

**ESTONIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

The current status of the implementation of the measures of the Recommendation is twofold, due to differences in scopes of protection provided by the Gender Equality Act (GEA) and the Equal Treatment Act (ETA). The GEA prohibits discrimination, which is based on gender (and gender identity) in all areas of, while the ETA divides the protected areas depending on the basis of discrimination.

The legal framework for equal treatment and non-discrimination mostly covers the area of employment (as required by Directive 2000/78/EC). The insufficiency of the of implementation of the Recommendation occurs in the areas of private life and family relations.

Steps have been taken to amend the situation. Two important developments currently in the process of consultations concerning the LGBT issues in Estonia are the amendment of the existing Criminal Code of Estonia and the civil partnership law concept.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please explain and, if appropriate, provide examples of any such measures found:

There has been no comprehensive review of existing legislative and other measures. Each Ministry is responsible for ensuring respect of equal treatment principles within its area of competence. New legal acts or amendments to existing acts must take this principle into account. Ministry of Social Affairs, through the gender equality department, is tasked with coordinating the activities of other state authorities relating to equal treatment in general.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Equal Treatment Act stipulates that discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by conciliation procedure.

According to the Gender Equality Act (GEA § 13) and the Equal Treatment Act (ETA § 24) the victims can demand both that the infringing party ends the discrimination and also compensates the

damages caused, both material and moral damages. There are no differences in the possible sanctions depending on the ground of discrimination.

Commissioner and the Chancellor can make recommendations on how to redress the discrimination in non-material terms and how to avoid such situations in the future. However, their opinions are not legally binding, except for the agreement reached at the mediation proceedings, and do not amount to recommendations being made by courts or labour dispute committees.

The scope, duration and nature of the discrimination is taken into account in determining the amount of compensation (GEA § 13(3), ETA § 24(3)). In case of non-proprietary (or moral) damage, the victim can ask for 'a reasonable amount of money' as compensation (GEA § 13(2), ETA § 24(2)). In case of moral damages, if the exact amount of the damage cannot be established or if the establishment thereof would involve major difficulties or unreasonably high costs the court will assess the amount of compensation according to its discretion.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If appropriate, please provide examples of measures adopted or in preparation.

No legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5). Two major developments concerning the LGBT issues currently in the process of consultations are the amendment of the existing Criminal Code of Estonia and the potential civil partnership law concept.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

A draft amendment to the Penal code is being prepared to address the deficiency.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- ☒ a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

✓ a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In Estonia the sanctions and the right of action is regulated by Law of Obligations Act, Equal Treatment Act and Penal Code.

Penal Code §151 regulates the sanctions for incitement of hatred. It says that activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person are punishable by a fine up to 300 fine units or by detention.

Penal Code §152 regulates sanctions for violation of equality. It says that unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention.

Law of Obligations Act (LOA) §1043 stipulates that a person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.

The conditions of the claim are:

- damage is caused to a victim
- unlawfulness of causing damage
- causation between unlawful act on causing of damages

LOA §128 regulates the types of damage subject to compensation. Pursuant to the law damage subject to compensation may be patrimonial or non-patrimonial. Patrimonial damage includes, primarily, direct patrimonial damage and loss of profit. Non-patrimonial damage involves primarily the physical and emotional distress and suffering caused to the aggrieved person.

LOA §134 subsection 2 states that in the case of an obligation to compensate for damage arising from depriving a person of liberty, causing bodily injuries to or damage to the health of a person or violation of other personality rights, including defamation of a person, the aggrieved person shall be paid a reasonable amount of money as compensation for non-patrimonial damage. Same paragraph subsection 5 says that the gravity and scope of the violation and the conduct and attitude of the person who caused damage to the aggrieved person after the violation shall be taken into account for the purposes of determining the compensation for non-patrimonial damage.

According to LOA §1045 subsection 1 point 4 causing of damage is unlawful if, above all, the damage is caused by violation of a personality right of the victim.

Hence taking into account of the previous, a person discriminated on the basis of sexual orientation or sexual identity, has the right of compensation for damages (both patrimonial or non-patrimonial). Analogous regulation appears on Equal Treatment Act. Its §23 says that discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Legal Chancellor by way of conciliation proceedings.

Equal Treatment Act §24 subsection 1 says that a victim demand that the person who violates the rights terminate the discrimination. Analogous paragraph is in LOA: § 1055 subsection 1, which states, that if unlawful damage is caused continually or a threat is made that unlawful damage will be caused, the victim or the person who is threatened has the right to demand that behaviour which causes damage be terminated or the making of threats with such behaviour be refrained from. In the case of bodily injury, damage to health, violation of inviolability of personal life or any other personality rights, it may be demanded, inter alia, that the tortfeasor be prohibited to

approach other persons (restraining order), the use of housing or communication be regulated or other similar measures be applied.

According to Victim Support Act all persons (including the victims of sexual orientation or gender identity discrimination) who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse, i.e. all those to whom suffering or injury have been caused, are entitled to victim support. Any person who has been subject to suffering or injury has access to counselling regardless of whether the identity of the perpetrator has been disclosed or criminal proceedings have been brought against him/her.

The purpose of the victim support service is to maintain or improve a victim's ability to cope. For improved coping, a victim needs both emotional support and information on the forms of assistance available (such as psychological counselling, legal assistance etc), and guidance on how to address the organisations. If a victim is assisted in due course, his/her coping ability can be maintained.

The law provides for the establishment of a network of victim support centres in all counties. The main duty of regional victim support services is to create and employ a network of organisations in the region which offer assistance and services to victims of crime, and to develop and strengthen this network where possible.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The obstacles in the provision of law.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its Appendix have been translated into Estonian by the Council of Europe and will be available on the Internet.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

However, such motives have not been clearly set in the law. An amendment is being prepared.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ✓

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The amendment is being prepared.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☐ d. ☐ e. ✓

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been taken.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☐ c. ✓ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Training will be foreseen to take place after the amendment has entered into force.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ✓

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been taken.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ✓ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ✓ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The consultation process of the amendment of the existing Criminal Code is currently ongoing. The amendment foresees specific provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. Judges have been participating in several trainings as regards discrimination.

**II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

No compliances have been made to Gender Equality and Equal Treatment Commissioner that freedom of association (including access to public funding available for non-governmental organisations) has been limited because of discrimination on grounds of sexual orientation or gender identity.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been adopted to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression. The usual means can be employed – complaints can be made to the Police if hostility or aggression potentially amount to a crime, complaints can also be made to the Chancellor of Justice or to a court.

17. Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No measures have been taken. There are no specific measures to protect, facilitate or encourage LGBT organisations. Free operation is based on the respective acts. In case of violations in regard to such organisations, they can turn to respective institutions, such as courts or the Chancellor of justice.

**III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

Pursuant to the Constitution of the Republic of Estonia § 47 everyone has the right to assemble peacefully and to conduct meetings without prior permission. The right to hold public meetings is regulated in the Public Meeting Law Act. Freedom of Speech is expressed in the Constitution § 45 - Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means.

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The right to freedom of peaceful assembly in Estonia is in general regulated by the Constitution of Estonia. Section 47 of the Constitution states: „Everyone has the right, without prior permission, to assemble peacefully and to conduct meetings. This right may be restricted in the cases and pursuant to procedure provided by law to ensure national security, public order, morals, traffic safety, and the safety of participants in a meeting, or to prevent the spread of an infectious disease.”

Restrictions to this regulations are stated in the Public Meetings Act (hereinafter PMA). Regulation and also the restrictions of the PMA can be divided into three separate parts I) when the public meeting is forbidden; II) the places where it is forbidden to hold public meetings; and III) cases when the meeting has to be registered beforehand.

I) PMA states, that public meetings are forbidden when: they are directed against the sovereignty of Estonia, it's aim is to forcibly change the existing polity, it advocates violation of the territorial integrity of Estonia, it encourages hatred, violence or discrimination as to nationality, race, colour, sex, language, origin, religion, sexual orientation, political belief or economic or social status; it advocates to breach public order or infringes morality.

II) PMA states, that public meetings can't be held: at a border checkpoint and closer than 300 meters to the border, on the territory of Estonian defence forces and closer than 50 meters to the defence forces territory, on a bridge, on a railroad, in a mine, under high voltage power lines, on a territory where infectious disease is spreading, at a place which is naturally dangerous to humans or at any other dangerous place to humans.

III) PMA states, that an organized public meeting has to be registered at least four workdays before the meeting at the rural municipality or city government, when it's necessary to redirect traffic, it's necessary to erect a tent, stage, bleacher or any other large scale construction, it's necessary to use sound or lighting equipment. All other public meetings (if they already haven't been registered in the above procedure) have to be registered at least two hours before the meeting at the police. The registration at police can be done in person at a police station or by using means of communication (phone, e-mail etc).

Also, in order to protect the right to freedom of peaceful assembly the Estonian penal code (section 158) states, that: “Interference with or violent dispersion of a lawfully organized public meeting is punishable by a pecuniary punishment or up to one year of imprisonment.” The cited acts are in accordance with the Constitution of Estonia and there haven't been any implications that the constitution itself or other acts pursuant to the constitution aren't in accordance with the international human rights law.

As a positive institutional measure taken to facilitate the exercise the right to freedom of peaceful assembly is for example the re-establishment of Police Rapid Response Unit (riot police) in 2002. The aim was to create a modern rapid response unit according to the best European practice. The

vision was that specific tasks are performed/ carried out by specially trained police officers who use modern equipment which will not cause disproportionate damage to the offender but will protect the officer against attacks. It's important to emphasize that the riot police was also created for the protection of peaceful demonstrators against the attacks of provocateurs and counter-demonstrators.

As described before all organized public meetings have to be registered and by doing so the fact is known to the police and police can take appropriate measures to ensure the protection of peaceful protesters. As an additional measure section 6 of the PMA states that the organizer of a peaceful protest has to appoint a steward to ensure the safety of the peaceful assembly. The appointed steward has the right to make proposals to police officers to eliminate protesters who don't follow his orders given to preserve the safety of the peaceful meetings. Also by the PMA the organizer has to ensure the safety of participants, limit dangerous places with barriers, adhere to the health requirements, warn offenders etc. The Estonian practice shows, that this regulation has been adequate and it works in practice.

As mentioned before section 158 of the Estonian Penal Code states, that Interference with or violent dispersion of a lawfully organized public meeting is punishable by a pecuniary punishment or up to one year of imprisonment. During the years 2010 and 2011 no violations of this section were registered.

Right to freely gather for peaceful meetings is assured in Estonia. With the right to organize meetings, obligation to plan the meeting in a way it does not jeopardise law and order, traffic safety and safety of the attending people, accompanies. Law enforcement authorities have never refused to provide consultations to any management how to fulfil those obligations. In 2006 and 2007 Tallinn Pride management board was provided with written recommendations. Limitations to the organisation of meetings are allowed if there is basis to believe that meeting may endanger law and order, traffic safety and participants. Specifying obligations, rights and competencies of organizing public meetings, project of new public order act has been elaborated, which is under legislative proceedings in The Parliament of the Estonia.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no such provisions.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Article 6 of the Personal Data Protection Act stipulates that upon processing of personal data, a processor of personal data is required to adhere to the following principles: principle of legality,



principle of purposefulness, principle of minimalism, principle of restricted use, principle of data quality, principle of security, principle of individual participation. In accordance with Article 4(2)(6) of the Personal Data Protection Act information on sex life is sensitive personal data.

This means that for processing sensitive personal data, the person must be explained that the data to be processed is sensitive personal data and the data subject's consent shall be obtained in a format which can be reproduced in writing (Article 12(4) of the Act). However, pursuant to Article 14 of the same Act processing of personal data is permitted without the consent of a data subject if the personal data are to be processed:

- 1) on the basis of law;
- 2) for performance of a task prescribed by an international agreement or directly applicable legislation of the Council of the European Union or the European Commission;
- 3) in individual cases for the protection of the life, health or freedom of the data subject or other person if obtaining the consent of the data subject is impossible;
- 4) for performance of a contract entered into with the data subject or for ensuring the performance of such contract unless the data to be processed are sensitive personal data.

Communication of personal data or granting access to personal data to third persons for the purposes of processing is permitted without the consent of the data subject:

- 1) if the third person to whom such data are communicated processes the personal data for the purposes of performing a task prescribed by law, an international agreement or directly applicable legislation of the Council of the European Union or the European Commission;
- 2) in individual cases for the protection of the life, health or freedom of the data subject or other person if obtaining the consent of the data subject is impossible;
- 3) if the third person requests information obtained or created in the process of performance of public duties provided by an Act or legislation issued on the basis thereof and the data requested do not contain any sensitive personal data and access to it has not been restricted for any other reasons.

Furthermore, Article 27(1) of the Personal Data Protection Act states that if a processor of personal data has not appointed a person responsible for the protection of personal data provided in Article 30 of the Act, the processor of personal data is required to register the processing of sensitive personal data with the Data Protection Inspectorate. If personal data are processed by an authorised processor then the applications shall be submitted by the chief processor. Article 27(4) of the same Act provides that processing of sensitive personal data is prohibited if the Data Protection Inspectorate has not registered the processing of sensitive personal data, except in the case specified in subsection 30 (1) of the Act or the term for processing sensitive personal data has expired or the Data Protection Inspectorate has suspended or prohibited the processing of sensitive personal data. Article 27(5) of the same Act states that the Data Protection Inspectorate shall refuse to register processing of sensitive personal data if there are no legal grounds for processing or the conditions for processing do not meet the requirements provided for in the Act, another Act or legislation established on the basis thereof or the organisational, physical and information technology security measures applied for the protection of personal data do not ensure compliance with the requirements provided for in Article 25 of the Act.

Pursuant to Article 42 of the Act violation of the obligation to register the processing of sensitive personal data, violation of the requirements regarding security measures to protect personal data or violation of other requirements for the processing of personal data is punishable by a fine of up to 300 fine units and the same act, and if committed by a legal person, is punishable by a fine of up to 32,000 euros. Article 32(1) of the Act provides that the Data Protection Inspectorate is responsible for monitoring compliance with the Act and legislation established on the basis thereof.

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In accordance with Article 2(1) of the Act, the following are nevertheless excluded from the scope of the Personal Data Protection Act: processing of personal data by natural persons for personal purposes as well as transmission of personal data through the Estonian territory without any other processing of such data in Estonia.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The regulation on common requirements to medical acts of sex change is the basis for all medical and legal acts regarding gender reassignment in Estonia. Although the Ministry of Social Affairs has considered it, so far no special regulation for gender reassignment has been worked out. According to the current regulation, the Minister of Social Affairs assembles a committee of medical experts competent to decide about a person's gender, they also grant permission for medical and surgical procedures necessary for gender change. A person applying for gender recognition must submit an application to the Ministry. The applicant must also present evidence about his/her transsexual identity during at least two years prior to the application; a psychiatrist's assessment excluding a psychiatric disorder, and the results of genetic research on compatibility of chromo somatic and gonad gender. The decision of a committee of medical experts is the basis for a decree by the Ministry of Social Affairs, which authorises hormonal treatment and medical acts, both of which are voluntary, to change an applicant's gender. This decision will also be a basis for legal change of gender and name.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Family Law Act a marriage is contracted between a man and a woman. Therefore once gender reassignment has been completed and legally recognised, the right of a transgender person to marry a person of the sex opposite to their reassigned sex is guaranteed.

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

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please provide examples:

Estonian national legislation does not regulate same-sex partnerships. Compared to heterosexual couples, same sex couples do not have the right to marry.

In May 2011 the Estonian Chancellor of Justice requested that the Ministry of Justice introduce legislation to give same-sex partnerships a legal foundation. In Chancellor's view, the law needed to be changed to cover areas such as property ownership and legal succession. The Chancellor of Justice requested the Ministry of Justice to introduce civil partnership law. The proposal was drafted in August 2012 and is currently under the process of consultation.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

Decisions regarding parental responsibility and adoption of a child have to base on the Family Law Act and have to be primarily in the child's best interest as well as follow the non-discrimination principle.

§ 147 of the Act permits adoption if it is necessary in the interests of the child and there is reason to believe that a parent-child relationship will be created between the adoptive parent and the child. Upon the selection of an adoptive parent, his or her personal characteristics, relationship with the child being adopted, his or her financial situation and ability to perform the obligations arising from the adoption relationship and, if possible, the presumed will of the parents of the child shall be taken into account. If possible, the need for consistency of raising of the child and his or her national, religious, cultural and linguistic origin shall be taken into account upon making a decision.

Adoption is not permitted if it is in conflict with weighty interests of the children of the adoptive parent or the child being adopted or if there is reasonable doubt that the children of the adoptive parent damage the interests of the child being adopted. Adoption shall not be decided on based on proprietary interests. Upon deciding, it shall be verified that the consents have not been granted for charge or any other compensation.

There are no court cases or cases processed by non-judicial institutions that have involved adoption issues in the light of adoptive parent's sexual orientation.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Access to employment

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- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- ii) Promotion, dismissals, pay and other working conditions  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- iii) Prevention and punishment of harassment  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- iv) Protection of privacy of transgender persons  
(in accordance with paragraph 30 of the Appendix to the Recommendation)  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Equal Treatment Act § 2 discrimination on the ground of sexual orientation is prohibited.

Subsection (2) prohibits discrimination of persons on grounds of religion or other beliefs, age, disability or sexual orientation is prohibited upon:

- 1) establishment of conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as upon promotion;
- 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination or cancellation of employment contracts or contracts for the provision of services, release from office;
- 3) access to vocational guidance, vocational training, advanced vocational training and retraining, practical work experience;
- 4) membership in an organisation of employees or employers, including a professional organisation, and grant of benefits by such organisations.

The Act does not preclude the requirements of equal treatment in labour relations on grounds of any characteristic not specified in subsection.

The Republic of Estonia Employment Contracts Act § 3 obliges employer to guarantee the employees the environment of non-discrimination and promote the principles of equal treatment according to the Gender Equality and Equal Treatment Acts. The ECA came into force in 2009 after negotiations with social partners. Related to the enforcement of the law several seminars were carried out across Estonia to the employers and employees, which handled also the principles of gender equality and equal treatment.

The new Public Service Act, which comes into force in 01.04.2013, contains a regulation according to which all public service bodies have to assure a public servant or a person wishing to enter into public service the protection against discrimination and promote equal treatment

Discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by way of conciliation procedure.

### **VI. Education**

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐
- ii) Information, protection and support for pupils and students  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐
- iii) Objective information on sexual orientation and gender identity in school curricula ?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐
- iv) School equality and safety policies and action plans  
a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Although specific measures have not been taken and LGBT issues are not directly part of the curriculum, the curricula of civics include topics of equal treatment, including LGBT issues. There has been no discrimination cases reported about discrimination on the ground of sexual orientation in schools.

NGO Estonian LGBT Association organizes trainings for school teachers and youth workers in order to provide adequate information and break negative stereotyping on LGBT issues. The NGO reports that the interest about the topic is generally growing and the fact that it might be one of the motives behind school bullying and exclusion is increasingly acknowledged among teachers and school leaders.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Estonian health policy is built on the principle of equal treatment. According to the Health Care Services Organisation Act, all people staying in the territory of the Republic of Estonia have the right to emergency care. Health insurance is provided also for the registered unemployed in order to alleviate the negative impacts of unemployment on health. Free health services are also available for all the people with the HIV or tuberculosis infection.

Estonian health insurance relies on the principle of solidarity. If a person is covered by health insurance, he or she has access to all health services according to the same conditions as everyone else.

Trainings of health service personnel have to be in accordance to the highest standards of possible health services and everybody must be guaranteed the necessary requirements for achieving the best possible state of health, regardless of someone's sexual orientation or gender identity. The National Health Plan does not separately cover the LGBT topic. The health service providers are encouraged to take into consideration of all patients' particular needs.

29. Has homosexuality been removed from the national classification of diseases?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?  
a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

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If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Transgender people have access to services on the same basis as everyone who is covered by the Estonian Health Insurance Fund; this includes access to specialists according to the general waiting list. The costs of surgical procedures are usually covered by the patient themselves.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?
- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

The state is obligated to create conditions in the housing market (legislation, institutional arrangement and support measures), which enable residents to solve their housing problems independently. The implementation of the Estonian Housing Policy is designed to be supported by employment, welfare and regional policy measures. Pursuant to the Constitution and the Local Government Organisation Act, local governments are responsible for organising housing and utilities in their administrative territory.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Even though there are no provisions targeting the LGBT community in particular, to a certain extent, Estonian legislature protects people who cannot afford housing for economic reasons or who need temporary housing or shelter for socio-economic or other reasons. Under the Social Welfare Act, local government authorities are required to provide dwelling for persons or families who are unable or incapable of securing housing for themselves or their families, and to create, if necessary, the opportunity to lease social housing.<sup>319</sup> The rural municipality council or city council establishes the procedure for provision and use of social housing. Persons who have difficulties moving about, caring for themselves or communicating in a dwelling are assisted by the rural municipality government or city government in adapting their dwelling or in obtaining a more suitable dwelling. Paragraph 18 of the Social Welfare Act establishes types of social welfare institutions:

- shelters – temporary twenty-four hour assistance, support and protection for persons;
- substitute homes – substitute home service to children;

- youth homes – living and rehabilitation for young people over the age of fifteen who are from substitute homes, schools for students with special needs, residential educational institutions or have been left without parental care;
- residential educational institutions – living, care, development and education for disabled school age children.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No measures have been taken.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Estonia has no practice in these cases.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Estonia has no practice in these cases.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There are no national human rights institutions as accredited by the United Nations under the Paris Principles. The Chancellor of Justice and the Equal Treatment Commissioner are human rights institutions created by law and mandated to address discrimination.

Gender Equality and Equal Treatment Commissioner has competence in issues of gender, racial or ethnic origin, colour, religion or belief, age, disability and sexual orientation. She accepts applications from individuals and provides her opinion and recommendations on discrimination issues. She is also authorised to act on her own initiative.

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

Neither the Commissioner nor the Chancellor can give legally binding opinions, neither is there an enforcement mechanism for them. They can both make recommendations to state and local authorities. The Chancellor can also make recommendations to the parliament. More importantly, unlike the Commissioner, the Chancellor can raise matters before the Supreme Court if the adopting institution has refused to amend the act.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Examples of good practices would be helpful for working out different measures for better implementation of the Recommendation.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes, Council of Europe should continue examining the implementation of this Recommendation periodically.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.