or collective agreement is forbidden. Worse working conditions shall be considered invalid (Wages Act §§ 14, 15).

The ECA establishes equal rights for Estonian citizens and citizens of foreign states permanently residing in Estonia and persons without citizenship, unless stated otherwise in legislation.

The rights concerning labour relations of the citizens of foreign states permanently or temporarily residing in Estonia are established by the **Working Conditions of Workers Posted in Estonia Act**, according to which international private law applies to the employment contracts of posted workers. Regardless the law applied to the employment contracts, working conditions established in Estonian legislation are to be applied in full to posted workers as well, unless the conditions of the applicable law of a foreign state are more favourable for the workers. Applicable working conditions in Estonia are, *inter alia*:

- Wage rates;
- Conditions for additional remuneration or free time for overtime work, working at evening and night time, weekends and on national and public holidays;
- Limits to wage-docking;
- Remuneration in case of transfer to another job or temporary dismissal due to work stoppage or production emergency. (Employment Conditions of Workers Posted in Estonia Act § 4 and § 5 (1) clauses 7-10).

According to the ECA, it is forbidden to establish less favourable working conditions, including remuneration, for part-time workers or workers with fixed-term employment contracts than the working conditions for full-time workers or workers with open-end employment contracts (Wages Act §-d 13¹ and 13²).

Question B

Please specify if these include methods for fixing minimum wage standards by law or collective agreements.

The **Wages Act** provides the procedure of remuneration of persons working on the basis of employment contracts. According to the legal definition, remuneration is fee paid by the employer to the worker for work in accordance with the employment contract or legal act or in other cases provided by laws, collective agreements or employment contracts. Remuneration consists of basic remuneration and additional remuneration, bonuses and extra payments provided in legislation (§ 2 (1)). Basic remuneration is remuneration fixed in the employment contract or by law and calculated on the basis of hourly, daily, weekly or monthly wage rate. In cases provided in legislation or employment contract the employer pays the worker additional remuneration or extra payments.

The Government of Republic is authorised by the Wages Act to establish the minimum wage for a fixed time unit (hour, day, week, month, etc) (§ 2 (7)). Remuneration for full-time work must not be less than the minimum wage.

Regardless the fact that Estonia has not yet ratified the conventions of the International Labour Organisation concerning the minimum wage, ILO principles have been taken into account in establishing the minimum wage. The establishment of the minimum wage is preceded by negotiations between the representatives of employers and workers, i.e. a classic social dialogue. Negotiation results are fixed in an agreement on the basis of which the Government of Republic establishes the minimum hourly wage and monthly wage for full-time work.

Estonia has ratified the **ILO convention No 100** "Equal remuneration for men and women workers for work of equal value." The convention entered into force in Estonia in May 1996. The Wages Act establishes the principle of equal remuneration (§ 5¹), according to which it is forbidden to define different remuneration conditions for workers of different sex for work of equal value. Employers are obliged to notify workers of the legal regulations on equal remuneration upon the conclusion of employment contracts. In case of an equal treatment dispute, the burden of proof lies

on the employer. Workers have the right to demand compensation for damages caused by the violation of the principle of equal remuneration.

According to the Wages Act, § 7 (2), it is forbidden to fix by a full time employment contract an hourly or monthly wage lower than the minimum wage established by the Government of Republic. More favourable conditions for workers may be established by collective agreements or employment contracts.

The custom of social dialogue that is becoming rooted in Estonia enables increasingly better protection of workers' interests, ensuring thereby economic development and sustainability. Social partners have been discussing the possibility of agreeing on a long-term rise in the minimum wage, which would make the parties feel more secure about the future.

In addition to the above-described remuneration regulations for persons working on the basis of employment contracts, there are special remuneration regulations in Estonia **for public servants, members of the Defence Forces, officials of foreign services and persons working on the basis of other types of service contracts.** General provisions of wage administration in issues not enforced by special regulations apply also to persons remunerated on the basis of special regulations.

Question C

Please indicate what proportion of wage-earners is without protection in respect of wages, either by law or collective agreement.

There are no exceptions in legislation.

Question D

Please provide information on:

– national net average wage⁵ (i.e. after deduction of social security contributions and taxes⁶);

– national net minimum wage if applicable or the net lowest wages actually paid (i.e. after deduction of social security contributions and taxes).⁷

Please provide information, where possible, on:

– the proportion of workers receiving the minimum wage or the lowest wage actually paid (after deduction of social security contributions and taxes);

– the trend in the level of the minimum net wage and/or the lowest wage actually paid compared to national net average wage and any available studies on this subject.

⁵ In principle the net average wage should be the overall average for all sectors of economic activity. The average wage may be calculated on an annual, monthly, weekly, daily or hourly basis. Wages cover remuneration in cash paid directly and regularly by the employer at the time of each wage payment. This includes normal working hours, overtime and hours not worked but paid, when the pay for these latter are included in the returned earnings. Payments for leave, public holidays and other paid individual absences may be included insofar as the corresponding days or hours are also taken into account to calculate wages per unit of time.

⁶ The net wage (average and minimum) should be calculated for the standard case of a single worker. Family allowances and social welfare benefits should not be taken into account. Social security contributions should be calculated on the basis of the employee contribution rates laid down by law or collective agreements etc. and withheld by the employer. Taxes are all taxes on earned income. They should be calculated on the assumption that gross earnings represent the only source of income and that there are no special grounds for tax relief other than those associated with the situation of a single worker receiving either the average wage or the minimum wage. Indirect taxes are thus not taken into account.

⁷ The net minimum wage should be given in units of time comparable to those used for the average wage.

Tabel 2: Average gross and net monthly wage by quarters 2000-2004⁸.

Year	Quarter	Average gross monthly remuneration (EEK)	Average gross monthly wage (EEK)	Average net monthly wage (EEK)
2000	I	4501	.	3536
	II	5031	.	3933
	III	4694	.	3682
	IV	5279	.	4128
2001	I	5098	.	4021
	II	5767	.	4518
	III	5300	.	4176
	IV	5879	.	4603
2002	I	5721	5673	4460
	II	6353	6301	4927
	III	5853	5800	4551
	IV	6512	6453	5033
2003	I	6333	6257	4887
	II	6915	6847	5308
	III	6431	6360	4963
	IV	7127	7039	5485
2004	I	6748	6678	5273
	II	7417	7348	5752
	III	7021	6948	5471

Source: Statistical Office

⁸ Covers workers working on the basis of employment contract, service contract and public law.

Tabel 3: National minimum monthly wage⁹ and share of full-time workers receiving minimum monthly wage.

Year	Minimum monthly wage	Share of full-time workers receiving minimum wage (%)
2000	1400	6,5
2001	1600	7,4
2002	1850	6,9
2003	2140	6,4
2004	2480	
2005	2690	

Source: Statistical Office

Relying on the statistics above it must be said that the net minimum wage in Estonia established on the national level does not form 60% of the average net wage, which is the level of dignified subsistence according to the Charter. However, a fall in the share of people receiving minimum wage in the last two years is a positive trend, which is also backed up by statistical data.

Considering the predictions for economic growth and rise in wages, Estonia will not be able to achieve the level of fair remuneration (Charter, article 4.2), i.e. situation where the national minimum wage forms 60% of the average wage, in the near future.

The statistical office has researched the subsistence of workers *inter alia* via comparison of wage index and consumer price index. Leaving aside the fluctuations of the average wage over quarters, a gradual improvement in the ratio of wage index and consumer price index can be detected.

⁹ Gross wage

Table 4. Wage index and consumer price index 2001-2004

	Quarter	Average gross monthly wage, EEK	Wage index	Consumer price index	Ratio of wage index and consumer price index
2001	I	..	..	..	..
	II	5767	100	100	1
	III	5300	91,9	100,7	0,91
	IV	5879	101,9	100,8	1,01
2002	I	5721	99,2	102,7	0,97
	II	6353	110,1	104,2	1,06
	III	5853	101,5	103,6	0,98
	IV	6512	112,9	103,8	1,09
2003	I	6333	109,8	105,2	1,04
	II	6915	119,9	104,9	1,14
	III	6431	111,5	104,8	1,06
	IV	7127	123,6	104,9	1,18
2004	I	6748	117,0	105,7	1,11
	II	7417	128,6	108,3	1,19
	III	7021	121,7	108,9	1,12
	IV	..	..	..	..

Source: Statistical Office

ARTICLE 7 PARA. 5

"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances."

LEGISLATION

- Constitution of the Republic of Estonia § 29: the state is obliged to provide vocational training and assist job-seekers in finding a job;
- Study Allowances and Study Loans Act;
- Vocational Education Institutions Act;
- Wages Act;
- Annual State Budget Act.

Question A

Please indicate the general rules applying to the wages of young workers and to the appropriate allowances of apprentices.

All general principles of remuneration for work established in the **Wages Act** apply to all young workers.

The **Study Allowances and Study Loans Act** provides study allowance for students obtaining secondary vocational education after upper secondary education. From 01 September 2005, students obtaining secondary vocational education after basic education are also entitled to study allowance. Study allowance is paid mainly on the basis of study performance. Besides study performance, students' socio-economic situation may be taken into account. Vocational education institutions establish the exact rules and conditions for paying scholarship.

Resources for (state) scholarship for students are provided with the annual **State Budget Act**. According to the allocated resources, 40% of students studying on state-commissioned study places receive study allowance.

Please see also article 10 para. 5 question B.

Question B

Please give available statistical information on the level of wages for young workers and on the appropriate allowances for apprentices.

The Ministry of Education and Research is not in possession of relevant statistical data on study allowances and remuneration of vocational apprenticeship.

ARTICLE 7 PARA. 6

"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;"

The Estonian vocational education system is (educational) institution-centred. The curricula of students studying on the basis of basic education contain besides vocational subjects also general education subjects. Part of vocational training is apprenticeship. Vocational students are not involved in labour relations.

If a vocational student works on self-initiative on the basis of an employment contract, all labour law provisions, including the minimum wage, apply to the student equally with other workers.

The Ministry of Education and Research is going to introduce *apprenticeship service* into the Estonian vocational education system. In preparing and implementing apprenticeship service, relevant international law is relied on.

ARTICLE 10 PARA. 2

"With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments."

LEGISLATION

- Vocational Education Institutions Act.

Question A

Please give an account of the legal framework and the functions, organisation, operation and financing of apprenticeships and/or other systems for training young boys and girls in various jobs in your country.

1. Initial vocational education and training

For a description of the legislative framework, administration and financing of the vocational education system in Estonia, please see article 10, paragraph 1. – Second report on the implementation of the Revised European Social Charter submitted by The government of Estonia (for the period 1 January 2001 to 31 December 2002: Articles 2, 3, 4, 8, 9, 10, 11, 14, 15, 17, 21, 22, 24, 25, 27, 28 and 29. Report registered at the Secretariat on 1 June 2004, Cycle 2005.

1.1 Apprenticeship training

The Phare 2002 Apprenticeship project

The aim of the Phare 2002 apprenticeship project is to develop and implement apprenticeship-training programmes in order to contribute to the integration of young people with vocational skills into the labour market.

The broader aims of apprenticeship training are:

- To improve the flexibility of the vocational education system enabling young people to have a wider choice of study pathways;
- To create newer and additional opportunities to ensure the social and vocational readiness of young people when they commence work;
- To reduce youth unemployment;
- To launch the co-operation of trainers and their social partners;
- To support business development, primarily in regions with a high unemployment rate as well as economically active regions, and involve more adults in training.

The project is directed at young people who have not finished basic school or who only have general secondary education, but have no vocational skills enabling them to start work. The aim of the project is to involve approximately 200 young people in the project by the end of their training period. As of September 2004, 160 people are participating in the project.

Training started in May 2004 with the participation of seven vocational education institutions and 25 companies. The training period is 60 weeks and will end with qualification examinations in September 2005.

The project covers the following sectors and specialities:

- Accommodation and catering services (housekeeping attendant);
- Construction (general builder, assembler of buildings);
- Timber and furniture industry (machine-tool operator-fitter, joiner, upholsterer, builder of log houses);
- Trade and services (cleaner, seller-cashier);
- Clothing and textile industry (dressmaker, sewer of footwear uppers);
- Electronics (maintenance operator of electrical equipment, installer of security devices);

- Metal industry (machine tool operator, assembly fitter, welder);
- Horticultural and landscaping design (gardener);
- Plastics industry (operator of plastics industry).

The apprenticeship project is a pilot project, and it is planned that an apprenticeship training system be developed and implemented in Estonia on the basis of this pilot project. A working-group, including representatives from the state and schools, has been established to develop the apprenticeship system. Employers will also be included in its development – the concept of the system will be introduced to them and they will be expected to give their opinions and offer comments.

1.2 Other youth programmes and alternative pathways

As an alternative, young people can have vocational training in upper secondary schools, and young men with behavioural problems will have an opportunity to take part in the project, New Opportunity.

Vocational training in upper secondary schools

The aim of vocational training in upper secondary schools is to help prepare students for career planning and making life decisions, to help them obtain the social readiness to continue their studies and enter the labour market. Another aim is to broaden the potential of vocational training and make vocational training available to everybody who wants to study. Studying a vocational curriculum, or curricula, in upper secondary schools will make it easier for the learners to study in vocational education institutions (the studies completed will be taken into account when starting on a curriculum in the same area of specialisation), and it will help them make a choice between different vocational fields and curricula. Vocational training in upper secondary schools is carried out by vocational education institutions to provide learners receiving a general secondary education with initial vocational and professional knowledge and skills. The volume of vocational training is 15-40 weeks of study.

The following is considered in financial terms:

- Financing vocational training in general education schools is project-based, student place oriented and centred on the application of the vocational education institution according to established priorities;
- State financing, from the funds for vocational education, amounts to 2/3 of the costs of vocational training carried out in general education schools, while financing from other sources (general education schools, owners of general education schools, and others) will make up the rest of the curricula costs, amounting to at least 1/3;
- Courses of less than 15 weeks of study are not financed from the state vocational education budget.

Pilot project – ‘New opportunity’

The aim of the project is to give young men, who have not finished basic school, a new opportunity to finish their studies in order to receive a basic education, to pass preliminary vocational training and to continue their further education.

During the project, the boys who had not finished basic school will be helped to get rid of bad habits and to acquire the knowledge, skills and experience necessary for life through a basic school curriculum and preliminary vocational training in a study group with basic military-style rules. One educational institution in Estonia offers that type of training. The project target group is 15-17 year old boys who have not finished basic school. Every year, 60 students will be admitted within the framework of the project.

In the development of the project, the US experience with difficult youth behaviour was considered, in regard to those who had not finished secondary school and needed help in studying for diplomas of general education.

During their period of study, students can obtain free food and clothes, and they receive an allowance to cover routine costs (study materials, etc.). They live in a hostel, a separate building, which has both living quarters and classrooms.

2. Recent policy developments

In the 1990's, the lack of qualitative information related to the labour market rendered it difficult to prepare appropriate state-commissioned education for initial vocational

education and work-related training. In addition, the principles of the centralised administration of vocational schools does not enable a rapid adaptation to the needs of the regional labour market or to take into account the increased interest of local authorities in vocational education and work-related training. Co-operation between different partners has improved a lot enabling schools to train a more qualified labour force according to requirements of the economic sector. In 2000, the creation of regional vocational education centres began. These centres are expected to provide multifunctional services, such as initial vocational and professional higher education and re-training, analysis of the labour market, curriculum development, counselling and training for instructors. In general, attention is being paid to optimising the network of vocational schools, which should consist of regional vocational training centres and specialised niche schools.

The development plan of the network of vocational education institutions for 2005-2008 foresees an essential decrease in the number of vocational education institutions. Vocational education institutions will merge, creating opportunities for the concentration of available resources and better use of funds. In a merged vocational education institution, there will be improved potential for allocating available resources to assure the quality of the vocational education. If at present a budget of 45 million euros for vocational education institutions is divided between 49 vocational education institutions, in the future, the number of state-financed vocational education institutions will be between 25-29.

Between 2004-2006, 10 vocational educational institutions will receive funds from the European Regional Development Funds (ERDF), in total 19.3 million euros. For the years 2007-2008, it has been planned to allocate approximately 10.9 million euros from the ERDF to vocational education institutions. The above sums will be used to renovate and upgrade the basis for studies in vocational education institutions and improve the training and student living conditions.

Table 5: Costs of vocational education acquired within the adult education system.

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004 estimate
Total amount in the budget of the public sector (million kroons)	269.3	350.5	416.2	473.4	493.9	493.2	525.9	551.9	581.7	811.0
% of GDP	0.63	0.63	0.61	0.60	0.60	0.53	0.50	0.47	0.46	0.59
Incl. the total amount in the state budget (million kroons)	268.1	347.7	413.0	469.2	490.4	489.3	512.4	537.5	564.4	793.7
% of the state budget		1.84	1.89	1.87	1.75	1.73	1.71	1.57	1.49	1.64
% of the state budget's educational costs	18.2	17.9	18.0	17.2	14.8	14.7	14.3	12.8	12.0	12.9

Source: The Ministry of Education and Research, analysis and planning department 2005

Note: According to the international methodology the educational costs in the budget of the public sector do not include schools' own incomes.

Question B

Please give an account of the measures taken to implement this provision, stating approximately, if possible, the number of young persons benefiting from training systems.

Please see answer to question A.

Question C

Please indicate how the arrangements for vocational training are divided between the various types of vocational activity.

Please see answer to question A.

Please see also answer to article 10 para. 1 question B. - Second report on the implementation of the Revised European Social Charter submitted by the government of Estonia (for the period 1 January 2001 to 31 December 2002: Articles 2, 3, 4, 8, 9, 10, 11, 14, 15, 17, 21, 22, 24, 25, 27, 28 and 29. Report registered at the Secretariat on 1 June 2004, Cycle 2005.

Question E

Please indicate whether the measures described are applicable to all categories of young boys and girls likely to benefit from and wishing to undertake apprenticeship or vocational training. If this is not the case, please give an estimate of the proportion of those not covered and, if possible, indicate the categories concerned.

Please see answer to question A.

Question F

Please indicate whether equality of access to apprenticeship training is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled persons.

According to the legislation all people have an equal right to vocational training.

Pursuant to § 18 of **the Vocational Educational Institutions Act** the language of instruction in schools is Estonian. The Ministry of Education and Research shall decide on the use of other languages as languages of instruction.

Table 6: The number of students at vocational educational institutions.

Academic year	Total number of students	Including Russian speaking
2001/2002	29 813	10 510
2002/2003	28 095	9 619
2003/2004	28183	9 748

Table 7: The number of Russian speaking students in the academic year 2003/04.

Field of study	Level			TOTAL
	Vocational education the basic education of which has not been determined	Vocational education on the basis of secondary education	Vocational secondary education on the basis of basic education	
Architecture and construction	1	199	914	1 114
Computer sciences		552	359	911
Personal service		434	775	1 209
Arts		90	90	180
Technical subjects	119	1 023	2 324	3 466
Health		141		141
Production and processing	16	293	1 086	1 395
Transportation services		155	145	300
Business and administration		697	335	1 032
TOTAL: Curricula in Russian	136	3 584	6 028	9 748
TOTAL: Number of students	264	10 787	17 130	28 183

Source: The Ministry of Education and Research, analysis and planning department 2005.

Please see also [article 10 paragraph 1 \(3.5\)](#). - Second report on the implementation of the Revised European Social Charter submitted by the government of Estonia (for the period 1 January 2001 to 31 December 2002: Articles 2, 3, 4, 8, 9, 10, 11, 14, 15, 17, 21, 22, 24, 25, 27, 28 and 29. Report registered at the Secretariat on 1 June 2004, Cycle 2005.

ARTICLE 10 PARA. 5

"With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

to encourage the full utilisation of the facilities provided by appropriate measures such as:

- a. reducing or abolishing any fees or charges;*
- b. granting financial assistance in appropriate cases;*
- c. inclusion in normal working hours, the time spent on supplementary training taken by the worker, at the request of his employer, during employment;*
- d. ensuring, through adequate supervision, in consultation with employer and worker organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally."*

LEGISLATION

- Adult Education Act.
- Holidays Act.
- Income Tax Act.
- State Family Benefits Act.
- Study allowances and Study Loans Act.
- Unemployed Persons Social Protection Act.

Question A

Please give a brief account of any fees or charges imposed in respect to vocational training and indicate, where appropriate, measures taken to reduce or abolish such fees or charges.

1. *Funding for initial vocational education and training*

Acquiring general upper secondary education and secondary vocational education according to the vocational education curricula on the basis of basic education is free of charge in municipal and state schools. According to the agreement between the Ministry of Education and Research and rural municipality or city governments, studies according to the secondary vocational education curricula conducted on the basis of upper secondary education may also be free of charge.

2. Funding for continuing vocational education and training and adult learning

Obtaining a basic education and general upper secondary education in the form of evening courses, distance learning or as an external student is free. Within the scope of state commissioned education, post-secondary vocational education (non-tertiary) is also free in the form of distance learning, but the number of such study places is limited. Higher education study is mostly not free for people for whom studying is not the primary activity.

Work-related training and informal education (continuing education and retraining) are not state-financed in Estonia. Continuing education and retraining is organised in state vocational education institutions according to the current curricula of formal education and other curricula and by private vocational education institutions or training centres. The tuition fees are paid by the clients i.e. either natural persons or employers who want their employees to be trained.

The state supports people's participation in training through the taxation system. In accordance with the **Income Tax Act**, people have a right to be exempted from income tax to the extent of the sum spent on training. Training financed by employers is not considered a fringe benefit, however, it is considered a fringe benefit when the employer pays for an employee's formal or informal education.

Question B

Please describe the system existing in your country for providing financial assistance (allowances, grants, loans, etc.) to participants in vocational training. Please indicate also the nature of the financial assistance provided (amounts, duration, eligibility criteria, etc.).

Please indicate whether equal treatment in respect of financial assistance is ensured for nationals of all the Contracting Parties to the Charter lawfully resident or working regularly in your territory.

1. Family benefits

According to the **State Family Benefits Act**, the partial reimbursement of expenses relating to the care, raising and education of children is possible for families with children. Families receive family benefits until the child attains 16 years of age, and if the child is studying in basic school, in upper secondary school or vocational school on the bases of basic education in daytime study, until 19 years of age. When attaining 19 years the benefits are paid until the end of the school year.

2. Study allowances and study loans

Students of state or municipal vocational schools who are acquiring vocational upper secondary education on the basis of basic education have the right to apply for a study allowance.

Students who are acquiring a vocational education on the basis of upper secondary education have the right to apply for a study allowance and to obtain a study loan.

According to the **Study Allowances and Study Loans Act**, a student who is an Estonian citizen or is staying in Estonia on the basis of a permanent or temporary residence permit, and is acquiring secondary vocational education on the basis of secondary education according to a study programme, which foresees student training places financed by state, or is acquiring a higher education according to a study programme which foresees student places formed on the basis of state commissioned education in full-time study and has not exceeded the nominal period of studies according to the study programme, has the right to apply for the basic

study allowance. Students, whose residence is located outside the local government area in which the educational institution at which they are studying is located or outside the bordering local government area, will be granted a supplementary allowance.

Study allowances are granted according to the order of merit lists within the limits of the funds prescribed therefore in the state budget and allocated to educational institutions. The amount of the basic allowance and supplementary allowance paid to students each month is established annually by the state budget. Study allowance funds are allocated to educational institutions from the state budget through the budget of the Ministry of Education and Research.

An Estonian citizen or a person staying in Estonia on the basis of a permanent residence permit, the duration of whose studies according to the study programme is nine calendar months or more, has the right to obtain a study loan, if he or she is enrolled in full-time study on the basis of upper secondary education at a state or municipal vocational school or at a private vocational school; or is enrolled at an Estonian university in public law, at a state institution of professional higher education or at a private university or private institution of professional higher education; or is studying abroad at an educational institution and in a form of study similar to the abovementioned.

Credit institutions that grant study loans from the funds of their credit resources are deemed to be lenders of study loans. The Minister of Finance announces the tender, decides on the results of the tender and enters into a contract for the management of grants or study loans with the credit institution selected, by way of tender on behalf of the state. The state secures the study loan for the recipient to the extent of the maximum rate established by the Government of the Republic and the interest to be paid to the credit institution on the amount of the study loan by the recipient (state guarantee).

The recipient of a loan shall commence repayment of the loan amount not later than twelve months after finishing his or her studies and completing the study programme if, during that time the recipient of the loan has not begun to continue his or her studies at another educational institution specified above. Any person, who has commenced service or employment in a state or local government authority or has commenced employment for a legal person in public law, has the right to have part of

the amount of his or her study loan, which has not yet been repaid written off by his/her employer.

3. *Transport benefits*

Students of state vocational schools who are studying according to the upper secondary vocational education curricula on the basis of basic education, of private vocational schools that have an education licence, of state upper secondary schools (gymnasiums) and of sanatorium schools and of schools for students with special educational needs who are studying in daytime form and whose residence is located outside the local government in which the educational institution at which they study is located, are provided transport benefits from the state budget to cover transport expenses between the institution and the permanent place of residency: for students of vocational schools up to two times in months; for students of state upper secondary schools and of sanatorium schools and of schools for students with special educational needs up to four times in a months. Also transport expenses for travelling to the permanent place of residency and back on national holidays and school holidays are covered. For students travelling every day to an educational institution and back to the permanent place of residency, transport expenses are covered to the extent of one return ticket per day (period ticketed recommended).

Local authority may decide on allocating transport benefits to students of municipal schools.

Table 8: Scholarships, travel fare concessions and education allowances to students of vocational educational institutions in the budget of the Ministry of Education and Research in 2000-2005 (thousand kroons).

	2000	2001	2002	2003	2004	2005
Travel fare concessions	10 471.3	10 105.1	8 595.1	8 283.8	7 994.4	9 135.0
Scholarships	3 706.6	3 870.0	5 878.8	3 853.0	4 038.4	0.0
Education allowances				10 466.1	56 957.4	68 824.6

Source: The Ministry of Education and Research, analysis and planning department 2005.

4. Stipends to unemployed persons

According to **the Unemployed Persons Social Protection Act**

Stipends are granted to the unemployed persons if they attend a course of at least 80 hours. The employment office keeps records of all receivers of stipends and payments, including the payment of additional stipends (travelling costs).

Table 9: Cost of social protection for the unemployed (in thousand euros).

	1997	1998	1999	2000	2001	2002	2003
Total cost of social protection for unemployed	5781,0	6110,1	15746,2	17162,8	17246,7	12222,9	10307,7
Including:							
Organisation of training	1773,9	1775,2	2044,7	2057,5	2703,7	3037,4	2792,6
Stipends	341,4	258,9	384,7	388,7	467,7	456,8	461,8

Source: Labour Market Board.

Question C

Please indicate the measures taken to include time spent on training taken by workers, at the request of their employer, in the normal working hours.

Persons employed under an employment contract and persons in public service shall be granted study leave in order to participate in education and training. In order to participate in formal education, within the adult education system, and at the request of an employee or public servant, study leave, of at least thirty calendar days in an academic year, shall be granted for study sessions on the basis of confirmation from the relevant educational institution. Additional study leave shall be granted for the completion of study on 28 calendar days (in the case of basic education) to as much as 49 calendar days (in the case of the defence of a Master's or Doctoral degree). The employer shall continue to pay an employee or public servant the average wages of the employee or public servant for ten days while on study leave acquiring

formal education within the adult education system. For the remaining days of study leave, the employer shall pay the employee or public servant at least the established minimum wage.

In addition to the study leave, the employer shall grant holiday leave without pay, up to seven calendar days, at the request of the employee or public servant and on the basis of confirmation from the relevant educational institution for the time indicated in the request.

In order to participate in work-related training, study leave of at least 14 calendar days, in a year, shall be granted on the basis of an application from the employee or public servant and confirmation from the relevant educational institution. During this time, the employee or public servant shall continue to receive his or her average wage.

Question D

Please indicate the supervision and evaluation measures taken in consultation with social partners to ensure the efficiency of apprenticeship and other training arrangements for young workers.

In the last decade, the involvement of social partners in administrative and consultative bodies of the education system has evolved substantially. In particular, employers have been assigned to play a more active and influential role, which is reflected in their participation in the Vocational Councils and in the framework of the creation of the "National Employee Qualification System".

On the national level, social partners have been represented by Eesti Kaubandus-Tööstuskoda (the Estonian Chamber of Commerce and Industry) and Eesti Töoandjate Keskkliit (the Estonian Association of Employers). Their membership includes enterprises, employer/employee unions and the more active employer associations. Through tripartite negotiations, a consensus has been reached about the organisational structures of vocation/profession-related initial-, re-, and complementary training and employee qualification and vocation/profession-attribution systems in Estonia.

On the regional level, participation of social partners in vocational/professional education depends mostly on the enthusiasm of the school and developmental level of the specific enterprise. Co-operation is present on the enterprise-school level.

Table 10: Participation of social partners in vocational/professional education.

	Responsibilities of social partners	Type of role (advisory/decision making, direct/indirect)
National level	Planning the reorganisation of the vocations/professions, which do not have higher education as a prerequisite, preparing preliminary laws, formulating strategies and vocational/professional conception	Decision making/direct
Regional level	Formulating and providing qualification and vocational standards	Advisory/direct
Sectoral level	In-company training sessions organised by employers or co-operation contracts between vocational guilds and the VET institution in order to match required qualification standards and programmes	Decision making/direct
Enterprise level	Training the necessary skilled workers/personnel by employers/companies	Decision making/direct

Question E

Please indicate if the provision of sub-paragraphs (a), (b) and (c) of Article 10 para. 4 are applicable to the great majority of the persons concerned.

The right to deduct the training expenses related to obtaining vocational education and the study loan interests should extend to all participants in the training.

Financial allowances shall be paid within the limits established by the state budget.

The possibility to receive study leave with partial or complete retention of salary shall be extended to distant or external students acquiring formal education within the adult education system, in the case of professional training and informal education to everybody.

ARTICLE 13 PARA. 4

"With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953."

LEGISLATION

- European Convention on Social and Medical Assistance.
- Aliens Act.
- Citizen of European Union Act.
- Health Services Organisation Act.
- Refugees Act.
- Social Welfare Act.

Question

Please indicate the guarantees which ensure conformity with this provision. Please describe more specifically the provisions which ensure that any repatriation of nationals of other Contracting Parties who are legally within the territory on the sole ground that they are in need of assistance is carried out according to the conditions laid down in Article 6 to 10 of the European Convention on Social and Medical Assistance 1953.

The European Convention on Social and Medical Assistance and its Protocol Ratification Act was passed in the Riigikogu (Parliament) on 24 March 2004. The Act was proclaimed by the President of the Republic on 7 April 2004 and entered into force on 1 August 2004.

In the ratification of the Convention the Republic of Estonia introduced two restrictions.

The first restriction concerns expulsion of a person. Pursuant to Article 6a of the Convention a Contracting Party shall not expel a citizen of another Contracting Party who lives on its territory back to their homeland only for the reason that the person needs assistance. Pursuant to the **Aliens Act** one precondition for issuing residence permits to persons is permanent legal income (clause 12 (1) 4)). Legally earned wages and salaries, income from legal business or property, pensions, stipends, benefits paid by a foreign country, maintenance of parents, as well as other subsistence guaranteed by family members who have legal income are considered as legal income. If an alien loses his or her job and has no above-mentioned income, there is no basis for them to stay in Estonia. The income requirement applies also to the citizens of the European Union and their family members pursuant to the **Citizen of European Union Act**. Thus, a person may be expelled from the country because of the absence of sufficient income. However, if a person has legal income but requires any other kind of other assistance, the need for support in itself cannot serve as a basis for the expulsion of the person.

Article 11b of the Conventions states that a person is not expelled if the execution of the expulsion order is suspended. On the other hand, it is not directly clear in the Convention under which circumstances the execution of the order is suspended. For the purposes of prevention of unambiguous interpretation of the Convention it was reasonable to introduce the restriction. According to the above restriction, when decisions are made on the revoking or extension of a person's residence permit it would be necessary to follow the applicable Aliens Act and Refugees Act since the latter establishes independent basis for the application for residence permits.

The other restriction applies to Article 8a of the Convention. According to the Article a Contracting Party who has expelled a person back to their homeland shall carry the costs made for expulsion of the person until their state border. This provision is not in compliance with § 16¹ of the Aliens Act. According to the Aliens Act an alien or a person at whose invitation an alien arrives in Estonia is required to bear the costs of the stay of the alien in Estonia and his or her departure from Estonia, including transportation costs borne in connection with the expulsion of the alien from Estonia. Upon failure to perform such obligation, an alien or a person who has invited an alien is required to compensate the state for such expenses.

The **Social Welfare Act** guarantees equal treatment of persons who need social assistance. Pursuant to the Act the following persons have the right to social services, social benefits and other assistance:

- Permanent residents of Estonia;
- Aliens living in Estonia on legal basis;
- Refugees staying in Estonia.

Each person staying in Estonia has the right to emergency social assistance.

Pursuant to the Social Welfare Act emergency social assistance means necessary social welfare measures in correspondence with the situation of a person without sufficient means of subsistence, which guarantees the person at least food, clothing and temporary shelter.

The right to general medical assistance is established in the **Health Services Organisation Act**. Corresponding to the Act every person on the territory of the Republic of Estonia has the right to receive emergency care. Health care professionals are required to provide emergency care within the limits of their competence and with the means available.

For the purposes of the Health Services Organisation Act, emergency care means health services, which are provided by health care professionals in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care.

Health services are the activities of health care professionals for the prevention, diagnosis or treatment of diseases, injuries or intoxication in order to reduce the malaise of persons, prevent the deterioration of their state of health or development of the diseases, and restore their health. The Minister of Social Affairs shall establish the list of health services.

Pursuant to the **Refugees Act**, during his or her stay in Estonia, a refugee has the right to receive state allowances, family benefits, employment services and state unemployment benefits, social benefits and other assistance on the same grounds as a permanent resident of Estonia as provided for by law and pursuant to the conditions and procedures established by the Government of the Republic (subsection 14 (1)).

According to current practice, corresponding to the data of the Citizenship and Migration Board, no aliens staying in the country with legal residence permit have been expelled because of the absence of income.

ARTICLE 18: THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER PARTIES

LEGISLATION:

- The Constitution of the Republic of Estonia

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

§ 29: An Estonian citizen has the right to freely choose his or her area of activity, profession and place of work. Conditions and procedure for the exercise of this right may be provided by law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by law.

The state shall organise vocational training and shall assist persons who seek employment in finding work. Working conditions shall be under state supervision.

§ 30: Positions in state agencies and local governments shall be filled by Estonian citizens, on the basis of and pursuant to procedure established by law. These positions may, as an exception, be filled by citizens of foreign states or stateless persons, in accordance with law.

The right of some categories of state public servants to engage in enterprise and to form commercial associations (§ 31), as well as the right to belong to political parties and some types of non-profit associations (§ 48) may be restricted by law.

§ 31: Estonian citizens have the right to engage in enterprise and to form commercial undertakings and unions. Conditions and procedure for the exercise of this right may be provided by law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by law.

§ 35: Everyone has the right to leave Estonia. This right may be restricted in the cases and pursuant to procedure provided by law to ensure the administration of court or pre-trial procedure, or to execute a court judgment.

- Administrative Procedure Act.
- Aliens Act.
- Citizen of European Union Act.
- Obligation to Leave and Prohibition to Entry Act.
- State Fees Act.
- Annual establishment of the immigration quota by the Government of the Republic of Estonia.
- Establishing the rates of legal income provided in the Aliens Act. Regulation of the Government of Estonia no 126 of April 22, 2003.
- The procedure and deadlines of applying for, providing, extending and cancellation of a residence permit and work permit and the list of certificates and data submitted when applying for a work or residence permit and entering the residence permit data in the alien's travel document and the procedure of registering alien's being away from Estonia. Regulation of the Government of Estonia no. 364 of November 26, 2002.
- The procedure of registration of an alien working in Estonia short term. Regulation of the Minister of Internal Affairs no. 44 of April 8, 2003;.

ARTICLE 18 PARA. 1

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

to apply existing regulations in a spirit of liberality;"

Question A

How is this paragraph observed in your country, both with regard to wage-earners and with regard to others?

Citizenship and Migration Board process residence and work permits. Their practice is described in answer to the question B.

Question B

Please indicate the number of permits granted compared with the number of applications made.

In 2004, 538 applications for a residence permit for employment were submitted. In 7 cases the application was turned down (1.3%), positive decisions were adopted in 531 cases (98.7%).

Table 11: Rejected applications in 2004 by citizenship.

The USA	1
Israeli	1
French	1
Ukrainian	1
Belarusian	1
Russian	2

Source: Citizenship and Migration Board.

In 2004, 4 applications were submitted for a residence permit for enterprise. None of these applications were turned down.

Question C

Please state whether your country applies restrictions to the right to engage in a gainful occupation by nationals of other states and if so, please mention the grounds.

The legal basis for alien taking employment Estonia is stipulated in section of 13 of the **Aliens Act**.

An alien is required to have a residence permit for employment or a work permit for activity in Estonia on the basis of an employment contract or other contract, and for other activities for the benefit of other persons where obtaining gain or any other proprietary benefit can be presumed, regardless of the type or form of the contract on which such activity is based, and the location of the seat or residence of the other party (hereinafter employment), unless otherwise provided by law or an international contract.

The immigration quota shall be applied in the case of applying for the residence permit for employment or enterprise. Exceptions are allowed on conditions provided by law.

Proceeding from the considerations of public order and national security some restrictions have been imposed on the activities of aliens in certain fields (e.g. provision of notary public's service or security service) and to the acquisition of property by aliens in certain areas.

ARTICLE 18 PARA. 2

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;"

Question A

Please describe the formalities which must be observed by nationals of the other Contracting Parties and the members of their families or by their employers, with regard to their residence in the country and the exercise of an occupation, whether they are seeking paid employment or wish to engage as self-employed, distinguishing between wage-earners or salaried employees, self-employed traders or craftsmen, heads of agricultural or non-agricultural concerns, various professions.

Please state what derogations have been made to the rules normally applicable and with regard to what categories of persons.

An alien staying in Estonia on the basis of a permanent residence permit does not need an additional work permit for employment in Estonia.

An alien staying in Estonia on the basis of a temporary residence permit must have a work permit for taking employment in Estonia. The work permit shall specify the period during which the alien has been permitted to work in Estonia. The work permit shall not be required if the alien has a temporary residence permit for employment in Estonia, as well as in other cases provided by law.

The applicant has to fill in an application form, submit an identity document and a document proving that state fee has been paid to apply for the work permit. If the person has a residence permit for study, the educational institution's permission will also be needed. Work permit may be applied for while being inside the country.

The residence permit for employment shall, as a rule, be applied for from the representation of the Republic of Estonia abroad, however, exceptions are possible in some cases provided by law.

The residence permit for employment shall be given to an alien if an open competition has previously been held for this position and the position has not been fulfilled within two months by using national employment intermediation service. In general, the Labour Market Board's consent for giving a residence permit for a foreigner is required. However, execution of the requirements, provided in this paragraph shall not be obligatory in several cases listed in the law. The employee shall have respective education, qualifications and other conditions stipulated by law. The employer shall be reliable, tax arrears shall be absent etc. In the case of applying for the residence permit for employment the application form the additional questionnaire, the employer's confirmation with the Labour Market Board's consent, CV in required form, an identity document and the document proving the payment of state fee have to be submitted, besides, the alien has to register his/her place of residence in Estonia.

An alien, who has a share in a business enterprise or who has been registered in the Republic of Estonia as a sole proprietor and his/her settling in Estonia is necessary for the enterprise and on condition that the alien has invested an amount of money, provided by law, in the enterprise in Estonia, is entitled to residence permit for enterprise.

Required documents are: the application form and respective additional questionnaires, CV, a document proving the profession/education, a document proving the amount of invested or controlled capital, a document proving legal income, a document proving the payment of the state fee, a written explanation about the form of enterprise, its data and business plan and the need to move to Estonia, in general also an insurance agreement and besides, the alien has to register his/her place of residence in Estonia.

In the cases provided by law, aliens, who have arrived in Estonia (with a visa or on provisions enabling visa-free stay) or already are in Estonia (with a visa or on provisions enabling visa-free stay) have the right to be engaged in short-term employment in without a work permit and residence permit up to six months a year.

Short-term employment shall be registered at the Citizenship and Migration Board before starting work by submitting a respective application, a copy of the travel document page containing personal data as well as the confirmation of the sponsor, if the employment is at a legal or a natural person and respective documents to prove the relevant conditions.

Question B

Please indicate what chancery dues or other charges are payable by foreign workers or their employers.

The applicant has to pay the state fee to apply for the residence and work permit:

- 750 EEK (ca 50 EUR) for applying or extending the work permit;
- 1 500 EEK (ca 100 EUR) for applying and extending residence permit for employment;
- 2 500 EEK (ca 167 EUR) for applying residence permit for enterprise and extending residence permit for enterprise.

Question C

Please indicate the steps taken to simplify the formalities described in Question A and to reduce the charges referred to in Question B.

The valid formalities are necessary for enabling the proportional ex ante and ex post control, over persons settling in Estonia for the purposes of employment or enterprise, necessary for guaranteeing internal security.

According to § 2 of **the State Fees Act** the payable sums are for performing legal acts, reviewing applications and issuing documents and only cover the costs of proceeding the application and are thus justified.

ARTICLE 18 PARA. 3

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

to liberalise, individually or collectively, regulations governing the employment of foreign workers;"

Question A

Please specify whether, and if so under which conditions, a foreign worker may:

- a. change his place of occupation;
- b. change his occupation;
- c. claim the renewal of the permit.

An alien who has a work permit is allowed to change his/her professional workplace and field of activity.

If the alien has a residence permit for employment, then changing the work place or field of activity will be a reason for repealing the residence permit. The alien has an opportunity to apply for a new residence permit for working at a new workplace.

Additionally, an alien has an opportunity to apply for extending the work permit until the expiry of the residence permit.

Question B

Please describe the situation of the holder of a work permit if he loses or gives up his job while the permit is still valid.

The validity of the work permit is not related to a certain work place or employer, therefore loss of job does not cause the work permit to become invalid.

Please see also the answer to question A.

ARTICLE 18 PARA. 4

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties."

Question

Please indicate whether there are any restrictions or special conditions affecting the right of such persons to leave the country for this reason and, if so, what the regulations are.

Pursuant to § 35 of the **Constitution** everyone has the right to leave Estonia. This right may be restricted in the cases and pursuant to procedure provided by law to ensure the administration of court or pre-trial procedure, or to execute a court judgment.

ARTICLE 23: THE RIGHT OF ELDERLY PERSONS TO SOCIAL PROTECTION

“With a view to ensuring the effective exercise of the rights of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

– *to enable elderly persons to remain full members of society for as long as possible, by means of:*

a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

– *to enable elderly persons to freely choose their life-style and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*

a. provision of housing suited to their needs and their state of health; or, of adequate support for adapting their housing;

b. health care and services necessitated by their situation;

– *to guarantee elderly persons living in institutions, appropriate support, while respecting their privacy, and opportunities to participate in decisions concerning the living conditions in the institution.”*

LEGISLATION

- Family Law Act.
- Funded Pensions Act.
- Gambling Tax Act.
- Health Insurance Act.
- Income Tax Act.

- Old-age Pension under Favourable Conditions Act.
- Persons Repressed by Occupying Powers Act.
- Public Service Act.
- Republic of Estonia Employment Contracts Act.
- Social Benefits for Disabled Persons Act.
- Social Welfare Act.
- State Pension Insurance Act.
- Superannuated Pensions Act.

Question A

Please describe the measures of social protection and the social services in your country to enable elderly persons to remain full members of society as long as possible.

Detailed overview on Articles 11-15 has been given in the previous reports of Estonia. We add the following. The priority of Estonian policy related to elderly persons is to create possibilities for supporting independent coping and active ageing of elderly persons. **“National programme for the implementation of the principles of Estonian policy concerning elderly persons for the years 2002-2005”**¹⁰ was launched in 2002. The target group of the programme is elderly persons and families taking care of and nursing elderly persons.

Social protection is offered to elderly persons through pension insurance, health insurance, social welfare services and benefits.

Social services, social benefits and other assistance pursuant to the **Social Welfare Act** is the right of

- Permanent residents of Estonia;
- Aliens living in Estonia on legal basis;
- Refugees staying in Estonia.

However, every person staying in Estonia has the right to emergency social assistance.

¹⁰ Minutes of the session No. 2 of the Government of the Republic of 15.01.02, item No. 6 on the agenda – Implementation programme of Estonian policy concerning elderly for 2002-2005

Please see in addition answers to questions B, C, E and G of this article.

Question B

Please indicate the measures taken to ensure that elderly persons have adequate monetary and non-monetary resources within the meaning of this provision.

Detailed overview is given in articles 11-15 of the Estonian report. Please see in addition answers to questions C, E and G of this article.

If pensioners work, they generally retain the right to receive full pensions. Only early retirement pensions are not paid to working-age persons if they work. Special pensions and superannuated pensions are not paid if the person works in a profession giving the right to the relevant pension.

Supplementary exemption from income tax has been established for pensions and it amounts to 36,000 EEK per year (3,000 EEK per month). Consequently 56,000 kroons of pensioner's income is exempt of income tax in 2005.

Employers have no right to terminate employment contracts or release from service employees when the person has reached the age of old-age pension. Employers have the right to terminate employment contracts or service relationship because of age if the employee is 65 years old and has the right to full old-age pension.

The **State Pension Insurance Act** regulates the granting and payment of old-age pension, pension for incapacity for work, survivor's pension and national pension. Payment of special pensions and superannuated pensions is regulated by special acts.

The persons who have attained 63 years of age and earned in Estonia for 15 years have the right to receive old-age pension. The age limit established for men entered into force in 2001, for women it will enter into force in 2016.

The persons who have attained 63 years of age and who have no right to old-age pension and who have been permanent residents of Estonia or have resided in Estonia on the basis of a temporary residence permit for at least five years immediately before making a pension claim have the right to national pension. The purpose of national pension is to ensure minimum pension to persons who have attained 63 years of age and have no right to receive any other type of pension.

National pensions are also granted to persons who are declared permanently incapacitated for work (with the 40 to 100 per cent loss of the capacity for work), to persons who have not completed years of pensionable service and who have lived in the country as permanent residents at least for one year and to persons who have no right to survivor's pension because of the absence of pensionable years of service of the provider if the provider had lived as a permanent resident of Estonia for less than a year before his or her death.

Table 12: Persons receiving state pension by type of pension.

Type of pension	2000	2001	2002	2003	2004
Old-age pensioners	284 327	297 363	298 490	296 836	294 063
With early retirement pension	-	2 349	4 620	6 274	7 715
With deferred old-age pension	-	-	-	91	168
Recipients of special pensions	...	...	...	916	1 031
Recipients of superannuated pension	3 240	3 369	3 386	2 839	2 820
Recipients of national pension ²	1 655	6 910	8 104	14 162	13 367

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

Pursuant to the State Pension Insurance Act it is possible starting from the year 2000 to receive early-retirement pensions up to three years before attaining the pensionable age, and starting from the year 2002 to receive deferred old-age pension. As an exception it was possible in 2000 to receive early retirement pension two years before attaining the pensionable age. An early-retirement pension is calculated by reducing the pension by 0.4 per cent for every month and a period shorter than a month which remains until the person attains the pensionable age. People immediately started using the possibility to receive early retirement pension and it has been observed that the trend is constantly growing. If in 2001 they made up 1.5% of old-age pensioners, in 2004 the corresponding figure was 2.6%. One reason of increase has been higher unemployment rate among people of pre-pension age.

Deferred old-age pensions are calculated by increasing the pension by 0.9 per cent for every month which has passed after the person has attained the pensionable age. Although the measure increases pension, deferred old-age pensions are used very little – in 2004 only 169 people used it.

Police officers, members of the Defence Forces, officials of the State Audit Office, judges, prosecutors, Chancellors of Justice, MPs of former memberships of the Riigikogu and the President have the right to receive special state pensions.

Pursuant to the Superannuated Pensions Act employees of certain professions have the right to receive superannuated pensions before attaining the pensionable age if they have qualifying years of service.

Table 13: Average pensions.

Type of pension	2000	2001	2002	2003
Old-age pension	1 532	1 583	1 758	1 985
Early retirement pension	1 316	1 328	1 471	1 657
Deferred old-age pension	-	-	1 766	2 061
Special state pension	...	...	5 548	5 903
Superannuated pension	1 093	1 341	1 408	1 562
National pension	913	913	948	989
Per family member receiving pension	941	872	839	808

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

In 2002 the system of mandatory funded pensions was launched. The system provides additional income to state pension insurance to pension-aged persons who had made contributions to funds. The payments from the funds will start in 2009. Joining the mandatory funded pension (II pillar) was voluntary for people born before 1983. Joining the fund was compulsory for persons born in 1983 and later. 60% of employees have joined the system of mandatory funded pension.

Supplementary funded pension (III pillar) is voluntary and contributions to the fund are made by people themselves. The contributions to the supplementary funded pension are exempt from income tax to the extent of 15% of the taxpayer's income in the period of taxation. 10% of employees have joined the system of supplementary funded pension.

Mandatory and supplementary funded pensions do not help present pensioners. The pensions of people who will shortly retire will not essentially increase

either due to the fact that they have not joined the funded pensions or the sums collected are small.

The main measures of social assistance are subsistence benefits. The purpose of the benefits is to ensure, if necessary, minimum income for a person and their family and to avoid the possibility that they might lose abode and become homeless. The conditions for receiving subsistence benefits are shown in Article 13.

Of the 51,114 families who received subsistence benefits in 2003 the number of pensioner families was 6,760, including 80 who received early retirement pensions.

Receivers of benefits were primarily pensioners who lived alone. Approximately 3 % of all pensioners received subsistence benefits in 2003 once or several times.

12.3 million EEK were paid to pensioners of the total 308.2 EEK paid as subsistence benefits in 2003. The amount paid to pensioners is rather small since pensioners generally have the right to receive benefits only in winter months, i.e. in the months of high housing costs. If a family as an average receives benefits 6 months a year, pensioner families receive benefits in 4 months.

Emergency social assistance is provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence (§28 of the Social Welfare Act). Emergency social assistance is provided to a person until he or she is no longer in a socially helpless situation due to the loss or lack of means of subsistence.

In addition to above the elderly have the right to allowances pursuant to the **Social Benefits for Disabled Persons Act**. The estimate is that half of the receivers of disabled adult allowances are of pension age.

For social services see more detailed answers to question E. Detailed overview on medical services is in Article 11 of the first Estonian report.

Question C

Please provide information on total public expenditure during the reference period on social protection and social services for the elderly.

Pension and health insurance are financed from the social tax of specific purposes, which is paid by employers, sole proprietors and state. Social tax is 33% from the tax base (salary fund), of which 20% is allocated to pension insurance and 13% to health insurance. National pensions, some pension supplements, special pensions and funeral grants are financed from the state budget.

Social welfare is financed from

- local government budgets;
- state budget;
- finances of legal and natural persons voluntarily engaged in social welfare;
- other means.

Cost sharing of financing by clients is presumed in case of several social services (care in general social welfare institutions, services to people with special mental needs, etc).

The amount of state financing of social welfare expenditures is established in the state budget act of the relevant financial year. The following is covered from the state budget:

- expenditure relating to state social welfare management,
- expenditure relating to state social programmes and projects,
- expenditure relating to social services financed by the state (social services to the disabled, care expenses of the elderly placed in general social welfare institutions before 1993, partial covering of the price of technical medical devices, etc.),
- expenditure relating to state social benefits, (subsistence benefit, disabled person allowance),
- other expenses relating to performance of state social welfare duties and events.

Local governments cover partially the costs of social welfare institutions for the elderly, the majority of the day care, domestic service, social housing, shelters for homeless, social counselling and other costs.

In addition local governments provide other services to the elderly and disabled and pay one-off benefits but there is no overview of such expenditures.

Possibilities for payment of additional benefits vary by local governments. For example, the City Government of Tallinn has established higher income levels for payment of benefits from their budget than the level for subsistence benefits paid from the state budget. A family in Tallinn has the right to receive income related benefits if their income per first family member is lower than the net wage calculated from the minimum wage and if per each subsequent family member it is smaller than 75% of the income. The elderly and disabled have the right to receive benefits for ensuring subsistence, for partial compensation of the acquisition costs of technical medical devices, rehabilitation and long-term nursing care and prescription medicinal products costs. There is also the right to receive funeral grants for arranging funerals of people close to them. In addition the City Government of Tallinn pays a 500-kroon benefit to all pensioners, and use public transport is free in Tallinn for persons of 65 years of age and older.

Of other financial resources gambling tax is important. 11.8 % of gambling tax is allocated to support family, medicine and social welfare projects and the elderly and disabled projects. 12.7% is allocated to the investments into regional programmes related to children, families, the elderly and disabled. First and foremost the projects support activities of the associations of disabled persons and pensioners. In 2002 11.6 million EEK were allocated to support the disabled and 1 EEK to support pensioners. Investments have allowed renovation of social welfare institutions, in 2002 for 4.4 million EEK.

Table 14: Expenditures on state pension insurance related to age (mil EEK).

	2000	2001	2002	2003
Old-age pension	5 467,8	5 704,2	6 309,2	7 049,0
National pension	67,3	77,3	105,7	141,1
Superannuated pension	36,9	43,8	44,4	48,6
Parliamentary pension, occupational pension of the President ¹¹	9,1	11,5	14,4	18,1
TOTAL	5 581,1	5 836,8	6 473,7	7 256,8
Including pensions and supplements financed from state budget ¹²	259,5	257,0	360,9	391,4

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

¹¹ These pensions are paid from the budgets of the Office of the President and the Riigikogu. These figures include old-age pensions for MPs (75% of the salary) and survivor's pensions for the MP's family members (30% of the salary per each family member incapable for work, and occupational pension of the President (75% of the salary). The state old-age pensions for parliamentarians are not paid during their time in office. For 2002 and 2003 the data is based on the budget.

¹² Different pensions and pension supplements are financed from the state budget: national pensions, pensions of different officials (judges, prosecutors, officials of the State Audit office, Chancellor of Justice, members of the Defence Forces, police officers, MPs, the President), pension supplements paid on pensionable years of service and other supplements (including supplements to officials).

Table 15: Costs of benefits and services paid from the state budget (mil EEK).

	2000	2001	2002	2003
Social benefits to disabled adults				
Disabled adult allowance	-	318,4	396,8	408,0
Caregiver's allowance (to caregivers of disabled adults)	-	56,3	96,9	107,0
Other social benefits				
Subsistence benefit	305,3	353,3	326,6	308,2
Supplementary benefit	10,0	1,0	21,3	16,9
Social services				
State services to people with special needs	96,8	89,7	98,8	101,2
General adults' social welfare institutions	6,2	4,3	4,0	3,4
Vocational training of the disabled	11,4	11,1	13,1	14,1
Partial compensation of prosthetic, orthopedic and other devices	23,2	25,2	26,2	35,7
State social welfare programmes	12,6	10,0	6,4	2,4
Other	10,9	4,1	4,4	4,2

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

The table shows expenditures not only on the elderly, but to all adults. Higher expenditure types are shown.

Expenditures on general social welfare institutions paid from the state budget become smaller every year since care of the elderly in social welfare institutions has been transferred from state financing to self-financing. If a person is unable to pay, the obligation will be imposed to their family or local government. The state will finance care of only those elderly persons who came to live in the welfare institutions before 1 January 1993.

In addition to the expenditures shown in the table the state also pays funeral grants. 32.4 million EEK were paid in 2003 as funeral grants.

Table 16: Income of general social welfare institutions/service expenses by financing sources (million EEK).

	2000	2001	2002	2003
TOTAL	161,5	174,8	187,5	197,2
From the state budget	9,2	5,9	10,3	3,4
From local government budgets	100,1	101,2	101,6	106,8
Maintenance expenses paid by ward or their guardian	47,9	64,8	72,7	86,8
Other (auxiliary production, donations, income from additional activities)	4,3	2,9	2,9	0,2

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

Question D

Please indicate by which ways information about the services and facilities available for elderly persons are provided to the persons concerned.

In Estonia there are two umbrella organisations of elderly persons including approximately 40,000 members or 13% of all pensioners. In addition to above umbrella organisations a large number of different organisations of elderly persons have been set up where people can get different information.

A large number of elderly persons who are members of the organisations of elderly persons are at the same time also members of the organisations of disabled persons (e.g. organisations of blind or deaf persons, of persons suffering from rheumatic, heart or other diseases and disabled persons organisations). All organisations have their own home pages on the Internet, organise information days and training, issue information brochures and leaflets.

To get information elderly persons can use the Internet in the day centres, since a number of them have public Internet points. Computers for them were purchased in the project "Look at the World". Day centres have run several training courses to teach elderly persons to use computers.

Many elderly persons (or their children, grandchildren) have computers at home and they use them.

In addition two newspapers are published for the target group of elderly persons (Videvik and Elukaar). One of them is free and the other is not. Financing of publishing of the free newspaper is project-based from the gambling tax and it is distributed through local governments. Information is available in national newspapers, but more from local (municipality, city, regional) ones. Research findings related to ageing or elderly persons are reported in the media.

Each person may approach social workers of local governments for getting comprehensive information.

The home page of the Ministry of Social Affairs www.sm.ee offers varied information to the target group of elderly people and it is widely used.

Question E

Please describe the measures taken to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, in particular by means of:

provision of housing suited to their needs and their state of health or adequate support for adapting their housing;

Pursuant to § 27 of the **Social Welfare Act** organisation of social welfare of elderly persons is the responsibility of the local government. In order to assist the elderly to cope in surroundings familiar to them and to have a life of equal value with other persons, rural municipality governments and city governments:

- establish opportunities for cheaper alimentation;
- ensure the accessibility of information concerning services provided and establish opportunities for the use of social services;
- establish opportunities for interaction and hobbies.

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 (§14 of the Social Welfare Act). Since social housing is located on the territory of the same municipality, i.e. close to the person's former place of residence, the changes related to the surrounding are small and they can retain their contacts.

At the end of 2003 the number of persons living in social housing was 3,224, of which 1,459 (45%) were of pension-age. 80% of the expenses on social housing and support homes (institutions providing day or periodical 24-hour services to disabled persons living at home) are financed by local governments.

Elderly persons can choose if and what kind of assistance they want.

Open care and domestic care services

The purpose of open care is to help those elderly persons living in familiar surroundings, whose coping ability has deteriorated, to cope independently or with the help of their family or organised services by social worker.

Open care services are:

- services provided to elderly persons in their homes (opportunities are created to elderly persons to live as long as possible in the security of their homes);
- services provided outside their homes (possibilities to be active in day centres);
- support services (special transport facilities, technical devices, alimentation, sauna and laundry service).

Domestic care services are adaptation of the elderly person's home, satisfying everyday needs, counselling, guiding and care.

Domestic services are provided by care workers who have undergone special training offered by day centres, rural municipality or city governments. More than 700 social care workers provided domestic services in 2003. The range of services offered varies:

provision with food, medicinal products, technical devices, medicinal and household appliances, tidying up, conversation and communication of information, washing of the elderly person, managing their affairs, laundry, housecleaning, etc.

A new service - domestic nursing care - is developing.

Fostering of elderly persons is not widely spread (care in family of which he or she is not a member). Of 1,113 persons in foster care in 2003 only 32 were adults, including 13 persons who were 65 or older. Fostering of children is facilitated by additional financing of the state.

Table 16: Domestic services, number of person who were provided with services.

	2000	2001	2002	2003
TOTAL	5 638	5 553	5 964	6 171
Including pension-aged persons	4 503	4 426	4 699	4 969
65-79	2 368	2 315	2 479	2 519
80 +	2 135	2 111	2 220	2 450

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

Technical and medical devices

There are possibilities for elderly and disabled persons, if necessary, to apply for technical and medical devices at a discount¹³. The devices would help them to cope better with their every-day life.

Technical devices (prothetic, orthopedic and other devices) are products, instruments, equipment or technical systems which enable to prevent aggravation of developed or congenital damage or disability, to compensate functional disorders which have

¹³ Conditions and procedure for application and distribution of technical devices at a discount. Approved by the Regulation No. 79 of the Minister of Social Affairs of 14.12.2000, entered into force on 01.01.2001

resulted from damage or disability, to improve or maintain possibly high physical and social independence and operational ability.

More than 25,000 persons received technical devices in 2003 at a discount, of which 64% were of pension age. The state financed the purchase and rent of technical devices to the extent of 35.5 million EEK, covering 76% of their price.

Medical devices are medical equipment (instruments, appliances, devices, materials or other items) which enable to treat developed or congenital diseases or injuries, or which application improves the results of surgery or treatment with medical products. Most of the costs of medical devices for persons who have health insurance are covered by the Health Insurance Fund.

Services of day centres

Day centres for elderly persons are institutions for hobbies (art, craft and language learning groups), information (sharing of information, holding lectures) provision of rehabilitation services (social counselling, activity therapy, gymnastics) and various social services (hot lunches delivered home, laundry, sauna service, etc). It is possible to do voluntary work and participate in the self-help movement. In 2002 there were 87 day centres or other institutions providing services of day centres in Estonia. More than half of them have no defined target groups and they provide services to children, elderly persons and disabled people of different age. According to estimates almost 80% of the customers of the day centres were of pension age. The number of day centres specialising in elderly people is approximately 20. The number of day centres is higher in Tallinn, Lääne-Virumaa county and Pärnumaa county. No proper day centre for elderly persons has yet been opened in Võrumaa county. The owners of day centres are local governments, private persons or non-profit organisations. A number of Estonian care homes (welfare institutions) offer services in addition to their own clients also to the elderly persons requiring care services of local governments (services of day centre, temporary care, provision with food, laundry, sauna, renting of technical devices, etc.).

The range of services provided by day centres, the number of elderly persons who use the services and the service expenses have increased every year. Day centres are financed mainly from local government budgets (88%), but also from the state budget and by the recipient of services or from other sources.

Most of the finances are spent on food, domestic services, day care and transport services.

Table 17: Services provided to clients of day centres, activities and events organised in 2003.

	Line No.	Number of persons*		Proportion of pension-aged persons, %
		Total	Pension-aged	
A	B	1	2	3
SERVICES AND ACTIVITIES	1	60832	49162	80,8
1. Adaptation and coping training	2	1457	979	67,2
2. Work therapy	3	289	95	32,9
3. Therapy	4	2908	2813	96,7
4. Provision with food	5	5837	4035	69,1
5. Domestic services (except provision with food)	6	1076	891	82,8
6. Day care	7	695	111	16,0
7. Sauna services	8	2436	1771	72,7
8. Laundry service	9	3023	2142	70,9
9. Beauty services	10	5820	5341	91,8
10. Health services	11	12635	11696	92,6
11. Small repair services	12	369	346	93,8
12. Use of information technology	13	4083	2815	68,9
13. Use of library	14	4471	3684	82,4
14. Transport services	15	1357	1038	76,5
15. Counselling	16	11277	8740	77,5
16. Other	17	3099	2665	86,0
HOBBIES (spare time activities)	18	15816	13328	84,3
17. Sports	19	3627	2937	81,0
18. Home economics groups	20	1751	1564	89,3
19. Art groups	21	2122	1480	69,7
20. Other hobby or club activities	22	8316	7347	88,3
TRAINING	23	2619	1648	62,9
21. Language learning	24	591	554	93,7

22. Computer training	25	999	753	75,4
23. Tutoring	26	317	0	0,0
24. Other	27	712	341	47,9
SELF-HELP GROUPS	28	1419	703	49,5
EVENTS	29	30130	24262	80,5

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

* one person may have used several services

Voluntary work of elderly persons

Good health, longer life expectancy and social demand are the factors which have involved more and more elderly persons with voluntary work. Elderly persons have taken voluntarily responsibilities to help their peers to attain spiritual levels similar to their own. At the same time it is a wonderful opportunity for them to feel themselves as useful members of the society. Elderly volunteers are generally united in organisations with the aim to support one another, learn from one another and share experience, e.g. neighbourhood help, tutoring of pupils, self-help, sharing of information. Elderly people, especially those who live alone, are explained the essence and possibilities of self-help. The Ministry of Social Affairs together with the Committee of senior citizens published a collection of writings "Joy of doing it yourself" in 1999. The book is about voluntary work and activities.

In 2000 only every tenth elderly person was registered as a volunteer (29,000 people or 10% of elderly persons), but the number of volunteers is growing every year. In 1999 the Government of the Republic approved the "**Principles of Estonian policy related to elderly persons**". The principles say: "Voluntary work and self-help of elderly people help the society to have a better understanding of ageing, to facilitate coping of elderly people, at the same time reducing the social welfare expenses intended for elderly people".

Elderly volunteers work in day centres, in different pensioners' associations, churches, care homes, penal institutions, etc.

the health care and any other services in the home necessitated by their state.

All persons who receive state pensions have health insurance. Mandatory solidarity-based health insurance system covers health care expenses incurred to finance the disease prevention and treatment for insured persons including partial compensation of purchasing costs of medicinal products and medical devices. On the other hand health care providers are allowed to ask fees for home visits and out-patients' visits to specialists up to 50 EEK, also inpatient fees if persons have specialist medical care in hospitals. The maximum rate of inpatient fee is 25 EEK per day and it cannot be collected for more than 10 calendar days for one case of disease.

Availability of health services is most of all dependent on waiting lists. However, pensioners may have problems with paying for medicinal products (cost-sharing of prescription medicinal products and free sale medicinal products) and with payment of inpatient fees.

Once every three years the Health Insurance Fund compensates old-age pensioners and insured persons who are at least 63 years old the payments made for dentures to the extent of established maximum rate. The rate of discount for pensioners, in comparison with working-age people, is bigger for some medicinal products (90% instead of 75%).

Persons without health insurance (under 6% of population) have the right only to emergency care and to some extent to care of family physicians.

Question F

If private services exist, please describe the forms of co-operation between public and private services in the area covered by this provision.

Local governments promote participation of individuals, charity organisations and other relevant organisation in the provision of social services in every manner. The state and

local governments give financial support to legally registered voluntary organisations of pensioners.

Legal and natural persons who are voluntarily engaged in social welfare cover their social welfare expenses from their own funds, but the Ministry of Social Affairs, county governors and rural municipality governments and city governments may enter into contracts for the provision of social welfare services with legal persons and natural persons, and with other legal persons and natural persons, and may allocate financial and material resources to them to cover expenditure relating to social welfare.

Resources received from different funds, foundations, non-profit activities, sponsor support and donations may be used for financing social welfare, as well as resources of persons applying for social welfare services or other assistance. Funds shall be registered, their use shall be accounted for, and the corresponding state authority and rural municipality government or city government have the right to audit their use.

Providers of social services, emergency social assistance or other assistance have the right to remuneration, made from the rural municipality or city government of their residence, for the expenses. The latter have no right to refuse compensation of the costs if the manner and extent of assistance comply with the provisions prescribed in laws or other legal acts or contracts.

The majority of welfare institutions intended for the elderly are in the administration of local governments, but more and more social welfare services are bought from private companies and NGOs. Almost 70% of all social welfare institutions are in the administration of local governments, 10% operate as non-profit organisation, 7% and private limited companies, 3% as foundations and a small number is owned by public limited liability companies, natural persons or church.

The majority of social welfare institutions operating today were set up after the restoration of independence (75%), one fourth before 1992 and 7% have been operating already for more than 50 years.

Question G

Please provide information on the number of elderly living in institutions, public or private, giving as far as possible the number of institutions and their staff and on the availability of places in relation to the number of applications. Please also indicate what form of assistance is granted to elderly persons living in institutions (eg. covering the costs of their stay).

Table 18: Number of adult social welfare institutions.

	2000	2001	2002	2003
General social welfare institutions for adults	96	97	101	108
Special social welfare institutions*	19	20	21	21

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005

*- institutions set up for living, care and rehabilitation of persons with mental illness or severe mental disability.

Table 19: Wards living in general welfare institutions for adults.

	2000	2001	2002	2003
Total of wards	3 276	3 356	3 509	3 890
Age 65-74	719	691	778	830
Age 75 and older	1 844	1 896	1 969	2 228
Proportion of persons of the age of 65 and older in the total of wards %	78,2	77,1	78,3	78,6

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

In addition to general welfare institutions elderly people live in special welfare institutions.

546 persons of the age of 65 and older lived in special welfare institutions at the end of 2002, making up 21% of the number of their inhabitants.

Table 20: The number of full-time personnel engaged with clients in general social welfare institutions for adults.

	2000	2001	2002	2003
TOTAL	832	867	913	973
Psychologist	2	2	1	2
Activity therapist	1	3	3	1
Physiotherapist	3	3	4	4
Social worker	32	23	21	24
Physician	5	6	6	3
Educator	-			2
Nurse	122	119	111	114
Social caregiver, caregiver, assistant educator, assistant nurse	600	654	703	793
Other service assistants	67	57	64	30
TOTAL of service recipients	3 276	3 356	3 509	3890
Service recipients per one full- time employee	3,9	3,9	3,8	4,0

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

The volume of activities, cost of services provided and ownership of general welfare institutions varies.

The majority of welfare institutions can take less than 40 clients, only 19% of institutions in the administration of local governments are larger. The largest welfare institutions can accommodate up to 385 and the smallest less than 10 clients.

In 2003 the place cost in welfare institutions with less than 20 clients was as an average 3,700 EEK, with 50-100 clients as an average 4,400 EEK per month. The most expensive one was 6,500 EEK and the cheapest 2,600 EEK per month. With participation of local governments trilateral agreements are concluded.

Place costs cover the administration expenses, personnel costs and operating costs, including accommodation, food, clothing and medicinal product costs of wards.

Table 21: Average expenditure per ward in general welfare institutions for adults per month (per annual average of wards, EEK).

	2000	2001	2002
TOTAL	4 201	4 364	4 568
Personnel costs	1 755	1 829	2 102
Economic costs	1 240	1 207	1 276
Other operating costs	697	781	837
Including food costs	591	653	683
Medicinal product costs	71	86	105
Capital costs	452	514	339
Other costs not listed above	57	32	14

Source: Social policy information and analysis department of the Ministry of Social Affairs, 2005.

Question H

Please provide information on any regulations applicable to institutions for the elderly, public or private, including procedures observed when institutionalising elderly persons.

Please indicate how control of these institutions is carried out.

Pursuant to the **Social Welfare Act** general welfare institutions are 24-hour care institutions for persons who due to special needs or general social situation are unable to live independently and their coping cannot be ensured by other social services or providing other kind of assistance. The institutions were established for living, care and rehabilitation of elderly and disabled persons.

Different regulations of the Minister of Social Affairs have established compulsory requirements for welfare institutions and social welfare services, requirements for rehabilitation institutions, conditions and procedure for application for and distribution at a discount of technical devices, procedures for implementing restrictions in welfare institutions.

Regulation No. 58 of 3.04.2002 (**Health protection requirements for adults' social welfare institutions**) specified requirements for the living quarters of welfare institutions including general hygiene requirements. Different requirements have been established by the **Building Act**¹⁴, by the **Regulation on the Requirements on living quarters and procedures for calculating rent** (Regulation No. 38 of the Government of the Republic of 26.01.1999).

The Minister of Social Affairs has also established the **procedure for covering the operating costs of provision of welfare services to persons with special needs**.

The Development Centre of Open Care has developed advisory guidelines for welfare institutions "**Service standards of institutional welfare of the elderly and pricing principles**".

Procedures for referral to and exclusion from general welfare institutions are established by local governments for the institutions in their administration.

Procedures of application for a place in social welfare institutions are the following:

- If an elderly person, their family member or caregiver wants to apply for a place in social welfare institutions, they have to present applications to social workers of local government who will explain the applicant the conditions and procedure for receiving the place.
- If a suitable place is found, the ward or those close to them make an agreement with the head of the institution. The agreement will provide the conditions for living in the institution and procedure of financing.
- If local governments are involved, trilateral financing agreements are made: the sum paid will include the pension of the elderly person (85-100%), a share paid by persons close to the ward, and a share paid by local government.

¹⁴ Dwelling Act, entered into force on 1.07.1992 (RT I 1998,71, 1199)

When wards go to social welfare institutions it is required to have referrals from family physicians or specialists and documents reflecting the person's health condition.

Pursuant to §19 of the **Social Welfare Act** a person is placed in a social welfare institution without his or her consent or the consent of his or her legal representative pursuant to a court order upon the concurrent presence of the following circumstances:

- the person is of unsound mind or an alcoholic or a drug addict;
- if upon failure to place the person in a social welfare institution the person poses a danger to himself or herself or to others;
- the application of earlier measures has not been sufficient or the use of other measures is not possible.

The care of a person in a social welfare institution without his or her consent is terminated if any of the circumstances set out above cease to exist.

The county governor or a person authorised by him or her shall supervise the quality of social services and other assistance provided in the county and the use of financial resources allocated by the state for social welfare (subsection 7 (29) of the Social Welfare Act). Each citizen has the right to make a complaint if his or her rights have been prejudiced or violated. Complaints are first made to the heads of institutions, after that they have the right to appeal to county social welfare department and then to the county governor. Each person has the right to turn to court to protect his or her rights.

Question I

Please indicate the measures taken to guarantee respect for the privacy of elderly persons in institutions and their participation in decisions concerning living conditions in such institutions.

Pursuant to § 27 of the **Social Welfare Act** local governments have an obligation to ensure the security and independence of the elderly living in social welfare institutions, respect for their private life and the opportunity to participate in decision-making pertaining to their physical and social environment and future.

In their operation welfare institutions proceed from the welfare institution's statutes and rules of procedure. Rules of procedure establish how people are taken into institutions, daily schedules, rights and responsibilities of clients, activities prohibited in institutions, leaving institution and responsibility.

A social welfare institution shall guarantee the inviolability of the private life of persons staying in the institution. §20 of the Social Welfare Act specifies restrictions to the rights of the person staying in the social welfare institution only on the following occasions:

a person staying in a social welfare institution shall not possess narcotic substances, devices related to their use or other substances or devices which endanger life or health. Upon discovery of such substances or devices, employees of the social welfare institution are required to remove them from the person's possession. If it becomes known that a person staying in a social welfare institution possesses or that mail or some other parcel addressed to him or her contains the substances or devices, the person or the mail or other parcel addressed to him or her shall be searched with the permission of the head of the social welfare institution;

the right to move freely may be restricted on the basis of a decision of the head of the social welfare institution or his or her substitute only so far as this is necessary to prevent leaving a person without supervision and to protect the rights and freedoms of other persons;

a person staying in a social welfare institution may, on the basis of a decision of the head of the social welfare institution or his or her substitute, be isolated from other persons staying in the institution if the person is dangerous to himself or herself or to others, but for not longer than twenty-four hours. The isolated person must be under the constant supervision of the employees of the social welfare institution.

Estonian general social welfare institutions (care homes) may be categorised into three types:

- "factory" type welfare institutions, heritage of the Soviet time;
- "hospital" type welfare institutions which were established as a result of reorganisation of small hospitals;

- “home” type institutions which were established after restoration of independence and probably take best account of the wishes and needs of the elderly.

Proceeding from the above the number of wards in rooms is different. In most cases 1- 4 wards live together in a room, but in some general social welfare institutions the number is 6-7. Unlike general welfare institutions there are state requirements for special social welfare institutions where the number of persons living in one room is up to 2.

Pursuant to health protection requirements established by the regulation of the Minister of Social Affairs for adults' social welfare institutions it must be possible to lock the bedroom doors.

Social welfare institutions respect the wish of people to take their own furniture to furnish their new rooms, but to limited extent, taking into consideration the possibilities of the room. If a person does not want to take their furniture with them or has no suitable furniture, necessary equipment is ensured by the social welfare institution. More precise criteria are set in the internal procedure rules of institutions. Institutions increasingly want to offer their wards comfortable and home-like atmosphere.

Participation of the elderly in the management of the institutions is specified in the internal procedure rules and they are different in each social welfare institution.

ARTICLE 26: THE RIGHT TO DIGNITY AT WORK

LEGISLATION

- Regulation of the Government of the Republic of Estonia “Confirming the Rules of the Government of the Republic”;
- Regulation of the Government of the Republic of Estonia „Technical Rules for Drafts of Legislation of General Application”;
- The Employment Contracts Act of the Republic of Estonia;
- The Gender Equality Act.

Question

Please indicate how organisations of employers and workers are consulted by the authorities on the measures required to implement each of the paragraphs of Article 26 (procedure and level of consultation, content, and frequency of consultation).

In the case of legislative measures, the employers' and employees' organisations as social partners shall be included in the preparation of the act by giving an approval to the draft act. According to clause 25 of the appendix to the regulation of the Government of the Republic of Estonia „**Confirming the Rules of the Government of the Republic of Estonia**“ if necessary, the draft shall be submitted to relevant institutions and persons, for getting an opinion, before submitting it to the Government of the Republic of Estonia or in the case of the directive of the Minister, before the Minister signs it. The coordinator shall provide his/her opinion about the draft and its explanatory letter primarily proceeding from his/her tasks and competence. Pursuant to the regulation of the Government of the Republic of Estonia „Technical Rules for Drafts of Legislation of General Application“ § 38 the person preparing the draft act shall mention, in the explanatory letter, to whom the draft Act was submitted for approval and for the receipt of opinion and proposals and the results of the approval and opinions.

ARTICLE 26 PARA. 1

“With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers’ and workers’ organisations:

to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;”

Question A

Please indicate which forms of behaviour are considered as sexual harassment.

Pursuant to § 3 subsection 1 clause 5 of the **Gender Equality Act** (hereinafter *GEA*) sexual harassment occurs where, in any subordinate or dependent relationship, any form of unwanted verbal, non-verbal or physical activity or conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment and the person rejects or submits to such conduct as it is a direct or indirect prerequisite for getting hired, maintaining the employment relationship, participation in training, receipt of remuneration, or other advantages or benefits.

Pursuant to § 3 subsection 3 of the *GEA* sexual harassment is a form of direct discrimination on grounds of sex.

The activity of an employer shall be considered discriminating on grounds of sex, if he/she harasses sexually or fails to perform the obligation to take care that an employee would, in the working environment, be protected from sexual harassment (*GEA* § 6 subsection 2 clause 5).

Question B

Please indicate what awareness-raising, information and preventive activities to counter sexual harassment at work or in relation to work are carried out (e.g. description, target groups, expenditure, etc.).

Pursuant to § 11 subsection 1 clause 4 of the GEA an employer shall ensure that employees are protected from sexual harassment in the working environment. The failure to perform the duty of care shall be, equally to sexual harassment, considered discrimination on grounds of sex by the employer (GEA § 6 subsection 2 clause 5).

Pursuant to § 11 subsection 1 clause 5 an employer is obliged to inform employees of the rights ensured by the GEA. As protection against sexual harassment has been presented, in the GEA, as a part of employer's obligation to promote gender equality, the employer is obliged to, pursuant to § 11 subsection 1 clause 6 regularly provide relevant information to employees and/or their representatives.

In order to enhance the gender equality awareness of people the Ministry of Social Affairs initiated, in the year 2000, the translation and publishing of "**The female employees' basic rights and the gender equality**", compiled by ILO. Among other things the publication explains the definitions of harassment at work (discouragement and suppression) and sexual harassment. The book has been distributed to libraries and handed out at various seminars and trainings.

Please indicate the role of the employer in preventing and combating sexual harassment. Please provide details with regard to training schemes, publications and infrastructures that exist and that employers put into place in order to effectively combat sexually harassing behaviour.

Please see answers to questions A and B.

In March 2004, the Estonian [Employers' Confederation](#) (ETK) organised a seminar about the role of employers as promoters of equality. Respective provisions of the

Gender Equality Act, which was still a draft, then, had major influence on the seminar. Representatives of the Ministry of Social Affairs as the initiators of the draft, university teachers and representatives of various companies and institutions made presentations at the seminar. The role of an employer in fighting sexual discrimination was discussed among other things.

In 2005, the Estonian Employers' Confederation shall conduct a project "**Partnership in an enterprise**" funded by the European Commission. In the course of this project various communication models inside an enterprise, their links with forms of representation of employees, motivation and satisfaction and with economic indicators of the enterprise shall be researched. The background of this project is to regulate internally the procedure of informing and advising employees; the respective act should be approved in spring. On the basis of this research, the Estonian Employers' Confederation will organise an information campaign and hold a conference. The research may also reflect about the matters of discrimination in a broader scale.

In the light of the amendments, *inter alia* those touching upon harassment, introduced in **the Employment Contracts Act of the Republic of Estonia**, the training centre "Tallinna Konverentsid" last year organised a training day for employers. At the training, lecturers discussed the topics of equal treatment and harassment. Attention was mainly paid to the issues necessary to keep in mind when hiring a new employee and creating the working environment and in which cases the employer is obliged to compensate the employee for the damage resulted from unequal treatment or harassment. 20 people participated in the seminar, 19 of them from the private sector.

Please indicate any specialised infrastructures to receive and deal with complaints against such behaviour (e.g. ombudsman, counselling, etc.).

Pursuant to § 15 of the Gender Equality Act the minister of social affairs shall appoint an independent and impartial expert, the Gender Equality Commissioner, who monitors compliance with the requirements of this Act and performs other functions imposed by law. Among other things the commissioner shall accept applications from

persons and provide opinions concerning possible cases of discrimination (GEA § 16 clause 2).

Additionally, pursuant to § 23 of the Gender Equality Act an official of the structural unit of the Ministry of Social Affairs (currently the Gender Equality Department) which deals with gender equality shall provide consultations to all persons on matters related to implementation of the principle of equal treatment for men and women. If necessary, the consultant shall explain to a person which institution is competent to resolve a possible case of discrimination and provides assistance in preparing a written application.

Beginning from January 1, 2004 the area of activities of the Chancellor of Justice has been extended. Every person has the right to apply to the Chancellor of Justice for conciliation procedure if he/she finds that he/she has been discriminated by a physical or legal person on grounds of sex, race, nationality (ethnic origin), colour, language, origin, religion or belief, political or other opinion, age, disability, sexual orientation or any other circumstances of discrimination.

The Chancellor of Justice shall control the activities of the physical or legal person and conducts the conciliation procedure on the basis of the application submitted by the person who finds that he/has been discriminated on one of the above mentioned circumstances. It is necessary to emphasize that the willingness to participate in the conciliation procedure is necessary for conducting it. As the conciliation procedure is voluntary, the party against whom the complaint has been lodged has no obligation to participate in the procedure. In addition, he/she may waiver participation in the conciliation procedure at any time. However, if both parties have participated in the procedure and the Chancellor of Justice has confirmed the agreement between the parties, the agreement will be binding to both parties.

Question C

Please describe any protective measures undertaken to prevent sexual harassment in the workplace and indicate, whether any sanctions are provided by law against such behaviour (in particular financial and other compensation).

Please give details on the relevant court procedures, indicating where the burden of proof lies.

Please indicate the employers' liabilities in case of recorded sexual harassment at the workplace.

In the case an employer has discriminated a person by harassing him/her sexually or failing to perform the obligation to take care that, in the working environment, the employee would be protected against sexual harassment (GEA § 6 subsection 2 cl 5 and § 11 subsection 1 cl 4), the injured person may, pursuant to § 13 of the Gender Equality Act, demand in court the compensation for damage and termination of the harmful activity. An injured party may additionally demand that a reasonable amount of money be paid to him/her as compensation for non-patrimonial damage caused by the violation. Upon determination of the amount of compensation, a court shall take into account, *inter alia*, the scope, duration and nature of the discrimination and whether the violator has eliminated the discriminating circumstances. The injured party may submit the claim for compensating for damage to court within one year as of the date, when the he/she becomes aware or should have become aware of the damage caused.

Pursuant to § 4 of the Gender Equality Act, if a person discovers that he or she has been discriminated against in working environment and submits an application to a competent body describing facts relating to such discrimination on the basis of which it can be presumed that direct or indirect discrimination based on sex has occurred the person against whom the application is submitted shall, at the request of the competent body, explain the reasons and motives of his or her behaviour or decision. If the person fails to do so or refuses to give explanations, such behaviour shall be deemed to be equal to acknowledgement of discrimination by the person.

Question D

Please indicate if reinstatement is provided in cases of dismissal or voluntary resignation as a result of sexual harassment at work or in relation to work and in cases where reinstatement is not possible, please indicate the amount of the damages awarded. Please specify the measures provided to combat any form of retaliation following a sexual harassment claim.

Pursuant to § 6 subsection 2 clause 6 of the Gender Equality Act, the activities of an employer shall also be deemed to be discriminating if the employer downgrades the working conditions of an employee or terminates an employment relationship with him or her due to the fact that the employee has made reference to the rights and obligations provided for in the Gender Equality Act. See also answer to question C.

Pursuant to the Employment Contracts Act of the Republic of Estonia the unequally treated person has the right to demand from the employer compensation for the proprietary and non-proprietary damage caused by the discrimination (§10³ subsection 1). However, a person with whom the employer refused to enter into an employment contract on discriminative grounds shall not have the right to demand entry into an employment contract (subsection 2).

ARTICLE 26 PARA. 2

“With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers’ and workers’ organisations:

to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct”.

Question A

Please indicate which forms of behaviour are considered as reprehensible or distinctly negative and offensive actions directed against individual workers.

So far there has been no discussion on this issue in Estonia.

Question B

Please indicate any prejudicial actions against workers’ dignity other than sexual harassment, which are recognised and combated through different measures such as legislation, regulations, collective agreements, etc.

Pursuant to § 10² subsection 4 of the **Employment Contracts Act of the Republic of Estonia** direct discrimination shall be deemed to be harassment of a person on the grounds of sex, race, age, nationality, language knowledge, disability, sexual orientation, duty to serve in the Defence Forces, marital status, fulfilment of family-related obligations, social status, representing employees interests or belonging to an employees’ association, political opinions or belonging to a political party, religious or other beliefs. Harassment shall be taken to occur where unwanted conduct or act, either verbal, non-verbal or physical, takes place against a person in a relationship of subordination or dependency with the purpose or effect of violating the dignity of the person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment, and the person rejects such conduct or tolerates it for a

reason that it affects his or her access to office or employment or in order to maintain the employment relationship, have access to training, receive remuneration or have access to other advantages or benefits.

Question C

Please answer the questions B to D of paragraph 1 with respect to reprehensible or distinctly negative and offensive actions directed against workers other than sexual harassment.

Question B.

Information sheets of the European Agency for Safety and Health at Work about work-related stress, harassment at work and work violence have been translated into Estonian. The translations are electronically available on the Ministry of Social Affairs website (http://osh.sm.ee/topics/index_ee.stm). In addition, a summary of the agency's report "**How to solve psycho-social questions and reduce work-related stress?**" dealing with the same issues has been translated and made available at (http://agency.osha.eu.int/publications/factsheets/32/et/facts32_et.pdf).

As for the role of an employer, see the answer to question B in subsection 1.

Question C.

Information missing.

Question D.

See question D in subsection 1, in the part about the Employment Contracts Act.

ARTICLE 30: THE RIGHT TO PROTECTION AGAINST POVERTY AND SOCIAL EXCLUSION

“With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b. to review these measures with a view to their adaptation if necessary.”

LEGISLATION

- Parental Benefits Act.
- Social Benefits for Disabled Persons Act.
- Social Welfare Act.
- State Family Benefits Act.
- State Pension Insurance Act.
- Unemployed Persons Social Protection Act.
- Unemployment Insurance Act.

NATIONAL DEVELOPMENT PLANS

- Joint Inclusion Memorandum
- National Action Plan for Social Inclusion

Question A

If there is an official poverty line please describe its main methodological features. If not, please indicate the methodology followed or criteria used to measure poverty.

Poverty is not defined in any legislative Act of Estonia, however several different terms are used for assessment of need.

The task of the official poverty line is fulfilled by the concept of subsistence level, which was implemented in 1993. On the basis of subsistence level deprived households are paid subsistence benefits. Pursuant to the Social Welfare Act the Riigikogu establishes the subsistence level every year. The subsistence level is established based on minimum expenses made on consumption of foodstuffs, clothing, footwear and other goods and services which satisfy the primary needs. Housing costs are left out from the subsistence level and they are compensated to people in need in addition to subsistence benefits. The subsistence level is calculated for a person living alone and to the first member of a family for each budgetary year. The subsistence level of the second and each subsequent member of a family is 80 per cent of the subsistence level of the first member of the family.

Comment [I1]: Seda peaks kontrollima, kuidas hetkel täpselt on.

If in 2001 the percentage of households¹⁵ receiving subsistence benefits was 10.0% of population and 9.4% in 2002, by 2003 the percentage had dropped to 7.2%.

The Estonian Statistical Office uses the terms of relative (at-risk of poverty rate) and absolute poverty rate for assessing poverty and they are calculated in correspondence with the findings of annual household studies. Relative poverty is calculated in compliance with the methodology recommended by Eurostat and accordingly the poverty line is 60% of the median of average income per family member (with weights 1; 0,5; 0,3). According to relative poverty line 18.3% of Estonian population lived in poverty.

The term of absolute poverty line includes consumption weights suitable for the circumstances in Estonia. Absolute poverty line is corrected every year according to the changes of consumer price index. The number of people living below absolute poverty line has substantially decreased in recent years. If in 2000 28.9% of population lived below absolute poverty line, in 2003 the percentage was 19.6% of the population.

¹⁵ All households have been considered who have received subsistence benefits at least once a year.

Please indicate the methodology followed or criteria used to measure social exclusion.

Please provide information taken from studies or enquiries concerning the nature and extent of poverty and social exclusion showing the number of persons and/or households who are socially excluded or live in poverty (if possible broken down according to sex, age, family characteristics, regional situations, etc.).

Exclusion is understood as a situation when a person has no possibilities to gain access to resources and services. It could mean possibilities to work, access to social insurance, education, health care services, culture and leisure time facilities, or information technology.

For measuring social exclusion eighteen Laeken's indicators and in addition national indicators described in the NAP (National Action Plan for Social Inclusion) are used. Most frequently used Laeken indicators are indicators based on income, employment, number of long-term unemployed and discouraged, percentage of drop-out of schools, life expectancy, etc.

One of the most important areas of deprivation is housing. Different housing surveys are used to assess this aspect of deprivation. See Article 31.

The greatest social group that is at risk of poverty is the unemployed (especially long-term unemployed). The unemployment rate was 10% in 2003. According to the survey on the effectiveness of social benefits¹⁶ 62% of the unemployed households were poor.¹⁷ Families with children are also at risk of poverty, primarily single parent families and families with many children.

People who earn low wages also experience poverty. Considering the additional costs brought about by work (transport, eating out, child-care, etc.) and loss of social benefits (subsistence benefit), sometimes it is not worthwhile to work. The lowest wages are in the regions of highest unemployment, and also in some sectors: hotels and restaurants sector, agriculture, fisheries, but also in health care and social welfare, including people employed in social welfare institutions.

¹⁶ „Effectiveness and impact of social benefits“, Praxis, 2002

¹⁷ Not a single member of household is working and at least one of 16 year olds or older is unemployed.

Pensioners, of which 99% receive old-age pensions, are not directly endangered by poverty. However, their income is quite close to the poverty risk rate. Income of 65-year-olds and older is significantly lower than income of persons under 65, as an average accounting for 70% of the latter. The poverty risk is lowest for two pensioners living together.

Comment [I2]: kas see peaks olema people of pensionable age või pensionable age persons

Based on the low employment rate of the disabled (26%) and surveys, we may assume that the only source of income for the majority of the disabled is the disability pension and benefits.¹⁸

Comment [u3]: 2000.aastast kehtib puuetega inimeste sotsiaaltoetuste seadus, mille eesmärgiks on puuetega inimeste iseseisva toimetuleku, sotsiaalse integratsiooni ja võrdsete võimaluste toetamine puudest tingitud lisakulude osalise hüvitamise kaudu.

Women tend to be more often than men single parents or look after elderly or disabled family members. This has an impact on their opportunities for earnings and social protection. Because of gender specific distribution of the labour market women tend to be more often than men employed on low-wage jobs. Thus, the phenomena of feminisation of poverty are evident in Estonia.

Generally the poverty risk of women is higher than that of men. The differences in the recent years have stayed within the limits of 2-2.5%. Concerning age, women over 65 have the greatest poverty risk in comparison to men (difference within 10-15 %). Elderly women are poorer than men, because after their husband's death they live alone since the life expectancy of women is more than 10 years longer than that of men.

With regard to households the amount of poverty risk depends on the number of people in the household and dependants. The households with greatest poverty risk are single-parent households having been either households of the highest risk or the second after the one-member households of over 65 in different years. The high poverty risk of single-parent households (32.8%) is directly related to poverty of women, because 95% of single-parent families are families with mothers.

¹⁸ According to labour force studies of 2002 75% of inactive disabled persons mentioned pensions (predominantly disability pensions) and 18% of persons mentioned incomes of relatives as their main sources of income. Slightly over half of unemployed disabled persons said that their main source of subsistence was income of relatives and 22% mentioned benefits related to disability.

Table 22: Level of at-risk of poverty rate per household type*.

		1998	2000	2001	2002	2003
1-member household	Total	33.5	30.1	33.3	34.9	33.2
	Men	29.2	31.7	32.5	35.2	29.4
	Women	35.1	29.3	33.6	34.8	34.8
1-member household, younger than 30		14.3	33.6	31.2	39.0	28.1**
1-member household, 30–64		30.3	28.5	32.3	35.9	32.6
1-member household, 65 and older		43.0	31.0	34.9	32.7	35.0
2 adults without dependant children, younger than 65 years		14.7	11.8	13.6	14.6	13.4
2 adults without dependant children, at least 1 member is 65 or older		8.9	9.0	10.2	6.9	9.3
Other households without dependant children		15.1	13.5	11.5	13.1	10.7
Single parent households, 1 or more dependant children		26.8	37.2	29.2	35.2	32.8
2 adults, 1 dependant child		13.0	13.0	15.6	12.7	14.9
2 adults, 2 dependant children		14.1	16.4	15.1	15.2	18.1
2 adults, 3 or more dependant children		24.7	22.9	20.8	20.0	24.4
Other households with dependant children		17.7	19.3	18.5	15.7	16.2

* - proportion of persons in the corresponding household whose net income is below poverty risk line (60% of the median net income of household members)

** - unreliable data (sample was 20-29 people)

Source: Statistical Office

Regional differences of unemployment are expressed also in income. In 2003 the net income in Harju county (including Tallinn) was 3,429 EEK per household member, but in Ida-Viru county it was 2,025. Average net income was 6,166 EEK in Harju county (including Tallinn) and 3,719 EEK in Valga county.

Question B

Please describe the global and co-ordinated approach taken to prevent and combat poverty and social exclusion, indicating:

the measures implemented in particular to promote the employment of persons who are, or who risk being in a situation of poverty or social exclusion;¹⁹

the methodology and level of funding devoted to this policy;

the number of beneficiaries and the results obtained.

Prevention of poverty and social exclusion, and reducing the number of people living in poverty is one of the main challenges to Estonian economic and social development. Combating poverty and social exclusion are not a separate policy area in Estonia. The issue is addressed in the framework of other general policies proceeding from the principle that people at risk of poverty and social exclusion should benefit from general systems of services and benefits targeted to all people. Thus, combating poverty and exclusion is a process which involves a large number of different government agencies. Work of ministries and government agencies when addressing problems of poverty and exclusion is co-ordinated in the same way like with common issues of other spheres. This means that all relevant organisations are involved in the development of draft legislation and they have possibilities to express their opinions before final decisions are made. In addition to draft legislation other co-ordinated actions are performed to reduce poverty and exclusion.

National Action Plan for Social Inclusion

With regard to the social inclusion process of the EU and the Lisbon strategy Estonia developed the Joint Inclusion Memorandum or JIM in 2003 and the National Action

¹⁹ The reply may contain references to information submitted under other provisions of the revised Social Charter.

Plan for Social Inclusion or NAP/incl in the summer of 2004. The first action plan includes strategies and action plans of different areas (employment, social security and welfare, health care, education, legal aid and assistance to victims, information technology) and integrates and unites them into a single strategy. The greatest value of the action plan is that it addresses poverty and exclusion as a multifaceted problem and joins and gives an overview of the objectives and actions of different areas.

Estonian strategy for reducing poverty and exclusion proceeds from the understanding that work is best to alleviate poverty. Another significant principle is offering integrated services. It means that first and foremost social and labour market services must be interrelated and their aim is to get as many people as possible to the labour market and help them to stay there. The third strategic starting point is development of the universal system of services and benefits. It means that vulnerable groups should get help from general systems. The positive side of the approach is, in comparison to earlier systems, avoiding the stigma of poverty and exclusion. On the other hand we have to recognise that certain vulnerable groups have problems with the general system of services and benefits. For bridging the gaps of the general system measures should be taken which consider the needs of specific, concrete groups.

Social security system

The Estonian social security system ensures protection in respect to all the traditional social risks, such as old age, sickness, incapacity for work, loss of work and maternity. The value of social security benefits exceeds the minimum requirements established in the European Code of Social Security regarding health care services, sickness and maternity benefits, old age and survivor's pensions, unemployment benefits and family benefits.

In addition to the existing unemployment benefit, in 2002, the unemployment insurance scheme was introduced. Since 2000, social benefits for disabled people exist that aim to partly compensate for additional disability-related costs.

Family benefits are a very important tool for decreasing and preventing poverty among families with children. The universal system of family benefits includes benefits targeted towards more vulnerable families including families with small children, families with many children and single parent families.

In recent years a number of changes have been made in the family benefits:

- In 2002 benefits to second children were increased from 225 EEK to 300 EEK; start of independent life allowance was increased from 5000 EEK to 6000 EEK; allowances to children who are under guardianship or foster care were increased from 300 EEK to 900 EEK; single lump-sum adoption benefits of 3000 EEK were introduced to adopting persons.
- In 2003 supplementary child-care benefits of 100 EEK per month were established for raising children until they are a year old.
- In 2004 first child benefits were increased from 150 EEK to 300 EEK per month. Quarterly benefits paid to families with four and more children were extended to families with three children.
- In 2005 a new type of benefit of 2,400 EEK per month was introduced to the parents of families with seven or more children, which will increase in 2006.
- In 2006 benefits to families with three children will be increased to 300 EEK and benefits to families with four or more children to 450 EEK per child every quarter.

On 1 January 2004 the **Parental Benefit Act** entered into force. The aim of the Act is to compensate parents the salaries they did not receive because of child's birth and care in the first year of the child's life. All mothers are eligible for the parental benefit starting from the child's birth or from the following day after the end of the maternity leave. Fathers are eligible for the parental benefit from the sixth month of the child's life. Parents who did not work are paid parental benefit to the extent of benefit rate (in 2004 2,200 EEK per month), for the others the amount of benefit depends on the earlier wages. Permanent residents of Estonia and aliens with temporary residence permit are eligible for the benefit. Estonian residents whose place of residence is in several countries are eligible for the benefit if they are residents pursuant to the definition of subsection 16 (1) of the Income Tax Act or if they live permanently in Estonia.

State Pension Insurance Act Amendment Act was passed in the Riigikogu in 2004 to reduce the poverty risk of pensioners. Pursuant to the Act in 2004, 2005 and 2006 in addition to indexation, pensions will additionally increase by 100 EEK as an average.

In terms of eligibility, social security and social assistance rights in Estonia are guaranteed to residents. Nationality is not a criterion, which means that Estonia's sizeable non-citizen population is also covered. Residence is the only criteria for receipt of national pensions, family benefits, funeral grants, social benefits for the disabled and social assistance subsistence benefits when a contingency occurs – making the coverage of these schemes universal. In the case of pensions on the basis of old age, incapacity to work and survivors' as well as unemployment benefits, fulfilment of an additional employment-related qualification period is required, and accordingly, these schemes are designated to cover all economically active persons. The only exception relates to the unemployment insurance scheme, where self-employed persons are excluded.

Tax benefits

In order to decrease poverty-risk of people with low-income, the minimum basic exemption from income tax was increased.

Although the minimum wages established by the Government of Republic for full-time work have constantly grown, they amount only roughly to 1/3 of the average wages in the Republic. To some extent the increase of the minimum basic exemption from income tax, and in 2005 the decrease of the income tax rate from 26% to 24% will help to increase the income of low-wage persons.

Table 23: Minimum basic exemption from income tax (EEK per month).

	2000	2001	2002	2003	2004	2005
Minimum basic exemption	800	1000	1000	1000	1400	1700
Rate of minimum basic exemption, %	26	26	26	26	26	24

In the area of social protection Estonia has set the following objectives for 2006:

- The number of children living below the relative poverty line will decrease by 2% in comparison to 2003;
- Minimum basic exemption per month will be 2,000 EEK;

Comment [LJ4]: Võib-olla teha siia juurde mõni peretoetuste tõstmise eesmärk. Minul seda NAPis ei olnud, sest siis ei olnud toetuste tõstmine veel üldse kindel ja me ei julgenud seda sisse panna eesmärgiks.

- Maintenance of average old-age pension on the level of 40% of the wages of unskilled male workers;
- Subsistence level will be raised from 500 EEK to at least 750 EEK (established for the year 2005);
- Availability of social services will have improved – 1,800 adults per one social worker (2,360 in 2003), 1,340 children per one child protection worker (1,820 in 2003).

Comment [LJ5]: Ma ei tea kas seda eesmärki panna sisse

The measures implemented in particular to promote the employment of persons who are, or who risk being in a situation of poverty or social exclusion,²⁰

The long-term objectives of Estonian employment policy are as high as possible employment rate of working-age population and prevention of long-term unemployment, inactivity and dependence on benefits. It means that great attention will be paid to bringing back to the labour market groups which have traditionally been excluded from the labour market.

Starting from 2004 the state employment policy has focused more on the development of active labour market measures, including the plans to add activity requirements to for receiving unemployment benefits. Implementation of a wider range of employment measures, case management and networking as work methods for employment services has started. The aim is to flexibly meet the individual needs of job-seekers. It means that more attention is paid to providing necessary and effective assistance to the unemployed. For promotion of employment it is planned to improve co-operation with employers.

Similar to other job-seekers vulnerable groups have the right, according to their needs, to general labour market measures (counselling, labour mediation, labour market education, labour-market benefits) Vulnerable groups have often personal or social obstacles in finding employment and retaining jobs. As a result they might need additional labour market measures.

Services of individual case management are used primarily in case of long-term unemployed persons (but also with unemployed youth and other vulnerable groups)

²⁰ The reply may contain references to information submitted under other provisions of the revised Social Charter.

from 2005. Individual job-seeking plans are developed for them. Such service like work practice is targeted at long-term unemployed.

Disabled persons with their low employment rate are one of the major social groups affected by poverty. For this reason in 2004 we started offering employment measures targeted at disabled persons. For example, employment offices have developed labour market measures now. These include consultants for disabled people, a programme of work-place adaptation has been drawn up and networking is being developed.

Vulnerable groups are offered the following additional labour market measures: public work, transport benefits, labour market support to employers of such persons, support to job-seekers with poor Estonian-language skills, integration to the labour market of persons released from prison.

The most important targets for 2006 in the employment area are:

- 64.3% of working-age population will be employed (in 2003 – 62.6 %);
- 30% of working-aged disabled people will be working (in 2003 – 26%);
- the average length of unemployment insurance benefits will be 120 days (in 2003 – 140 days);
- the proportion of long-term unemployed will be 45% of all unemployed persons (in 2003 – 46%).

the methodology and level of funding devoted to this policy;

the number of beneficiaries and the results obtained.

The national budgetary strategy for 2006-2009 will support greater use of active labour market measures. Since the implementation of measures is only starting no statistics is available on the beneficiaries and results obtained.

Question C

Please provide information on whether and how poverty and social exclusion measures are monitored and evaluated with a view to their adaptation if necessary.

Subsistence level is reviewed every year and the Riigikogu decides the level. The Statistical Office collects information on poverty and exclusion in the annual surveys (mainly surveys of household budgets and consumer price statistics) and the findings are used in the development of national programmes and draft legislation. If necessary, additional studies are conducted. In addition to national indicators, the so-called Laeken indicators used in the inclusion process of the European Union are used for monitoring poverty and exclusion in Estonia.

As a member of the European Union, National Action Plans for Social Inclusion are drawn up in Estonia every other year. In 2003 the Joint Inclusion Memorandum (JIM), and in 2004 the first National Action Plan for Social Inclusion for 2004-2006 in Estonia were developed.

In addition Action Plans for Employment have been developed every year. The Action Plans for Employment are structured in compliance with European Employment policies and consist of three parts – labour market policy in Estonia, main developments on the labour market in recent years and results of earlier Action Plans for Employment and new policies.

The objectives for reducing poverty and exclusion are considered also in the development of national budgetary strategies.

Question D

Please indicate whether and how the social partners and the relevant non-governmental organisations participate in the formulation, implementation, evaluation and adaptation of measures to combat poverty and social exclusion.

1. Co-operation with social partners

Involvement of social partners to solve employment and social problems is essential both in the implementation of the European social model and ensuring effective operation of Estonian labour market. Social partners of the social dialogue in Estonia

are the Central Federation of Trade Unions (EAKL), the Employees' Unions' Confederation (TALO) and the Estonian Confederation of Employers (ETTK).

Opinions of social partners are considered in drawing up strategic development documents, drafting legislation and making amendments to legislation. In 1996 a trilateral agreement on the development of participatory democracy was made. Pursuant to the document the Government sends all draft acts, before submitting them to the Riigikogu, to central organisations of both employers and employees for receiving their opinions and proposals. The Government adds the opinions of social partners to the explanatory memoranda of draft Acts. Agreements made until now have supported the implementation of European employment policies and prevention of social exclusion and poverty. Social partners are participating in the work of supervisory boards of the public law organisations Unemployment Insurance Fund and Health Insurance Fund. The boards are engaged in the administration of unemployment insurance and health insurance schemes in Estonia. The Supervisory Board of the Unemployment Insurance Fund is planning measures to reduce unemployment. |

Comment [16]: töötukassa nõukogu ei määra ju töötuse kestuse aega? see on jabur. siin peaks vist olema makes proposals for the period of unemployment insurance benefit.

Concerning reduction of social exclusion, social partners have been essential in the minimum-wages negotiations. In 2001 a bilateral agreement was made by the EAKL and the ETTK which aims to achieve the level of not less than 41% of the national average gross wages for minimum monthly wages by 1 January 2008. The trilateral agreement made between the Government of the Republic, EAKL and ETTK in 2003 on the raise of minimum basic exemption from income tax should first and foremost improve the situation of poorer groups of society. Recently social partners and non-profit organisations have been active in combating illegal wages, so-called envelope wages, which reduce social guarantees of employees.

Social partners have contributed to the promotion of the development of human capital and life long learning, and to raising youth employment, which also helps to enhance social inclusion.

Enhancement of inclusion of social partners has received considerable support. In 2002-2004 the Phare Twinning project "Social dialogue in Estonia" was carried out. In the course of project work contacts of different parties on the labour market were developed. The government has planned to support social dialogue with 1.9 million

EEK in 2004-2006²¹. In addition the Labour Market Board is planning to carry out the ESF project “Organisation of the operation of employment councils, their operation principles and enhancement of their administrative capacity” in 2004-2005. The aim of the project is more efficient inclusion of social partners in the implementation of labour market policy.

According to the evaluation of the study made by the Centre for Policy Studies Praxis²² social dialogue in Estonia is quite well developed and therefore there are no great problems with the process as such.

2. Co-operation with non-profit organisations

Non-profit organisations have been active participants in the projects related to employment issues. In the first application round under the ESF measure 1.3 “Equal opportunities on the labour market” 22 applicants out of 72 were non-profit organisations and in the second application round 28 applicants out of 71 were non-profit organisations. Of 68 applications submitted to the EQUAL projects 35 were from non-profit organisations. Social partners have also presented project applications.

Non-profit organisations are also included in the development of sector legislation related to poverty and exclusion. For example in ensuring family benefits and protection of children’s rights co-operation with child protection and family organisations has been very close.

²¹ RES 2005 – 2008

²² Praxis 2004

ARTICLE 31 PARA.1

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

to promote access to housing of an adequate standard;”

Question A

Please indicate whether there is a right to adequate housing. If so, please indicate the legal basis, supply the relevant texts and describe any significant case law.

In terms of basic social rights the Estonian Constitution is based on a minimum concept of rights. The Constitution of Estonia does not directly stipulate everyone's right to housing. The Constitution directly protects only the inviolability of existing dwellings (§ 33 stipulates the inviolability of a home and forbids anyone from forcibly entering and searching it). However, the social state principle in the Constitution says that the state must take care of those who cannot support themselves, as well as guarantee subsistence for them. This obligation corresponds to a person's right to state assistance in the case of need (section 28(2)). The essence and extent of the guarantee is largely up to the legislator to determine – the constitutional principle only requires guarantee for the essential minimum for living. Based on this kind of minimum concept, a person would have the right to receive food, temporary shelter and clothing as assistance. The right to housing is also related to the constitutional right to the protection of health (section 28(1)), as unsuitable living conditions are one of the main reasons for diseases and ill health.

The right to housing as a social right, in Estonian court practice, has been indirectly recognised by the Civil Chamber of the Supreme Court. Namely, it is forbidden to evict a person from a municipal dwelling in case the local government is obliged to provide social assistance to the person living in the apartment, and a rental debt has arisen for valid reasons. But the court, in handling the matter of housing rights, also refers to section 28(3) of the Constitution, which stipulates that families with many

children and persons with disabilities are under the special care of local governments.²³

Basic social rights (incl. the right to housing) are based on the principle of human dignity, which suggests that the state must guarantee decent life, and not just accommodation in a shelter (decent life is not just life on the boundaries of an existential minimum).

Currently no legal definitions exist for a 'minimal' and 'adequate' housing standard. The socially reasonable standard among dwellings is 18 m² of the total area of dwelling per every member of the family, plus an additional 15 m² per family.

Question B

Please indicate the measures taken to promote access to adequate housing especially for:

- a. families, particularly single-parent families and large families;
- b. vulnerable groups such as persons with disabilities and elderly persons;
- c. homeless persons;
- d. migrants.

The right to housing is realised with the mechanisms supporting the users of housing.

Households in need have the right to apply for subsistence benefit covering also the housing utilities' expenses in the extent of the socially justified standard. Pursuant to **the Social Welfare Act**, a family whose monthly net income, after the deduction of the fixed expenses connected with dwelling is below the subsistence level has the right to receive a subsistence benefit.

Local governments set the standards for the cost of housing utilities. In principle, nobody should become homeless due to lack of money because a subsistence

Comment [17]: kordus, seda juba öeldi eespool ja eluaseme kuludega seostades võiks sama asja lühemalt öelda. nt local governments set certain standards for the cost of housing utilities. These costs take into consideration the socially reasoned standard size of dwellings. (muuseas, mulle tundub see väljend socially reasond standard size väga imelik väljend. Anneli, kas seda kuidagi teisiti ei öelda?)

²³ Annus, T., Aaviksoo, B. (2002). Sotsiaalhoolekanne kui põhiõigus. Juridica.

benefit is paid on the basis of presented bills before the due date for housing expenses.

However, some of the housing expenses are withheld from the benefit (e.g. necessary payments for building renovation). A further restriction is created by the fact that private tenants often do not have an official tenancy contract since private landlords prefer to hide their rental income. To overcome these problems more housing policy instruments are necessary to improve access to housing for all vulnerable groups and to also guarantee good housing maintenance for low-income groups.

Access to home-ownership for is facilitated by the housing loan policy. Although the interest rates offered by commercial banks are extremely favourable today, the requirement for down payment often limits the opportunities for risk groups to buy housing. Young families with at least one child and young specialists (up to 30 years old) can receive a housing loan from a commercial bank on favourable conditions (10% down payment instead of 34% as normal in commercial banks). Similar loan conditions also apply to tenants living in restituted housing. In cooperation with the foundation KredEx, a self-managing institution within the administrative field of the Ministry of Economics and Communication, provides guarantees on commercial loans for those target groups.

Comment [18]: kes on riskirühmad ja mis põhjusel?

Comment [19]: siin peaks olema seletus, mis on tagastatud majade üürnikud. JIMis on selle kohta hea inglise keelne allmärkus.

Providing municipal housing by the local governments is one of the tools to realise the right to housing. According to **the Local Government Organisation Act**, providing housing is an obligation of the local government unit. According to **the Dwelling Act**, a local government is competent to establish a procedure of registration for people who do not own a dwelling as well as those needing help for improving their living conditions. The **Social Welfare Act** gives vulnerable groups the right to apply for municipal housing in case the person or family is not able to ensure it for themselves; and according to the same act vulnerable groups have the right to receive inevitable social assistance that also includes the opportunity to use temporary shelter. The council of a rural municipality or a town shall, on the basis of the Dwelling Act, establish a procedure of providing and using social housing. Often, in addition to accommodation, other services could be provided in social housing such as counselling, assistance with certain activities etc.

Comment [110]: kas volikogu on council?

In general, municipal housing is primarily ensured for people coming from the orphanage, tenants of restituted buildings and people released from custodial

Comment [111]: peaks kasutama sama restituted buildings kui eespool on seda kasutatud

institutions. As a rule, people with insufficient financial standing, as well as persons with physical disabilities or special mental needs, can apply for social housing. Additionally, depending on the local municipality, single parents, families with 3 or more children, and other vulnerable groups can be eligible for municipal housing.

The need for affordable municipal housing for low-income groups exceeds existing supply, especially in the main towns. In 2002, the municipality of Tallinn approved its housing programme, which aims to construct 2,000 new municipal dwellings, and to renovate a portion of the existing municipal housing stock in the period 2002-2007. The largest target group for these new and renovated apartments is tenants in restituted housing.

The state also grants subsidies to local governments for constructing municipal rental apartments.

The conditions and procedure for covering the expenses related to a refugee's settling in a local government unit are regulated by regulation no 21 of the Government of the Republic of Estonia of January 21, 2003 "**The conditions and procedure for covering the expenses related to the settling of a refugee in a local government unit**". The Ministry of Social Affairs organises the settling of a refugee in a local government unit. Before the refugee settles down the Ministry of Social Affairs concludes an agreement with the respective local government. Among other expenses the expenses of renting housing for the refugee, repairs, purchasing of the basic furniture, household appliances and equipment shall be reimbursed to the local government from the state budget.

Question C

Please indicate whether there is a nationality condition or a length of residence requirement imposed on beneficiaries of state schemes in this field. Please indicate whether nationals from other Parties are subject to any additional conditions of eligibility.

Access to social assistance (to compensate for housing costs), access to favourable housing loans, and access to municipal housing is in no way related to citizenship status or length of time lived in Estonia. All permanent residents in Estonia have the same rights, and no additional rights apply to Estonian citizens.

Question D

Please indicate the level of state funding in this area, the various forms of housing aid, the number of applicants and the number of beneficiaries.

Social assistance is the state policy instrument – the total amount covering the need for such benefits is transferred annually to local government budgets. Local governments are responsible for assessing the applicants' needs, making decisions about benefit recipients, and distributing support grant within the legal framework set by the central government.

In 2003, social assistance was paid to 51 114 households (approximately 9% of the total number of households) in the amount of 308 million kroons. As separate housing allowance is not paid in Estonia it is not possible to point out how large amount of the subsistence benefit was paid because of high costs of housing. However, surveys have shown that up to 80% of social assistance might be used for covering housing costs. Depending on the income of the household, housing costs could partially or even completely be covered by means of the social assistance.

In 2003, 98.9% of the submitted applications for social assistance were approved. In 2003, the total number of submitted applications was 316 873 of which 313 360 applications were satisfied. This means that on average one household got the social assistance 6 times (months) a year (including the winter months when housing costs are high).

In 2003, two heads of households, which received the social assistance, were citizens of a state which had ratified the European Social Charter. One had the Polish citizenship and a household with 12 children whose head of household had German citizenship.

Question E

Please describe the obligatory standards that apply in relation to housing quality.

Please provide information on the extent to which sub-standard dwellings exist. Please indicate what measures are taken to improve housing standards, especially in public-owned housing stock.

Please describe the means by which compliance with housing standards is ensured in practice.

The requirements for dwelling are established by the Government regulation of January 26, 1999 “**Confirming the requirements for dwelling and the procedure for calculating rent**”. The requirements should be followed when new dwellings are constructed, and when dwellings are being renovated. The aim of the requirements set for residential dwellings is to ensure people safe and healthy living environment. A dwelling must enable a person to stay there round the clock, have sufficient lighting as well as natural or mechanical ventilation that guarantee quantity of air and the circulation of air necessary for living. Requirements also include that a dwelling must be separated from other dwellings, which means that every dwelling must have a separate entrance, and that every living-room, study, bedroom and separate kitchen in the dwelling must have at least one door. The requirements also include the minimum size of rooms and internal climate requirements.

The state supports repairs related to reconstruction and restoration of the main construction of apartment houses built before 1990 and updating the electricity system. The support shall cover 10% of the total price of the work. The Ministry of Economic Affairs and Communications organises issuing this support through the foundation KredEx. In addition, some local governments issue loans on favourable conditions for renovating houses (e.g. Tallinn City Administration).

Comment [12]: ma ei tea kas support on selles kontekstis kõige õigem sõna

According to the household survey conducted in 2003, approximately 6000 households or 1.2 % of the population live in dwellings without electricity, any means of heating, access to clean water in the dwelling or in the surroundings (in a well) and there is no toilet in the dwelling or its vicinity.

ARTICLE 31 PARA. 2

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

to prevent and reduce homelessness with a view to its gradual elimination;”

Question A

Please provide where possible information on the number of homeless persons, indicating where possible the number of children and young persons, elderly persons, persons with disabilities, and nationals of other Parties.

Homelessness is mostly a problem in large towns, especially in the capital. There are no official reliable statistics about homeless people in Estonia. According to expert evaluations, the number of homeless in Tallinn is nearly 2,000 or 0.5% of the inhabitants. Experts estimate the total number of homeless people in Estonia to be 3,000-5,000, or 0.3-0.4% of the population.

The numbers of homeless according to gender (3/4-4/5 are men) are similar to that of the rest of the world. The homeless in Estonia consist mostly of people who have no family or who have lost their family and close ones. All age groups within working age range of 18-65 are represented. The largest number of women without housing is represented by the group aged between 40-50, and the largest number of men, between 50-60. There is equal number of people from different ethnicities (Estonian-speakers and Russian-speakers) among the homeless compared to the population as a whole (50:50% in Tallinn). Two thirds of those using shelters have had no place to live for a long time (over 6 months).

Comment [113]: Anneli, kas see on õige termin?

Question B

Please indicate what measures are taken to prevent homelessness. Please indicate the total expenditure reserved for this purpose.

Please describe existing legal protection in cases of eviction for non-payment of rent and repossession.

The policy above (Article 31 section 1) describes measures, such as subsistence benefit and municipal housing provision, as being the principal measures for avoiding and fighting against homelessness.

The total amount of subsistence benefits paid in 2003 was 308 million EEK, of which about 80% is estimated to have been paid to compensate for housing costs. In addition, 17 million EEK was paid as additional social benefits from the subsistence benefit fund (please also see answer to question D para. 1).

When a dwelling is returned to the legal successor the valid lease agreement shall be considered valid for three years from the date of transferring the house to the legal successor. Upon expiry of the term the agreement shall extend for five years and then again for five years whereas the options for terminating the agreement in the meantime are almost non-existent. Thus, when the house is returned, lease agreements shall not expire automatically.

In the event the tenant does not pay the lease, but lives in a dwelling of a private owner, the courts are of a clear opinion that the owner has to tolerate the debt exactly so long as prescribed by law (three consecutive months or an amount equal to three months' lease). In the case of eviction the person can apply to the local government for social housing. As the housing reserve of the local government is not sufficient, the application does not necessarily give real results. In the case the person lives in a dwelling owned by a local government, the courts are of the opinion that the local government should help people in need and do not always allow terminating the lease agreement.

Question C²⁴

Please indicate what measures are taken to reduce homelessness, with particular emphasis on long-term solutions to this problem.

The above policy (Article 31 section 1) describes measures, such as subsistence benefit and municipal housing, as also being the principal measures for avoiding and fighting against homelessness in the long-term.

Please indicate whether there is a right to adequate housing. If so, please indicate the legal basis, supply the relevant texts and describe any significant case law.

Please see Article 31 para 1.

Please indicate the role of voluntary organisations in this field.

Voluntary organisations primarily provide shelter and overnight accommodation services. These often include social counselling, catering or an opportunity to prepare food, and washing facilities. Customers also get help in applying for documents. In general non-profit associations administer shelters or overnight accommodations set up for the homeless by local governments.

²⁴ Reference may be made to information supplied under Article 31 para. 1.

ARTICLE 31 PARA. 3

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

to make the price of housing accessible to those without adequate resources.”

Question A

Please describe the measures taken in your country to make the price of housing accessible to those without adequate resources (housing benefit, reduced-rate loans, tenancy buy-out options, etc.). Please indicate the amounts of public funds reserved for this purpose.

The above policy (Article 31 para 1) describes measures, such as subsistence benefit, municipal housing provision and state guaranteed housing loans to young families, young specialists and tenants living in restituted housing, as being the principal measures for reducing housing expenses for vulnerable families and thus improving access to housing for these groups.

The privatization of dwellings shall be regulated by the **Privatisation of Dwellings Act** adopted by the Government of the Republic of Estonia on May 6, 1993 and determining the objects, subjects, conditions and procedure of privatisation. The basis for the privatization of dwellings is the government’s regulation no 198 of July 1, 1993 **“About the procedure of privatizing dwellings”**.

Privatisation of the state housing sector was carried out on extremely favourable terms to sitting tenants. The privatisation programme, which started in 1991, has included both the restitution process, i.e. the return of dwellings nationalised by the Soviet authorities to the former owners or their legal heirs, and the privatisation of dwellings under state or municipal ownership. Dwellings were mostly privatised to their sitting tenants. The purchase of apartments was conducted through privatisation vouchers, which were entitled to all individuals who had permanently lived and worked in Estonia for at least five years, regardless of their ethnic status. Thus, the financial resources and ethnicity of households did not affect their ability to privatise. In 2002, 96% of the total number of dwellings were privately owned and 4% of dwellings were owned by the public sector.

Please see also answer to question B of article 31 subsection 2.

Municipalities can apply for a state subsidy for up to 50% of the cost of providing new or renovated municipal rental housing for tenants who have otherwise difficulties in reallocating from restituted housing. This is expected to solve housing problems for this particular vulnerable group (the Housing Development Strategy for 2003-2008). In 2004, the support of municipal lease dwellings fund was allocated through the KredEx foundation to 14 local governments in the total amount of 12 million EEK; of this amount 10 million was for creating dwellings for tenants living in restituted buildings and 2 million for founding dwellings for new labour force arriving in the region. All in all 24 local governments submitted applications for getting support from the municipal lease dwellings fund in the total amount of 34 million kroons. The decision was negative in the case of 10 local governments as their application did not correspond to the conditions or the project was not eligible for support. With the assistance of support local governments intend to build 116 dwellings for tenants in restituted houses and 23 dwellings for new labour force arriving in the region.

Question B

Please indicate the criteria applied to identify persons without adequate resources.

Pursuant to the **Social Welfare Act**, after paying for all standardised housing costs to the extent of the standard allotted living space households must retain at least the subsistence minimum (the rest is covered by the subsistence benefit).

Please indicate whether, where a person meets the criteria, they are entitled to assistance in accessing housing as of right. Please indicate whether they may challenge an unfavourable decision before the courts on both procedural and substantive grounds.

The use of dwellings at the possession of local governments shall be determined by the respective local government. In general, dwellings shall be first guaranteed for persons coming from the orphanage, tenants of restituted houses and persons released from custodial institutions.

It is possible to lodge an out-of-court complaint if there is a certain law providing the opportunity of submitting such challenge. Otherwise the person may always contest the decision of the public authorities within 30 days from being informed of the decision and claim for annulling the decision and adopting a new one. As this is an administrative proceeding, appellation is cheap. State fee for a complaint at the administrative court is 10 kroons; besides, the administrative court is an investigative court where the judge is more committed to finding out the circumstances.

Please indicate the number of persons who apply for such assistance and the number who benefit.

About paying the subsistence benefit please see also answer to question D in subsection 1.

Question C

Please indicate whether there is preferential treatment for any group such as homeless persons, large families, and persons with disabilities, elderly persons, single parents, and migrant workers.²⁵

The subsistence benefit applies universally to all households eligible for such a benefit. The only criteria on which applications are assessed are the household's

²⁵ Reference may be made to information supplied under Article 31 para. 1.

actual income (and other resources) and the actual housing costs in accordance with the limits of the standard allotted living space and standardised housing costs.

Table 24: Recipients of subsistence benefit.

Type of family	Of the total number of families which received the benefit
Retired people's family	13.2
Students' family	18.5
Family with an unemployed member	54.8
Family with child	36.5
Family with a disabled person	8.2
Other	4.2

Source: The Ministry of Social Affairs 2004

As presented in the table above, risk groups such as families with children, families with a disabled person who is head of the family and others are often among the recipients of social benefit, but they are treated according to the same rules as other households.

Vulnerable groups such as the homeless, single parent families, families with many children, the disabled and the elderly may match locally defined criteria for applying for municipal housing.

Question D

Please indicate whether nationals of other Parties are subject to any additional conditions.

No additional conditions.

Question E

Please indicate annual trends in housing prices (sale and rental), including significant regional variations where appropriate.

Rent levels in municipal housing are mostly cost-rent, i.e. the income gained from the rent should cover only the costs of housing utilities and housing maintenance. However, in most municipalities, rent levels remain lower than would be necessary to pay for housing maintenance (municipal housing stock is greatly amortised). In new municipal dwellings, higher rents are applied in order to cover the costs related to construction.

Rent levels in the private rental market exceed the rent levels in (old) municipal housing several times. In 2001, in Tartu, the second major town in Estonia, the rent for a standard two-room private apartment was approximately EEK 1,500-2,000 (EUR 96-128) (cost of housing utilities excluded). At the same time the rent level in the municipal sector was EEK 8 (EUR 0.5) per square metre—approximately EEK 251 (EUR 16) for an average two-room apartment. This example illustrates the difference between municipal and private rental market prices. Average incomes as well as housing prices vary a lot between Estonian cities and counties. In 2001, in Harjumaa County (the region of the capital), the average three-room apartment cost 44.6 average net monthly salaries, whereas in Jõgevamaa (a more peripheral county) the same apartment cost only about five net monthly salaries. In 2001, 66% of all real estate transactions took place in Tallinn (the capital) and Harjumaa County.