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**REPORT
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COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE**

DUNJA MIJATOVIĆ

**FOLLOWING HER VISIT TO ESTONIA
FROM 11 TO 15 JUNE 2018**

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SUMMARY

Commissioner Dunja Mijatović and her team visited Estonia from 11 to 15 June 2018. During the visit, the Commissioner held discussions on issues pertaining to gender equality and women rights; the human rights of older persons, and the situation of national human rights structures for the protection and promotion of human rights.

The present report focuses on the following major issues:

Gender equality and women's rights

Gender equality is a basic principle of human rights, a necessity for genuine democracy, as well as a prerequisite for social justice and economic development. While noting the adoption of legislation and policies, as well as significant progress in the field of gender equality in Estonia, the Commissioner's visit revealed that more efforts are needed to address persistent gender stereotypes and prejudices about the traditional roles of women and men in society. The Commissioner encourages the authorities to strengthen efforts to raise awareness about the negative impact of structural inequality between men and women, and to support an education system able to promote gender equality throughout the country. In order to accelerate and increase the representation of women in decision-making, further consideration should be given to temporary special measures that can be effective in the country's context. The Commissioner further encourages the authorities to take comprehensive measures to tackle the range of factors causing the significant gender pay gap, which is the highest in the European Union at 25.3% according to Eurostat. In particular, she welcomes the proposed amendments to the Gender Equality Act as a good first step in that direction.

Women's unequal status in society, resulting from an unbalanced distribution of social, political and economic power, is one of the drivers of gender-based violence against women, which remains a pervasive human rights violation in Europe, including in Estonia. The Commissioner congratulated the authorities on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in 2017. She invites them to continue to pursue public campaigns against gender-based violence and domestic violence. In that regard, the engagement of the President to denounce violence against women and domestic violence is welcome. Whereas Estonia has a well-developed system of protection and support for women victims of violence, the main challenge is to ensure an effective response from the law enforcement and judicial system, so that appropriate dissuasive sanctions are applied against perpetrators of violence and repeat victimisation is prevented. The Commissioner recommends continuing training law enforcement and judicial officials, strengthening legal assistance to victims and considering establishing teams of specialised prosecutors and judges to handle gender-based violence cases.

Human rights of older persons

Estonia faces the urgent task of addressing the societal and economic challenges arising from a rapidly aging population, in a way that fully protects the human rights of older persons. Given the range of issues concerned, the Commissioner encourages the authorities to develop a comprehensive strategy on older persons, in accordance with the Council of Europe Recommendation CM/Rec(2014)2 on the promotion of the human rights of older persons. In order to combat discrimination in all fields of life, the Commissioner invites the authorities to adopt the amendments proposed by the Ministry of Social Affairs to the Equal Treatment Act, as well as to ensure that older persons are aware of their human rights so that they can claim them, and to conduct public awareness campaigns to combat ageism and stereotypes about older persons. The Commissioner was concerned to learn about the very high rate of poverty among older persons in

Estonia. She urges the authorities to take the necessary measures to ensure that older persons can live in dignity and enjoy their human rights to health, food and an adequate standard of living, including by raising social protection floors, which are currently inadequate. Consideration should be given to the situation of older persons among the Russian-speaking minority.

The long-term care of older persons, which involves help for daily tasks, nursing for chronic diseases and assistance related to physical or mental disability, also involves a number of important human rights issues. The Commissioner's visit revealed that there are concerns with regard to the availability, organisation, cost and quality of long-term care services for older persons. The Chancellor of Justice has repeatedly raised the alarm about human rights violations in social care homes. In order to ensure the autonomy and dignity of older persons in long-term care, the Commissioner invites the authorities to integrate in their upcoming Action Plan on long-term care a de-institutionalisation approach, which involves increasing home-based services and relocating residents in smaller community-based living arrangements. She further invites the authorities to increase support to informal carers to ensure that their human rights are also respected. Given Estonia's strong focus on digitalisation, new technologies and artificial intelligence, the Commissioner urges the authorities to support and empower older persons in the use of information and communications technology, so that they can exercise fully their right to participate in social and public life. Careful consideration must be given to the ethical, legal and human rights implications of using robots and artificial intelligence in the care of older persons.

National Human Rights Structures

Estonia's national human rights structures, the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner (Equality Commissioner), play a key role in the promotion and protection of human rights and equality at the national level. The Commissioner welcomes the recent amendments to the Chancellor of Justice Act, which will enable the institution to function as Estonia's National Human Rights Institution under the UN Paris Principles. However, measures should be taken to strengthen the independence of the Equality Commissioner, by providing an independent, merit-based nomination process, and an autonomous budget line. Given the current underfunding of the Equality Commissioner, the Commissioner urges the authorities to provide that office with sufficient and sustainable resources so that it can effectively fulfil its mandate.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Estonia from 11 to 15 June 2018.¹ The visit focused on two sets of issues: gender equality and women's rights (section 1 of this report) and the human rights of older persons (section 2). In addition, the visit also provided the opportunity to take stock of the situation of national human rights structures (section 3).
2. In Tallinn, the Commissioner met with the President of the *Riigikogu* (Estonian parliament), Eiki Nestor, the Prime Minister, Jüri Ratas, the Minister of Social Protection, Kaia Iva, the Minister of Health and Labour, Riina Sikkut, officials from the Ministry of Justice and the Ministry of Foreign Affairs, and members of parliament and of the Estonian delegation to the Parliamentary Assembly of the Council of Europe. In addition, the Commissioner had exchanges with the Chancellor for Justice, Ülle Madise, the Gender Equality and Equal Treatment Commissioner, Liisa Pakosta, as well as with civil society organisations.
3. The Commissioner's visit included Ida-Viru, the north-easternmost of Estonia's 15 counties, where over 70% of the population belongs to the Russian-speaking minority. In the municipality of Kohtla-Järve, she visited a municipality-owned social care home for older persons, and a recently-established sexual assault centre at the local health care clinic. In the municipality of Jõhvi, she visited a shelter for victims of domestic violence and met with representatives of the local authorities.
4. The Commissioner would like to thank the Estonian authorities in Strasbourg and in Tallinn for their assistance in facilitating the visit. She is also grateful for the useful support provided by the Chancellor of Justice and wishes to thank all her interlocutors for sharing their knowledge and insights with her.

1 GENDER EQUALITY AND WOMEN'S RIGHTS

5. Women's rights are an inalienable, integral and indivisible part of universal human rights. According to the Council of Europe Gender Equality Strategy 2018-2023, gender equality *"entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men."*² Equality between men and women is a basic principle of human rights, a necessity for genuine democracy, as well as a prerequisite for social justice and economic development.³
6. Women formed 53% of the Estonian population in 2017⁴ and it is essential that they be able to contribute to the full extent of their abilities to the economic, political, social and cultural life of Estonia, without facing impediments.

¹ The Commissioner was accompanied by Bojana Urumova, Deputy to the Director of her Office, and Géraldine Mattioli-Zeltner, Adviser.

² Council of Europe, "Gender Equality Strategy 2018-2023", March 2018, available at: <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>.

³ Recommendation of the Committee of Ministers of the Council of Europe to member states on gender equality standards and mechanisms, CM/Rec 2007(17), 21 November 2007, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3.

⁴ Quarterly Bulletin of Statistics Estonia, 26 June 2017, p. 42, available at: https://www.stat.ee/publication-2017_quarterly-bulletin-of-statistics-estonia-2-17.

1.1 LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK

7. Estonia is a party to a number of international human rights instruments related to the protection of women's rights and the elimination of discrimination against women. The relevant United Nations (UN) treaties to which Estonia is a state party include the International Covenant on Civil and Political Rights ([ICCPR](#)), the International Covenant on Economic Social and Cultural Rights ([ICESCR](#)), and the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)).⁵
8. At the European level, there are numerous Council of Europe standards related to gender equality that apply to Estonia, including article 14 of the European Convention on Human Rights ([ECHR](#)) (which provides that the rights and freedoms in the Convention shall be secured without discrimination on any ground, including sex), as well as the jurisprudence of the European Court of Human Rights.⁶ Estonia has signed but not yet ratified Protocol 12 of the ECHR, which provides for a general prohibition of discrimination. The Committee of Ministers of the Council of Europe adopted several relevant recommendations⁷ and a second Gender Equality Strategy 2018-2023.⁸ Estonia acceded to the revised European Social Charter ([ESC](#)) in 2000, accepting its article 20, which recognizes the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. Estonia's accession to the European Union (EU) in 2004 and the adoption of the EU's *acquis*, in particular the EU founding treaties and the [2006/54/EC Directive](#), further strengthen the legislative and policy framework to promote gender equality in the country.⁹
9. At the national level, Article 12 of the Estonian [Constitution](#) foresees that all citizens are equal before the law and no one may be discriminated against, including on the grounds of sex. The [Gender Equality Act](#), adopted in 2004, is the principal legal act regulating gender equality. The Act prohibits discrimination based on sex and mandates national and local authorities to actively promote gender equality. It also creates institutions for the promotion of gender equality, as explained below. Further to a revision in 2009, the Act provides for a right to compensation for discrimination in the workplace and other areas of life.
10. Estonia has a number of institutions and bodies tasked with combating discrimination against women and promoting gender equality. The [Gender Equality and Equal Treatment Commissioner](#) (Equality Commissioner) is the independent body tasked to combat discrimination.¹⁰ The [Chancellor of Justice](#), an independent institution established by the Constitution, can also examine issues related to women's rights (see section 3 of the report for more information on these two bodies). The Gender Equality Act 2004 also provides for the creation of a Gender Equality Council, which is an advisory body within the Ministry of Social Affairs on gender equality policies and strategies. The Council was established, with

⁵ The CEDAW Committee issued its latest Concluding Observations on Estonia in November 2016, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/EST/CO/5-6&Lang=En.

⁶ See European Court of Human Rights, "Factsheet on Gender Equality", updated June 2018, available at: <https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c>.

⁷ Council of Europe, "Gender Equality and Women's Rights, Council of Europe standards", available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>.

⁸ Council of Europe, "Gender Equality Strategy 2018-2023", op. cit. The Gender Equality Strategy is centered around 6 strategic objectives: prevent and combat gender stereotypes and sexism; prevent and combat violence against women and domestic violence; ensure equal access of women to justice; achieve balanced participation of women and men in political and public decision-making; protect the rights of migrant, refugee and asylum-seeking women and girls, and achieve gender mainstreaming in all policies and measures.

⁹ European Commission, "[EU Gender Equality Law](#)", September 2018.

¹⁰ See below section 3 of this report for a discussion of the gender Equality and Equal Treatment Commissioner.

some delay, in 2013. According to information provided by the authorities, the Council has a broad membership (Estonian Unemployment Insurance Fund, Institute for Health Development, representatives of non-governmental organisations (NGOs), representatives of political parties, representatives of academic institutions etc.) and meets two to three times a year. In the Ministry of Social Affairs, the [Equality Policies Department](#) is responsible for gender equality policies. Estonian women rights' NGOs as well as the CEDAW committee have expressed concern that both the Equality Commissioner and the Ministry of Social Affairs' Department, which used to be dedicated to gender equality only, went through an expansion of their mandates to all discrimination issues without corresponding budgetary increases, thus diluting their attention to gender equality.¹¹

11. Estonia has set out gender equality policy objectives. These are part of the Welfare Development Plan 2016-2023 of the Ministry of Social Affairs, which is focused on diverse issues handled by that Ministry, including employment and social protection policies, as well as strategies regarding older persons and people with disabilities.¹² While state funds dedicated to gender equality and violence against women have increased over the years, external funding sources - e.g. the European Structural Funds and Norway Grants - continue to play an important role in the implementation of projects and activities to promote gender equality.¹³

1.2 GENDER EQUALITY IN PRACTICE

12. While acknowledging the authorities' efforts to adopt legislation and policies on gender equality, the Commissioner notes that progress is only partial. During her visit, most of the Commissioner's interlocutors acknowledged that implementing the Gender Equality Act has been a challenge. With a global score of 56.7 as compared to an EU average of 66.2 (on a scale of 1 to 100 under the Gender Equality Index, from total gender inequality to total gender equality), Estonia ranked 20th of the 28 EU member states in 2017.¹⁴ Estonia, however, scored above average results in certain areas, such as participation of women in the labour market (discussed below).
13. The Commissioner was concerned to learn that persisting discriminatory stereotypes and prejudices about the traditional role of men and women in society continue to hinder women's full participation in public and economic life. For example, a 2017 Special Euro

¹¹ This happened in 2009 for the Equality Commissioner with the adoption of the [Equal Treatment Act](#), which prohibits discrimination on grounds of nationality (ethnic origin), race, colour, religion, age, disability and sexual orientation, and in 2014 for the dedicated "Department of Gender Equality" in the Ministry of Social Affairs; CEDAW Concluding Observations on Estonia, 18 November 2016, op. cit. ; "NGO Shadow Report on combined fifth and sixth periodic reports of Estonia on the implementation of CEDAW", October-November 2016, available at: http://www.enu.ee/lisa/625_7CEDAW_Shadow_Report_2016_2.pdf.

¹² Estonian Ministry of Social Affairs, Welfare Development Plan 2016-2023, available at: https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf. The gender-equality part of the Plan addresses the following key objectives: 1) supporting the equal economic independence of men and women and increasing the gender balance on all levels of decision-making and management; 2) reducing gender stereotypes and their negative effects; 3) ensuring institutional capacity for reducing gender inequality and for promoting gender equality.

¹³ "Estonia National Review on the Implementation of the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women and the outcomes of the 23rd Special Session of the General Assembly", 2009-2014, available at: https://www.unece.org/fileadmin/DAM/Gender/publication/Estonian_National_Review_of_the_Implementation_of_the_Beijing_Declaration_and_Platform_for_Action.pdf.

¹⁴ European Institute for Gender Equality, Gender Equality Index 2017, available at: <http://eige.europa.eu/gender-equality-index/2015/countries-comparison>.

barometer survey on Gender Equality showed that 70% of Estonian respondents agreed with the statement “the most important role of a woman is to take care of her home and the family” (against a 44% average in the EU).¹⁵ NGOs informed the Commissioner during her visit that there are recurrent instances of sexist speech by politicians.¹⁶

14. Despite some progress,¹⁷ women continue to be under-represented in decision-making positions in the public sector, falling short of the minimum target of 40% of women in public decision-making bodies, set out by the Council of Europe Committee of Ministers [Recommendation \(2003\)3](#) on balanced participation of men and women in political and public decision making. In the 2016 elections, 25.7% of elected members of the *Riigikogu* were women. At the time of the Commissioner’s visit, 5 out of 14 Ministers in the government were women (slightly above 30%), and 31.1% of members of local assemblies and 17% of mayors were women in 2015.¹⁸ The Commissioner observes that there are positive examples of women’s representation in political life, such as Estonia’s president in office, Kersti Kaljulaid, who is the first woman to be elected to that office.
15. In the private sector, while the EU average gender balance among board members, chairs and CEOs of large companies was 23.9% in 2016, Estonia scored 8.8%.¹⁹ According to the Ministry of Social Affairs, the lesser representation of women in decision-making positions is in part explained by gender stereotypes held by employers, who tend to view women as unreliable and less dedicated workers, because of their other responsibilities.²⁰ The difficulties of balancing professional and private life also hinder women’s ability to pursue a career and accede to top management positions. The lack of role models of women in leading positions contributes to perpetuating this situation. According to information provided by the authorities, in 2017, women made up 39% of managers, 26% of employers and 34% of self-employed people in the country.
16. The Commissioner discussed with several interlocutors during the visit the opportunity of temporary special measures to accelerate the achievement of *de facto* gender equality in Estonia, as permitted under the Gender Equality Act (paragraph 5). According to [General Recommendation 25](#) of the CEDAW committee, temporary special measures are an essential part of a state’s strategy to actively promote gender equality. These measures include a wide variety of policies and practices, such as outreach and support programmes, allocation of resources, targeted recruitment, hiring and promotion, and different types of *quotas*. They can be put in place in either or both the public and private sectors, and should be restricted in time.

¹⁵ European Commission, Euro barometer, Gender Equality Survey, 2017, available at:

<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2154>.

¹⁶ See, for example, a public letter denouncing sexist comments upon nomination of the Minister of Public Administration (in Estonian), available at:

<http://www.delfi.ee/news/paevauudised/eesti/avalik-kiri-feministid-taunivad-labaseid-nalju-treiva-lobisti-ning-jutlustaja-janek-maggi-maaramist-riigihalduse-ministriks?id=81933741>.

¹⁷ Council of Europe, Gender Equality Commission, “Balanced Participation of Men and Women in Decision Making, Analytical Report, 2016 Data”, September 2017, available at: <https://rm.coe.int/analytical-report-data-2016-/1680751a3e>.

¹⁸ European Commission, 2017 Report on equality between women and men in the EU, available at:

https://eeas.europa.eu/sites/eeas/files/2017_report_equality_women_men_in_the_eu_en.pdf.

¹⁹ Ibid.

²⁰ Estonian Ministry of Social Affairs, Analysis on Gender Equality, February 2015, available at:

<http://www.sm.ee/et/gender-equality>.

17. The Commissioner found that opinions were divided on this issue. Those who opposed temporary special measures cited their lack of popularity among public opinion, politicians and private enterprises' leadership, and possible backlash. Those in favour supported a comprehensive combination of measures – not just *quotas* – and noted that progress toward gender equality would probably happen without temporary special measures but much more slowly. In 2017, a bill put forward by Marianne Mikko, Head of the Estonian delegation to the Council of Europe Parliamentary Assembly, called for an equal number of women and men among the first 20 names of any voting list in a state-level election, but was rejected.²¹ In a recent [publication](#), the Gender Equality Commission of the Council of Europe found that 17 of the 47 member states have introduced gender *quotas* or parity systems in 2016 and that these tended to have a positive impact on the representation of women in political decision-making bodies.

1.2.1 THE GENDER PAY GAP

18. Equal pay for work of equal value between men and women is enshrined in the 1948 Universal Declaration of Human Rights, and is a legal requirement in Estonia under the Gender Equality Act (paragraph 6.2). A gender pay gap may result if the foregoing principle is not respected, but there are also other factors which come into play. The European Commission's definition of the gender pay gap is: "*the difference between the average annual earnings between women and men. It takes into account three types of disadvantages women face: lower hourly earnings, working fewer hours in paid jobs, and lower employment rates*".²² Reducing the gender pay gap improves women's economic independence, which is closely related to women's other fundamental rights, in that it reduces poverty and social exclusion, including at an older age. Further, a woman who is economically independent is in a better position to leave a violent partner.
19. According to the [International Labour Organisation's Global Wage Report 2016/2017](#), the gender pay gap is a persistent feature of virtually all nations' labour markets, and has proven difficult and slow to solve. Estonia has the highest gender pay gap in the EU, amounting to 25.3% (meaning that women earn on average 74.7% of what men earn in the country), with the EU average being 16.2% in 2016.²³ According to information provided by the authorities, the gender pay gap is practically the same in the public sector and the private sector, and is the largest in the financial and insurance sectors. The gender pay gap was the highest in Ida-Viru county.²⁴
20. To an extent, the gender pay gap in Estonia is "structural", meaning that is related to the fields of study pursued by women, and the particular segments of the labour market in which they are employed. Apparently, the labour market in Estonia is rather segregated between the genders, both horizontally (between sectors of activity) and vertically (between types of positions within a given sector). Representatives of NGOs informed the Commissioner that expectations and stereotypes about suitable career choices for girls and boys are very strong in Estonia. Girls and women tend to choose social or humanities careers, which are important

²¹ ERR, "Bill calling for gender *quota* in national elections voted down", 16 June 2017, available at: <https://news.err.ee/601853/bill-calling-for-gender-quota-in-national-elections-voted-down>.

²² European Commission, Justice and Consumers, "[The Gender Pay Gap in the European Union](#)", November 2017.

²³ Eurostat, "Gender Pay Gap Statistics", March 2018, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics.

²⁴ Estonian Statistics, "The gender pay gap remained at the level of previous year", 14 May 2018, available at: <https://www.stat.ee/news-release-2018-053?highlight=gender%2Cpay%2Cgap>.

but not well remunerated, such as care or education.²⁵ 83% of teachers in Estonia are women.²⁶ Furthermore, women are under-represented in better-paid, managerial positions. NGOs explained that this is also true in sectors where women are otherwise predominant, for example in academia or social care. The gender pay gap is also partially explained by the fact that women take on a larger part of unpaid family care duties. For example, the gender pay gap is the largest (33%) for women aged between 35-44, which roughly corresponds to child-rearing age.²⁷ While more child care places have been created in the country, NGOs indicated that child care is still difficult to find, especially in cities, or is too expensive, because it is provided by private pre-schools. Ensuring care for older dependent relatives can also be difficult, as described in section 2 of this report. Long breaks to take care of dependent relatives mean fewer earnings, but also fewer opportunities to advance a career, which in turn has consequences for access to better paid jobs.

21. Nevertheless, according to information provided by the authorities, the gender pay gap is not solely due to the above-mentioned “structural” factors. This points to differences in earnings between men and women in similar positions. For example, NGOs and the national human rights structures told the Commissioner that women starting out in a career are less likely than their male counterparts to negotiate their first salary. There appeared to be a consensus among the Commissioner’s interlocutors that, while employers are not necessarily intentionally discriminating against women, they are not paying sufficient attention to the problem to ensure that discrimination does not occur. One positive example from the private sector that was repeatedly mentioned during the visit was that of the banking company Swedbank, which had successfully applied a comprehensive programme against its internal gender pay gap, including through the creation of a child care facility, targeted hiring and providing a specialised career adviser.
22. The Estonian government has taken some steps over the years to tackle the gender pay gap. The Welfare Development Plan 2016-2023 includes a number of measures. In 2017, the government launched a reform of the parental leave policy in order to encourage a more equitable division of care duties between men and women and to provide more flexibility for parents of young children to combine work and parental leave.²⁸ The Commissioner also received information about several projects carried out by NGOs and the Equality Commissioner in relation to the gender pay gap, including the holding of an awareness-raising “Gender Pay Gap Day”, lectures and trainings in schools and universities, and a campaign entitled “Choose your job according to your heart, not your gender.”
23. During the visit, the Commissioner discussed amendments to the Gender Equality Act that were being prepared by the Minister of Health and Labour in relation to the gender pay gap in the public sector. According to the information provided, the amendments would increase the powers of the Labour Inspectorate to exercise oversight over equal pay for equal work and create a digital tool to facilitate such oversight (a “wage-gap speedometer” to be

²⁵ Welfare Development Plan 2016-2023, op. cit.

²⁶ OECD, “Estonia: Education at a glance 2014”, 2014, available at: <http://www.oecd.org/education/Estonia-EAG2014-Country-Note.pdf>.

²⁷ Ministry of Social Affairs, “The Gender Pay Gap in Estonia, empirical analysis”, available at: https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Valjaanded/gender_pay_gap_estonia_analysis.pdf.

²⁸ ERR, “Government approves amendments to parental leave, benefits system”, 27 September 2017, available at: <https://news.err.ee/632922/government-approves-amendments-to-estonia-s-parental-leave-benefits-system>.

introduced in 2020). Moreover, it is envisaged to conduct a study of the gender pay gap in the public sector.²⁹

1.3 VIOLENCE AGAINST WOMEN

24. During the visit, the Commissioner congratulated the Estonian authorities on the country's ratification of the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence ([Istanbul Convention](#)) in 2017. The Convention is a ground-breaking legal instrument providing comprehensive tools to combat violence against women. Estonia is the first – and, thus far, only – of the Baltic states to have ratified it. Estonia is also a state party to the Council of Europe [Convention on Action against Trafficking in Human Beings](#).
25. According to the Gender Equality Index 2017, it is estimated that 33.5% of women in Estonia have experienced physical or sexual violence, which corresponds to the EU average. According to information provided by the Chancellor of Justice, in 2017, an estimated 2632 domestic violence crimes were recorded. In 86% of domestic violence cases, the perpetrators were men, in 12% they were women, and in 2% the perpetrators were from both sexes. According to information provided by the authorities, 54 women died as a result of violent crimes (in general) between 2013 and 2017.
26. According to a [2014 survey](#) by the EU Fundamental Rights Agency on violence against women, 13% of women in Estonia have experienced stalking (which can include offensive or threatening communications, following and damage to property). The survey also finds that 21% of women between 18 and 29 in Estonia have been victim of cyber harassment. During the visit, NGOs informed the Commissioner about online harassment campaigns, notably through social media, against women who take public positions on certain societal issues, such as refugees or racism.³⁰ There are three police investigators, the “web constables”, who specialise in handling hate speech and harassment online.³¹
27. Estonia does not have a specific law on gender-based violence or on domestic violence but the Commissioner's interlocutors considered that the existing legislative provisions in Estonian law would be sufficient if well implemented. The section of the [Estonian Criminal Code](#) dealing with “Acts of Violence” (including threats of violence, physical abuse and torture) may be applied to cases of violence against women and domestic violence. The Criminal Code was amended in December 2017 to add stalking, female genital mutilation, forced marriages and the prohibition of buying sexual services from victims of trafficking, as foreseen by the Istanbul Convention. Sexual harassment was also added as a misdemeanour.³² At the policy level, Estonia adopted in 2015 a [Strategy](#) for Preventing Violence for 2015-2020, which addresses reduction of violence and crime in general.

²⁹ ERR, “Estonia to target gender pay gap in the public sector”, 10 February 2018, available at: <https://news.err.ee/682168/estonia-to-target-gender-pay-gap-in-public-sector>.

³⁰ Postimees, “Hope you get raped”, 11 February 2016, available at: <https://news.postimees.ee/3579475/hope-you-get-raped>, Feministerium “Cyber harassment deters women from the online world” (in Estonian), April 2018, available at: <https://feministeerium.ee/kuberahistamine-ajab-naised-veebist-minema/>.

³¹ Estonian Police, “Web constables give advice on the internet”, 24 July 2018, available at: <https://www2.politsei.ee/en/nouanded/veebikonstaablid/>.

³² European Network of legal experts in gender equality and non-discrimination, “Estonia: amendments to the penal code”, 16 June 2017, available at: <https://www.equalitylaw.eu/downloads/4560-estonia-ratification-of-the-istanbul-convention-pdf-109-kb>.

28. According to surveys referenced in the Strategy for Preventing Violence, while the vast majority of the Estonian population condemns domestic violence, 21% of respondents think it is a private matter for the family and that others should not intervene. Moreover, 54% of the respondents believe that female victims of domestic violence are “partly guilty” of the crimes committed against them, and 47% of the respondents that “rape victims bring it on themselves because of their clothing”. The Strategy asserts that these views may be most commonly held among older men, and men belonging to the Russian-speaking minority.
29. While NGOs have run a number of targeted public campaigns with support from the Norway Funds over the years,³³ the statistics above show the importance of fighting gender stereotypes and of continuing to conduct information campaigns on gender-based violence and domestic violence at regular intervals. The Commissioner notes with appreciation the leadership of the president of Estonia, Kersti Kaljulaid, in breaking taboos and raising awareness through discussion of domestic and gender-based violence in her public speeches.³⁴

1.3.1 SUPPORT AND PROTECTION SERVICES

30. Estonia has a national women’s helpline, “Tugitefon” (1492), which is free of charge and operates 24/7. The helpline offers emotional support, information on accessing support services, as well as legal counselling - in Estonian and Russian - for women experiencing physical, emotional, economic, and/or sexual abuse. It is run by the NGO [Estonian Women’s Shelters Union](#). According to information provided by the authorities, the helpline received 750 calls in 2017.
31. There is a well-developed network of 15 NGO-run shelters for women victims of violence and domestic violence, which cover Estonia’s 15 counties. The shelters operate 24 hours a day free of charge and there are about 100 beds available across the country. According to information provided by the authorities, the number of women who turn to shelters has increased over the years, with 1180 women in 2011, 1617 in 2014 and 1939 in 2016.
32. The Commissioner had an opportunity to gain first-hand information about support services for victims by visiting the women’s shelter in the municipality of Jõhvi. The shelter comprises a publicly accessible office and an apartment located at a confidential address, which is provided by the municipality. At the time of the visit, accommodation services were used by one woman and her child. In addition to support staff, the shelter employs a lawyer and a psychologist. The shelter’s staff indicated that the women who contact them need, above all, psychological and legal counselling. The shelter’s psychologist is Russian-speaking, a necessity given that 80% of the women contacting the shelter are Russian-speaking (a reflection of the population’s composition in the area).
33. On 1 January 2017, the support service to women victims of violence was made part of the national victim support service organised by the Estonian Social Insurance Board, pursuant to

³³ Estonian Ministry of Social Affairs, “Norwegian Financial Mechanism 2009-2014, Annual Programme Report on the Implementation of the Programme EE11 on Domestic and Gender-based violence”, 2015, available at:

https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Norra_toetused/Koduse_ja_soopohise_vagivalla_vahendamise_programm/ee11_annual_programme_report_2015_final.pdf.

³⁴ For example “The President of the Republic at the Republic of Estonia Independence Day at the Estonian National Museum”, 24 February 2018, available at: <https://www.president.ee/en/official-duties/speeches/14154-the-president-of-the-republic-at-the-estonian-national-museum/index.html>.

the [Victim Support Act](#). The service is fully funded through public funds to NGOs. During the visit, NGOs claimed that the tender organised in 2017 by the Social Insurance Board had used cost – rather than experience and other qualitative factors - as the main selection criterion, resulting in the selection of less experienced NGOs and a decline in the quality of the service provided to women.

34. According to information provided by the authorities, Estonia has been using the United Kingdom-inspired MARAC model (Multi-Agency Risk Assessment Conference) since 2016 to combat domestic violence. It is planned to expand the use of this model to all 15 counties in the country by 2020. This model consists in regular meetings between relevant actors, such as police, health and social workers, shelters and NGOs with a view to protecting victims, to sharing information about specific situations and seeking to prevent repetition of violence.³⁵ During the visit, the Commissioner received information about some interesting projects involving such multi-disciplinary cooperation. For example, in the municipality of Kohtla-Järve, the Commissioner visited a recently established sexual assault centre in the local medical clinic. There are four such centres across Estonia. A small team of motivated and specialised doctors and nurses explained that they are on call to provide medical care to women victims of sexual violence. Police know to direct victims to the centre. In addition, the centre collects medical evidence that could be helpful in future judicial proceedings, and encourages victims to file complaints with the police. The victims are referred to the shelter in Jõhvi for psychological assistance. The centre had received three victims since its opening a few months earlier.

1.3.2 ACCESS TO JUSTICE

35. During her visit, the Commissioner was informed that Estonia's legislative framework to investigate and prosecute perpetrators of gender-based violence and domestic violence is not implemented effectively. Only a few cases reach the courts each year and few perpetrators are ever sentenced to imprisonment. While the process for women to report a crime is simple in principle, the shelter's workers and doctors at the sexual assault centre informed the Commissioner that women are very reluctant to file complaints in practice. Judicial proceedings are slow and costly. The clinic staff explained that they are legally obligated to report sexual assaults against girls under 15, but girls and adult women above that age must file the complaint themselves.
36. The attitude of police when receiving complaints can be a potential deterrent. NGOs have organised several training activities on gender-based violence and domestic violence for police officers and report that their attitude in general has improved, but regret that it can still vary from officer to officer. A 2015 [survey](#) of attitudes among actors of the justice system showed that, while most respondents clearly attributed responsibility for violence against women to men, a high proportion still held views according to which women bear some responsibility because they "acted irresponsibly" or "provoked men by ceaseless nagging". During the visit, the Commissioner was informed that two women were killed by their partners in the city of Narva in 2017, one of whom had previously contacted the police on several occasions.

³⁵ For more information about the MARAC model, see for example: Reducing the Risk of Domestic Abuse, MARAC, available at: <http://www.reducingtherisk.org.uk/cms/content/marac>.

37. Another reason why women are reluctant to report violence relates to their safety. While the Estonian [Criminal Procedure Code](#) foresees long-term and temporary restraining orders against perpetrators, the judicial process to obtain them is lengthy and it is currently not possible to obtain an emergency restraining order (i.e. within hours). The Commissioner welcomes information from the authorities that legislation to provide for fast-track restraining orders is in preparation. The Commissioner also learned with interest about a pilot project currently implemented in the municipality of Parnū, where police remove the perpetrator of domestic violence from the household. This is combined with accelerated judicial proceedings and rehabilitation programmes for perpetrators.
38. NGOs stressed that courts' decisions indicating a lack of understanding or sensitivity to gender-based violence tended to discourage women from instigating proceedings. For example, NGOs explained that judgments about custody of children rarely take domestic violence into consideration. Several cases were reported to the commissioner where male perpetrators use custody proceedings to put their female partners and the family under pressure. Further, in cases involving sexual assault, the burden of proof is perceived as very hard to meet and sentences as lenient.³⁶ As pointed out by the CEDAW Committee, Estonia's Criminal Code distinguishes between rape (article 141) and non-consensual sexual act (article 143). This has the effect of opting for the lesser offence when qualifying specific cases of sexual assault, according to NGOs.

1.4 CONCLUSIONS AND RECOMMENDATIONS

Gender Equality

39. The Commissioner underscores that equality between men and women is not only a basic human rights principle, it can also have a positive impact on society as a whole, by ensuring effective democracy and economic development, and it is one of the core goals of the [UN Sustainable Development Goals 2030](#). The Commissioner urges the authorities to ensure that gender equality is taken into consideration in all areas of policy-making, either through the adoption of a stand-alone gender equality strategy or through mainstreaming of the issue in all other strategic plans.
40. The Commissioner stresses in particular the importance of continuing efforts to combat discriminatory gender stereotypes, which influence women's choices, prospects and opportunities in all areas of their lives. The Commissioner calls on the authorities to review school curricula and conduct trainings for teachers to ensure that education is free from gender-bias and stereotypes. Awareness-raising campaigns should be conducted regularly, including for the Russian-speaking minority.
41. While there is a general perception in the country that gender equality is progressing well, Estonia scores only 28.2 in the [Gender Equality Index 2017](#) in the area of "power", against an EU average of 48.5. Noting that the [Committee of Ministers Recommendation \(2007\)17](#) on gender equality standards and mechanisms calls for proactive measures for the promotion of gender equality, the Commissioner encourages the Estonian authorities to conduct further analysis into the causes of under-representation of women in decision-making, both in the

³⁶ For example, in three recent decisions, the Supreme Court either lowered the sentence against a sexual offender or sent the case back to a lower court for additional evidence: Supreme Court case 1-17-7206, 18 June 2018, available at: <https://www.riigikohus.ee/et/lahendid?asjaNr=1-17-7206/27>; Supreme Court case 1-16-7179, 15 June 2018, available at: <https://www.riigikohus.ee/et/lahendid?asjaNr=1-16-7179/127> and Supreme Court case 1-17-1629, 11 June 2018, available at: <https://www.riigikohus.ee/et/lahendid?asjaNr=1-17-1629/44>.

public and private sector, and to consider corresponding temporary special measures that could function well in Estonia. She invites the authorities to conduct awareness-raising about the need, variety, and possible impact of temporary special measures.

Gender pay gap

42. The Commissioner recognises that the gender pay gap is caused by many structural factors and encourages the authorities to take comprehensive measures to address each of them. The Commissioner would like to draw the attention of the Estonian authorities to a recent [report](#) adopted by the Parliamentary Assembly of the Council of Europe, “Empowering women in the economy”, which lists a number of possible measures. In Estonia, these should include combating gender stereotypes and prevailing tendencies towards gender separation by field of study or activity in education and the labour market, as well as addressing the “glass ceiling phenomenon” that prevents women from reaching higher positions. Efforts to introduce policies on work-life balance and care services for children or other family members should be sustained. It is also important to combat discrimination based on family care duties by employers, a phenomenon which may impact equally women and men seeking parental leave or flexible work arrangements for that purpose.
43. The Commissioner welcomes the proposed amendments to the Gender Equality Act as a first step to promote its effective implementation, by ensuring that the public sector is a role model in combating the gender pay gap. In this regard, she points out that some Council of Europe member states have adopted the principle of “[equality duty](#) in the public sector”, which obliges public bodies to take proactive measures to promote equality. She stresses the need to work with the private sector too in this field, however, and points out that work on the implementation of the UN Sustainable Development Goals 2030 or the adoption of a business and human rights action plan may offer appropriate frameworks to do so.³⁷ The Commissioner further encourages the authorities to work with trade unions and social partners to introduce transparency policies on salaries, by making remuneration scales public.

Violence against women

44. Violence against women undermines their dignity and integrity as individual human beings, as well as seriously harming families, communities and society as a whole. She encourages the Estonian authorities to support regular awareness-raising and prevention campaigns, including in regions inhabited by members of the Russian-speaking minority. The Commissioner stresses that politicians and public figures, including men, have an important role to play in this regard. The Commissioner welcomes information provided by the authorities that combating gender-based violence and domestic violence is a priority for the government. In this regard, a strategy specifically dedicated to the issue could help identify priority actions and mainstream gender issues throughout other anti-crime policies.
45. Estonia has a well-developed system of protection and support for victims of gender-based violence. The Commissioner welcomes the increase in public funding for this purpose. In light of the new tender-based approach by the Social Insurance Board, the Commissioner urges

³⁷ Danish Institute for Human Rights, “Women in business and human rights: a mapping of topics for state attention in the United Nations Guiding Principles on Business and Human Rights implementation processes – preliminary draft”, February 2018, available at: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects_docs/gender_business/bhr_gender_mapping_notes_draft_2018.pdf.

the authorities to provide sustainable multi-year grants to NGOs and to ensure that competitions accord sufficient importance to experience and quality of the services, in addition to cost-effectiveness. While welcoming information from the Ministry of Justice that draft legislation providing for emergency restraining orders is being prepared, she calls on the authorities to consider amending the law as appropriate to ensure that domestic violence is taken into consideration in custody proceedings.

46. In order to prevent repeat victimisation and put an end to gender-based violence, further efforts are needed to ensure that perpetrators of gender-based violence are prosecuted and punished. To that effect, the Commissioner encourages the authorities to continue to support projects such as the sexual assault centres, which increase cooperation between the medical sector and the justice system. She also stresses the importance of strengthening legal assistance for victims to support them through the judicial process. The Commissioner invites the authorities to continue capacity building for all officials in the justice system, and to consider establishing teams of specialised prosecutors and judges to handle gender-based violence and domestic violence cases.

2 THE HUMAN RIGHTS OF OLDER PERSONS

47. Estonia is a country with a rapidly aging population. According to [Eurostat](#), the proportion of people above 65 rose from 12.8% in 1996 to 19.3% in 2016 and may reach 30% by 2050 if the fertility rate remains constant. Close to 10% of the Estonian population is over 74 years at present. There is a marked difference in the life expectancy of women and men: in 2016 it was 82 years for women and 73 years for men.³⁸
48. There is no international legally-binding treaty dedicated to the human rights of older persons. However, given that human rights are by definition universal, the whole range of human rights standards and principles that can be found in core international and regional human rights treaties are applicable to older persons.³⁹ Specific Council of Europe standards on the human rights of older persons are contained in the 2014 [Committee of Ministers' Recommendation CM/Rec\(2014\)2](#) on the Promotion of the Human Rights of Older Persons and the 2017 [Parliamentary Assembly of the Council of Europe's Resolution 2168 \(2017\)](#) on the Human Rights of Older persons and their comprehensive care.

2.1 DISCRIMINATION

49. Estonia's [Equal Treatment Act](#), adopted in 2009, specifically includes age as a prohibited ground of discrimination. However, discrimination on the basis of age is currently only prohibited in the area of employment. Indeed, areas protected against discrimination are divided into two categories in the Act: whereas discrimination based on racial or ethnic origin and colour is prohibited in all areas of life (employment, education, services, and social security), discrimination based on religion or belief, age, disability and sexual orientation is only prohibited in the area of employment (paragraph 2 of the Act). Seized with this matter

³⁸ Estonian Statistics, Life Expectancy at Birth, available at: <https://www.stat.ee/34279>.

³⁹ Office of the High Commissioner for Human Rights, "Human Rights of older persons: international human rights principles and standards. Background paper – revised and updated, Open-ended Working Group, GA resolution 65/182", April 2011, available at: <https://social.un.org/ageing-working-group/documents/OHCHR%20Background%20paper%202011.pdf>. This has been [confirmed](#) multiple times in the work of UN monitoring bodies and Special Rapporteurs, including through the adoption of specific commentaries, such as [CEDAW's General Recommendation No. 27 on older women and protection of their human rights](#) or [CESCR's General Comment No. 6 on the economic, social and cultural rights of older persons](#).

at the time of the adoption of the Act, the Chancellor of Justice had found that the different levels of protection in the Equal Treatment Act respect EU law, but violate international human rights treaties that Estonia is party to, as well as the Estonian Constitution.⁴⁰

50. The Commissioner learned during her visit that the government was preparing [amendments](#) to the Equal Treatment Act that would expand protection against discrimination in all areas of life on all grounds, including age. The Commissioner would appreciate being kept informed about this process.
51. According to a 2012 [Euro barometer survey](#), 55% of Estonian respondents believed that discrimination on the ground of older age (over 55) is very or fairly widespread in their country (the EU average was 45%). Discrimination against older persons can result from ageism, a phenomenon which has been characterised as stereotyping and prejudice against older persons, based on the view that they would “*become people of a distinct and inferior kind, by virtue of having lived a specified number of years*”.⁴¹ The World Health Organisation has said that ageism is the “*most socially normalised stereotype*” and is often relayed by the media. It contributes to the marginalisation of older persons and has negative impacts on their health and well-being.⁴²
52. With 26% of older persons active in the labour market (against 9.2% on average in the EU), the level of employment of older persons in Estonia is one of the highest, if not the highest, in the EU.⁴³ Furthermore, Estonia’s Supreme Court issued important decisions to combat discrimination against older workers, for example by finding obligatory retirement or differences in health benefits illegal.⁴⁴ Despite these positive points, the Commissioner heard repeatedly during her visit that discrimination against older persons in the field of employment is common.
53. A 2018 [survey](#) conducted by the Estonian Institute for Open Society Research documented the persistence of stereotypes in the labour market that hinder the recruitment of older persons. These include opinions such as: older persons tire more easily, they often have health problems, and are unable to use modern technologies. NGOs informed the Commissioner that it is particularly difficult for older persons to find a new position and that the job seeking process is significantly longer for them.⁴⁵ Both national human rights structures and NGOs believe that putting aside CVs from older persons during the recruitment process is a widespread practise, even if it is illegal.
54. NGOs further informed the Commissioner that older persons tend to occupy positions below their qualifications and suffer from an important wage-gap, compared to younger colleagues. Discrimination is even more acute for older women, including because they are more

⁴⁰ Estonian Human Rights Centre, “Human Rights in Estonia 2008-2009”, 2010, available at:

<https://humanrights.ee/en/topics-main/inimoigused-eestis/inimoiguste-aruanne/human-rights-in-estonia-2008-2009/>.

⁴¹ Office of the High Commissioner for Human Rights, “Human Rights of older persons: international human rights principles and standards. Background paper – revised and updated, Open-ended Working Group, GA resolution 65/182”, op. cit.

⁴² World Health Organisation, Ageing and life-course, available at: <http://www.who.int/ageing/ageism/en/>.

⁴³ Eurostat, “A look at the lives of the elderly in the EU today”, op. cit.

⁴⁴ Vadim Poleshchuk, “Older age, employment and equality in legislation: a “progressive” Estonian Approach?”, The Equal Rights Review, Vol. Twelve, 2014, available at:

<http://www.equalrightstrust.org/ertdocumentbank/Older%20Age%2C%20Employment%20and%20Equality%20in%20Legislation%20A%20Progressive%20Estonian%20Approach.pdf>.

⁴⁵ Estonian Ministry of Social Affairs, “Report on the follow-up to the regional implementation strategy of the Madrid International Plan of Action on Ageing in Estonia”, 2016, available at:

https://www.unece.org/fileadmin/DAM/pau/age/country_rpts/2017/EST_report.pdf.

numerous in the older population, and there is a lack of inter-generational solidarity in general. The Chancellor noted with regret that only few complaints were filed by older persons about discrimination in the field of employment. The Commissioner was informed that the Ministry of Health and Labour was considering tax incentives to encourage employers to hire older persons.

55. Outside of the employment sector, the Chancellor of Justice has dealt with a number of cases of discrimination against older persons in the field of services. For example, in her [annual report 2016-2017](#), the Chancellor of Justice documented the case of a 76-year old pensioner who was automatically denied a credit card by a bank on the basis of age.
56. Finally, the Commissioner was also reminded that despite Estonia's significant efforts to integrate members of the Russian-speaking minority and solve the issue of non-citizens, including by easing conditions of naturalisation for persons above 65, a number of Russian-speaking older persons are still unable to obtain Estonian citizenship because of their inability to learn the Estonian language. Non-citizens are members of Estonia's Russian-speaking minority who did not acquire either Estonian or Russian citizenship after 1991. There are about 80,000 non-citizens in Estonia. Non-citizens cannot create or join a political party, stand for elections or vote in national parliamentary elections; otherwise, they have essentially the same political and civil rights as Estonians.⁴⁶

2.2 POVERTY

57. In 2016, 41.8% of people aged 65 or older were at risk of poverty⁴⁷ in Estonia, which is considerably higher than the EU average of 17.4%.⁴⁸ The rate of older persons at risk of poverty has dramatically increased since 2013, when it stood at 24.4%. Estonia has the worst poverty rate in the EU for persons above 74, with 48.2% of that category being at risk of poverty.⁴⁹
58. During her visit, the Commissioner learned that the situation is worst for persons living alone and in rural areas. Older women are particularly at risk because they live longer, and thus more often alone, and tend to receive lower pensions as a result of their involvement in lower-income sectors of the labour market (see section 1). Commissioner Mijatović was also informed that the poverty rate is higher among the Russian-speaking community, which is a reflection of existing economic inequalities between the respective communities.⁵⁰
59. There are several factors that explain the high level of poverty of older persons in Estonia. Many of those who were middle-aged in the 1980s and 1990s lost their savings in the 1990s with the monetary reform from roubles to Estonian currency.⁵¹ In addition, NGOs informed

⁴⁶ For more information, see Framework Convention on National Minorities Advisory Committee, "Fourth Opinion on Estonia", 2015, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047d0e5>.

⁴⁷ The risk of poverty threshold is calculated at 60% of the median income in a country (after social transfers). In Estonia, it was 468 euros in 2016. See, Estonia Statistics, "Last year, every fifth person lived in relative poverty", December 2017, available at: <https://www.stat.ee/news-release-2017-135>.

⁴⁸ Eurostat, "People at risk of poverty or social exclusion", December 2016, available at:

http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion.

⁴⁹ ERR, "Estonia needs to address the poverty risk of its elderly", December 2017, available at: <http://estonianworld.com/opinion/estonia-needs-address-poverty-risk-elderly/>.

⁵⁰ Legal Information Centre for Human Rights, "National minorities in Estonia: risk of poverty and social marginalisation", OSCE human dimension implementation meeting, 2014, available at: <https://www.osce.org/odihr/124459?download=true>.

⁵¹ ERR, "Estonia needs to address the poverty risk of its elderly", op. cit.

the Commissioner that some older persons live in poverty because they are not entitled to a pension after having worked for an employer who failed to officially register them.

60. Furthermore, old-age pensions are low. On 1 April 2018, the full old-age pension (for 44 years of service) was 446.5 euros, which is below the risk of poverty threshold (468 euros). It is also notable that the minimum national pension (which is paid to people who do not have the qualifying period required for receiving old-age pension, or as pension for incapacity for work, or survivor's pension) is 167,40 euros per month,⁵² which is below the absolute poverty rate (201 euros in 2015).⁵³ In a recent submission to the Council of Europe's review of implementation of Recommendation (2014)2, the Estonian authorities acknowledged that benefits and social protection are not sufficient to prevent poverty of older persons.⁵⁴
61. Poverty is both a consequence and a source of violations of human rights. For older persons, poverty most commonly jeopardises the enjoyment of the following human rights: the rights to adequate housing, to an adequate standard of living, to health, and to food. In Estonia, the relationship between health and poverty is particularly salient, with people in need of care at higher risk of poverty.⁵⁵ Medical and care costs are high and it is the responsibility of the dependent person and their relatives to pay for them, as much as they can. According to information provided by the authorities, in 2016 70% of users of 24-hour care services paid for them themselves (with the help of their families). According to the study on long-term care in Estonia by the World Bank Group, 1 in 4 among persons above 65 with poor health cannot afford care.⁵⁶
62. The Commissioner was informed that the Estonian authorities have taken some steps to tackle poverty among older persons. On 1 April 2018, the government approved a 7.6% increase to the old-age pension. According to media reports, this increase hardly covers the inflation rate, however.⁵⁷ The Minister of Social Affairs also informed the Commissioner that one-off benefits have been paid, for example to older pensioners living alone or women with children. The state can cover the cost of medicines if they reach a certain threshold. During her visit to a social care home in Kohtla-Järve, the Commissioner met residents who lived there with funding from the municipality because they did not have the financial means to live independently.
63. The government's key focus has been on reforming the old-age pension system and the labour market with a view to keeping people in employment as long as possible. Academics

⁵² Estonian E-state, "State pensions", available at: <https://www.eesti.ee/en/pensions-and-allowances/pensions/state-pensions/>.

⁵³ The absolute poverty threshold expresses the monetary cost of satisfying minimum needs. In 2015, it was 201 euros in Estonia. See Estonian Statistics, "Quarterly Bulletin of Statistics Estonia", June 2017, available at: https://www.stat.ee/publication-2017_quarterly-bulletin-of-statistics-estonia-2-17.

⁵⁴ Council of Europe, Steering Committee for Human Rights, "Request for Information on the Implementation of the Committee of Ministers Recommendation CM/Rec(2014)2 on the promotion of the human rights of older persons: Compilation of member states answers", 23 August 2018, <https://rm.coe.int/steering-committee-for-human-rights-comite-directeur-pour-les-droits-d/16808c7a63>.

⁵⁵ According to a recent study conducted by the World Bank, the rate of people above 65 suffering from severe limitations due to health in Estonia is among the highest in the EU. World Bank Group, "Reducing the burden of care in Estonia", 5 June 2017, available at: https://riigikantselei.ee/sites/default/files/content-editors/Failid/hoolduskoormus/3_aparnaa_somanathan.pdf.

⁵⁶ World Bank Group, "Reducing the burden of care in Estonia", op. cit.

⁵⁷ ERR, "Government approves 7.6% pension increase", 15 March 2018, available at: <https://news.err.ee/689863/estonian-government-approves-7-6-percent-pension-increase>.

have commented that this approach creates the risk of locking older persons in a situation where they have no choice but to work despite having reached retirement age.⁵⁸

2.3 DIGNITY AND INDEPENDENCE IN LONG-TERM CARE

64. When people require help for daily tasks such as shopping, cooking, eating, cleaning or bathing over a long period of time, they are in need of long-term care. Long-term care may also cover nursing for chronic diseases or assistance related to physical or mental disability. According to the World Bank Group study referred above, about 20% of persons above 65 in Estonia require long-term care. Not only is the population of Estonia aging fast, but it is also less healthy than in other EU countries. This has a strong influence on care needs.

2.3.1 LEGAL AND POLICY FRAMEWORK

65. Estonia ratified the UN Convention on the Rights of Persons with Disabilities ([CRPD](#)) in 2012. While the categories of persons with disabilities and older persons do not fully match, there is often a strong correlation between age and disability.⁵⁹ The CRPD is highly relevant for older persons with disabilities and in need of care, as it states key principles and rights such as: respect for dignity, autonomy and freedom to make choices; non-discrimination, freedom from violence and abuse (article 16), the right to live independently and to be included in the community (article 19), and the right to adequate standard of living and social protection (article 28). As of 1 January 2019, the Chancellor of Justice will be the national monitoring body on the implementation of the CRPD (see section 3).
66. At the European level, in addition to the standards mentioned above, article 23 of the [Revised European Social Charter](#) contains an obligation for states to enable older persons to remain full members of society for as long as possible.⁶⁰ The Commissioner notes that Estonia has not accepted this article of the Charter to date.
67. At the domestic level, two acts in particular are relevant for long-term care of older persons: chapter 8 of the [Family Law Act](#) provides for an “obligation to provide maintenance arising from filiation” and the [Social Welfare Act](#) specifies the different types of social services to be implemented for vulnerable persons, including older persons. The services for older persons include at-home health care, personal assistant to handle daily activities, social transportation services, open social centres, and social care homes. Care services are organised at the local level by the municipalities, through a combination of public and private providers.
68. During her visit, the Commissioner repeatedly heard concerns about the organisation, availability and quality of long-term care services for older persons. Estonia has established a task force on long-term care issues, and the Ministry of Social Affairs is preparing an Action Plan on long-term care, including for older persons. The Commissioner hopes that, in

⁵⁸ Kristina Lindemann & Marge Unt, “Trapped in “involuntary Work” in the late career? Retirement expectations versus the “desire to retire” in Estonia”, *Studies of Transition States and Societies*, Vol. 8, Issue 3, 2016, available at: <http://publications.tlu.ee/index.php/stss/article/view/237>.

⁵⁹ European Commission, “Implementation of the UN CRPD with regard to older people”, available at: https://social.un.org/ageing-working-group/documents/sixth/Presentation_ten%20Geuzendam.pdf.

⁶⁰ This includes enabling them to lead independent lives in their familiar surroundings as long as they wish and are able, by adapting their housing to their state of health and by providing the health care and the services they need. For older persons living in residential institutions, states must guarantee appropriate support, while respecting privacy, and participation in decisions concerning their living conditions.

developing the Action Plan, the authorities will take into consideration the observations below, and would appreciate being kept informed of progress in this regard.

69. The majority of social care homes for older persons in Estonia are large institutions built during the Soviet period. There are long waiting lists for social care homes, and insufficient home-based services. Despite revisions to the Social Welfare Act in 2016 to insert a list of mandatory services to be provided by municipalities, the Commissioner understands that there continue to be major inequalities between municipalities in the number and quality of services available. These inequalities are caused in part by a difference in resources at the local level, but also by varying policy approaches to the issue of care, as some municipalities interpret the Family Act strictly as placing most of the care responsibility on the families of dependent persons. According to the authorities, the 2017 administrative reform, which led to a drastic reduction of the number of municipalities, is expected to increase the resources available for care. In 2017, Estonia's public spending for long-term care (0.37% of GDP for that year, according to information provided by the authorities) was lower than in most other EU member states.

2.3.2 APPROACH TO DE-INSTITUTIONALISATION

70. The Commissioner visited a social care home for older persons in Kohtla-Järve, Ida-Viru county, with a capacity for 140 residents. The staff appeared dedicated to their work with the residents; however, staffing levels were low. With a total of 28 staff, the home had seven active staff members during the day shift and three at night. The four-storey building had no elevator (though there were ramps), which makes it difficult to take persons with mobility difficulties or who are bed-ridden outside.
71. The Director also informed the Commissioner that a number of care staff must undertake training to satisfy the new requirements of the Social Welfare Act 2016. Indeed, according to information provided by the authorities, only 22% of all carers in Estonia have professional qualifications (with 48% having in-job training, and 30% no training at all), a situation that the Social Welfare Act seeks to address by imposing training requirements that will enter into force on 1 January 2020.
72. As part of its mandate as National Preventative Mechanism under the Optional Protocol of the Convention against Torture, the Chancellor of Justice conducts visits to social care homes for older persons. The Chancellor has pointed to systemic problems and a number of human rights violations in social care homes over the years.⁶¹ The types of human rights abuses documented by the Chancellor include: restrictions of freedom of movement;⁶² medication without informed consent, including, in some instances, sedation as a way to restrain patients; violations of the right to privacy, notably in the course of hygiene procedures; and violations of people's dignity, for example when the living conditions are inadequate, when residents are fed in haste and no outside or leisure activities are provided. There were also some reports of communication difficulties between staff and personnel based on language (this did not appear to be the case in the home visited in Kohtla-Järve).

⁶¹ Estonian Chancellor of Justice, "Systematic problems found in nursing care services", available at: <http://www.oiguskantsler.ee/en/chancellor-justice-systematic-problems-found-nursing-care-services>.

⁶² Estonian Chancellor of Justice, "2016-2017 Overview of Activities, National Preventive Mechanism", 2017, available at: http://www.oiguskantsler.ee/sites/default/files/NPM%20Annual%20Report%202017_0.pdf; Estonian Chancellor of Justice, "Nursing home has no right to deprive people of liberty", available at: <http://www.oiguskantsler.ee/en/chancellor-justice-nursing-home-has-no-right-deprive-people-liberty>.

73. The Estonian Social Insurance Board is conducting a review of service providers in an effort to improve the quality of service. A new unit dedicated to supervision and counselling to municipalities will also be created within the board. Furthermore, according to information submitted by the authorities, the government carried out two open calls for projects in 2016 and 2018 to provide additional services for older persons, including home care, general care outside the home, and personal assistants. A further call will be organised in 2019.
74. There is overall a shortage of home-based services for older persons in Estonia.⁶³ One consequence of this situation is that some people who would otherwise be able to cope in their home environment with the help of support services are forced to move to social care homes, as was confirmed to the Commissioner during her visit to the Kohtla-Järve social care home. As mentioned above, the preferred approach in the CRPD and Council of Europe standards is to enable older persons and older persons with disabilities to live as long as possible - or as long as they wish - independently in the community, and to prefer smaller structures and living arrangements.
75. While Estonia is implementing a de-institutionalisation⁶⁴ programme for persons with disabilities and for children, it became clear during the visit that this is not necessarily the prevalent approach for older persons in need of long-term care. According to the Estonian audit service, there was an 80% increase in the number of places in social care homes between 2012 and 2014, against a 10% increase only in home-based services.⁶⁵

2.3.3 PERSONS WITH DEMENTIA

76. As stressed by the World Health Organisation (WHO), people living with dementia are especially vulnerable to abuse. In many countries in the world, people living with dementia are physically or chemically restrained, subject to physical violence or exploitation, at home or in institutions.⁶⁶ Alzheimer Europe estimates that there were about 21720 people living with dementia in Estonia in 2013.⁶⁷ Apparently, instances of deprivation of liberty in institutions, such as those documented by the Chancellor of Justice, mostly involve older persons with dementia. Because of inadequate premises and insufficient staffing, it can be difficult to ensure the safety of patients living with dementia. NGOs also informed the Commissioner that persons living with dementia are routinely refused in social care homes because of a lack of qualified staff or sufficient resources to take care of them.
77. The Estonian authorities informed the Commissioner about plans to create a competence centre on dementia in the fall of 2018. The competence centre will conduct research, make policy recommendations and prepare training material related to dementia. The government also plans to create 900 places dedicated to persons with dementia in care institutions. The

⁶³ Estonian Ministry of Social Affairs, "Report on the follow-up to the Regional Implementation Strategy of the Madrid International Plan of Action on Ageing in Estonia", 2016, op. cit.

⁶⁴ De-institutionalisation refers to the progressive relocation of residents from large social or medical institutions to regular community living. It involves the development of services to support independent living and inclusion in the community.

⁶⁵ National Audit Service Estonia, "Growth in number of elderly receiving nursing home services outstrips increase in home-based eldercare", 2014, available at:

<https://www.riigikontroll.ee/Suhtedavalikkusega/Pressiteated/tabid/168/ItemId/708/amid/557/language/en-US/Default.aspx>.

⁶⁶ World Health Organisation, "Ensuring a human rights-based approach for people living with dementia", available at: http://www.who.int/mental_health/neurology/dementia/dementia_thematicbrief_human_rights.pdf.

⁶⁷ Alzheimer Europe, "2013: the prevalence of dementia in Europe: Estonia", 24 February 2014, available at: <https://www.alzheimer-europe.org/Policy-in-Practice2/Country-comparisons/2013-The-prevalence-of-dementia-in-Europe/Estonia>.

Commissioner considers that this plan should be implemented in accordance with a de-institutionalisation approach and in consultation with associations of people living with dementia and their carers.

2.3.4 INFORMAL CARERS

78. Shortages in long-term care services in Estonia – both in social care homes and home based services – means that a large portion of the care is handled by close relatives. According to the World Bank group study on long-term care in Estonia, informal care is provided primarily by women (among family and close friends) and impacts mostly people above 50 years old, some of whom also have health issues of their own. The Estonian Carers Association informed the Commissioner that support for informal carers is insufficient. In this area too, there are large inequalities between municipalities, with some providing a small benefit and others none. A lack of effective support for informal carers can have serious consequences on the quality of care provided.
79. The Commissioner also notes that the state has the responsibility to ensure that the human rights of informal carers are protected. Intensive care duties can have an adverse impact upon a person's rights to family and private life, to participation in social and public life, including their right to work. In Estonia, for example, the World Bank Group study found that 18% of informal carers had to stop working completely because of their care duties, with obvious consequences in terms of income and risk of poverty. Even if some studies have shown that caring for dependent relatives can provide life satisfaction, excessive pressure, and a lack of recognition or choice can have a negative impact on the health and psychological well-being of informal carers.⁶⁸

2.4 NEW TECHNOLOGIES

80. Estonia is a leader in the fields of digitalisation and technological innovation. In this section, the Commissioner briefly examines how older persons and their human rights are affected in particular by the digitalisation of state services, and by the use of artificial intelligence and robots in social and care services.
81. The first aspect primarily touches on older persons' right to participate in social and public life, in a society that is profoundly changing and where public processes are increasingly run through the internet. With the development of [e-estonia](#) (the e-government project), a large amount of public processes and services have become digitalised over the years. For example, the government and parliament are entirely paperless and new pieces of legislation are only available online; business and private tax claims are run online; data from health-care services have been digitalised through the e-health project; e-voting was first allowed in 2005 and Estonian citizens hold electronic identity cards which, in addition to e-voting, can be used to carry out various administrative procedures. On the one hand, these developments can help older and isolated persons with restricted mobility to obtain administrative services, as well as to participate in political elections from their homes (provided they have an internet connection). On the other hand, it requires a specific effort on the part of the authorities to ensure that older persons are literate in the use of internet, so that they are not left behind in a rapidly evolving society.

⁶⁸ Eurocarers, "What do informal carers need? Towards a fair and rights-based deal", available at: https://www.eurocarers.org/userfiles/files/factsheets/Eurocarers%20-%20Needs_final.pdf.

82. For some older persons, in particular those with lower education or little exposure to information communication technologies (ICT) during their work life, getting acquainted with the internet may represent a challenge. The Estonian authorities organise free ICT training courses targeted at older persons, notably to teach them the e-government services. These courses are held in Estonian and in Russian in the areas inhabited by Russian-speaking minorities.⁶⁹ Yet, according to [Eurostat](#), the proportion of persons between 65 and 74 using the internet in Estonia is still much lower than the general population (47% of 65-75 use internet once a week against 85% of the general population in 2016). Further, in her 2016-2017 annual report, the Chancellor of Justice noted that there is no available data regarding the use of internet by persons above 74.
83. NGOs also alerted the Commissioner about recent difficulties linked to the use of automated decision-making in social benefits services. Following a recent reform of the work ability support [system](#), machines and algorithms were used to automatically re-evaluate incapacity levels. Reportedly, the incomplete data in the e-health platform, compounded by a lack of in-person interviews, resulted in loss of social benefits for certain persons with disabilities and older persons with disabilities.
84. There have apparently been some initiatives to employ new technologies to facilitate older persons' long-term care. For example, the city of Tallinn is participating in a pan-European pilot project called [Smartcare](#) to test remote care. By providing services such as alarm buttons (in case of falls, or emergency), digital monitoring of regular health data (such as blood pressure, sugar etc.), and medical consultations by video conference, Smartcare is said to reduce the need for home visits by doctors, nurses and personal assistants. Representatives of the Jõhvi municipality informed the Commissioner that they were considering developing similar services, given the increasing care needs and costs of care services.
85. According to academic research, the use of robots and artificial intelligence in caring services for older persons is likely to increase rapidly.⁷⁰ Robots can be used in three main areas: to assist older persons and their carers in their daily tasks (for example to enable mobility or the moving of persons, bathing, feeding, shopping etc.); to monitor their health and behaviour, and to provide interaction and entertainment. There are obvious benefits, but also risks related to the use of robots in long-term care. On the positive side, robots could enable older persons to live longer in autonomy and independently, they could also help provide control and privacy (in hygiene procedures for example), and fight social exclusion.
86. Yet, as pointed out by the UN Independent Expert on the enjoyment of all human rights by older persons, the use of robots in relation to the long-term care of older persons raises serious ethical questions and requires a human rights-based approach to ensure that no rights are violated.⁷¹ This includes for example ensuring that older persons have the choice and sufficient information to use assistive technologies. Such technology should also be accessible to all without discrimination and without deepening social inequalities. Machines

⁶⁹ Ministry of Economic Affairs and Communications, "Digital Agenda 2020 for Estonia", available at: https://www.mkm.ee/sites/default/files/digital_agenda_2020_estonia_engf.pdf.

⁷⁰ Amanda Sharkey and Noel Sharkey, "Granny and the robots: ethical issues in robot care for the elderly", Ethics and Information Technology, Volume 14, Issue 1, March 2012, available at: <https://link.springer.com/article/10.1007/s10676-010-9234-6>.

⁷¹ UN Human Rights Council, "Report of the Independent Expert on the enjoyment of all human rights by older persons", A/HRC/36/48, 21 July 2017, available at: <https://www.ohchr.org/En/Issues/OlderPersons/IE/Pages/Reports.aspx>.

should be designed so that the technology does not stigmatise or discriminate against older persons and respects their preferences. Some of the issues that require urgent attention include the handling of data collected by monitoring machines, which could have an impact on the right to privacy. Freedom of movement and liberty could become an issue with machines meant to monitor the safety of older persons or persons with dementia, for example. The parameters and conditions for potential decision-making by the machines on the basis of artificial intelligence also need to be carefully considered.

87. Furthermore, the risk of diminishing human contact and deepening social exclusion should be born in mind. In a [study](#) carried out by Age Platform (“ICT for Aging Well: Listen to What Older Persons Think!”), older persons had a range of attitudes vis-à-vis the deployment of new technologies for their care, but some underscored that what they missed most were the informal chats with the carer or nurse who would have otherwise provided health and care services. It is critical that the use of robots in long-term care be considered from the perspective of the benefits for older persons and not solely for the purpose of reducing the cost and burden of care for the society.

2.5 CONCLUSIONS AND RECOMMENDATIONS

88. The Commissioner welcomes the authorities’ stated intention to focus more on the situation of older persons. To that effect, she recommends that the authorities consider adopting a global policy strategy on older persons, which, in keeping with the Committee of Ministers Recommendation (2014)² would address all issues that concern them, including discrimination, participation, protection from violence, social protection, care, palliative care, and access to justice, with a strong emphasis on adopting a human rights-based approach.

Discrimination

89. The Commissioner welcomes the government’s initiative to expand the protection against discrimination in the Equal Treatment Act. She also recommends that Estonia ratify Protocol 12 of the ECHR on the general prohibition of discrimination. The Commissioner underscores the importance of effective mechanisms to implement the Equal Treatment Act and urges the authorities to ensure that the national human rights structures have enough resources to address discrimination against older persons, among others (see section 3).
90. Underscoring that laws alone do not change attitudes, the Commissioner invites the authorities to conduct awareness-raising campaigns to combat ageism and stereotypes about older persons. It is also important to ensure that older persons have access to information about their human rights so that they are empowered to claim them.

Poverty

91. The Commissioner calls on the Estonian authorities to combat poverty so that all older persons can live in dignity. The Commissioner refers to her recent human rights comment entitled “[Keeping the promise: ending poverty and inequality](#)”, in which she called on all Council of Europe member states to put the fight against poverty at the heart of their policies. Specifically, the Commissioner urges the authorities to refrain from any reforms of old age pensions that would increase the vulnerability of older persons. Noting that Estonia’s

investment in social protection is among the weakest in the EU,⁷² the Commissioner calls on Estonia to consider increasing its social protection floors to combat poverty.

Long-term care

92. The Commissioner welcomes the authorities' preparation of an Action Plan on long-term care. She also welcomes initiatives to increase capacities at the state level to monitor and advise on the quality of long-term care. She encourages the government to give specific consideration to the great disparities between municipalities regarding both the provision and quality of long-term care, and to seek ways to better harmonise the system.
93. The Commissioner urges the Estonian authorities to centre their Action Plan on long-term care around the need to enable older persons to live independently and in the community as long as possible or as long as they wish. This involves increasing home-based services, and progressively relocating residents from large institutions into smaller community living structures. The Commissioner also welcomes the authorities' focus on the need to address the specific needs of older persons living with dementia. Finally, in accordance with the UN Committee on Economic, Social and Cultural Rights [General Comment No 6](#) and the Committee of Ministers Recommendation (2014)2, the Commissioner recommends that the authorities increase support to informal carers, in consultation with associations representing them, including through training, counselling and emotional support, and respite care.
94. Overall, the Commissioner recommends that the Estonian authorities adopt a human rights-based approach to long-term care, which involves inter alia ensuring that their policies do not violate the human rights of anyone, that they are applied in a non-discriminatory manner, and that older persons can participate in decisions about their own care and in policy making. In that regard, the Commissioner refers to her predecessor's human rights comment "[The right of older persons to dignity and autonomy in care](#)" and the European Network of National Human Rights Institutions' "Applying a Human Rights-based Approach to Long-Term Care for Older Persons: a [toolkit](#) for care providers."

New technologies

95. Given Estonia's strong focus on digitalisation and ICT, the Commissioner recalls that states should provide equal access to the benefits of ICT to all, including older persons, in order to fulfil their obligations under international human rights law and advance the UN Sustainable Development Goals 2030. She recommends that the authorities study the factors that currently hinder older persons' use of ICT so that appropriate measures can be taken to ensure that such persons are not disadvantaged. She further recommends implementation of the Chancellor of Justice's recommendation to collect data about the use of internet among those older than 74.
96. With regards to the use of robots and artificial intelligence in care, the Commissioner would like to refer to her recent human rights comment entitled "[Safeguarding human rights in the era of artificial intelligence](#)", which signals some of the ethical, legal and human rights implications of such new technologies. She urges the authorities to conduct an investigation into errors related to the use of algorithms in decisions about social benefits and to ensure

⁷² 15.1% of GDP against an EU average of 29.7% in 2014, Eurostat, "Social Protection Statistics", June 2017, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Social_protection_statistics.

that this does not re-occur. The Commissioner recommends that the authorities consider developing specific human rights-based guidelines regarding the use of robot and artificial intelligence in long-term care, and to include relevant issues from this specific field as they move forward with drafting an artificial intelligence strategy and legislation.

3 INDEPENDENCE AND EFFECTIVENESS OF NATIONAL HUMAN RIGHTS STRUCTURES

97. Effective and independent national human rights structures (NHRs) are crucial to protect and promote human rights and equality at the national level. The Commissioner's visit to Estonia provided an opportunity to examine progress on the implementation of recommendations made in this field by her predecessor in 2013.⁷³
98. Estonia has several NHRs, including a Labour Inspectorate and a Data Protection Inspectorate. The Commissioner focused her attention on the situation of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner (Equality Commissioner). Estonian NGOs, as well as international human rights monitoring bodies, including the Commissioner's predecessor, have repeatedly called on Estonia to establish or designate a national human rights institution (NHRI) under the United Nations Paris Principles.⁷⁴ The UN Vienna Conference on Human Rights in 1993 first recommended that all states establish independent NHRIs in order to improve states' effective implementation of their human rights obligations.

3.1 NATIONAL HUMAN RIGHTS STRUCTURES

3.1.1 THE CHANCELLOR OF JUSTICE AND DESIGNATION OF A NATIONAL HUMAN RIGHTS INSTITUTION

99. The Chancellor of Justice is an independent institution established by the Constitution, which enjoys wide ranging powers.⁷⁵ The Chancellor is elected for a period of seven years by the *Riigikogu* on the proposal of the President. The current Chancellor is Ms Ülle Madise, who was elected in 2015. The Chancellor has the power to review laws and regulations to ensure their conformity with the constitution and international conventions, and can refer cases to the Supreme Court. The Chancellor can also receive and resolve complaints from individual citizens about maladministration or violations of fundamental rights by public authorities or private bodies carrying out public functions (*Ombudsman* function). She can conduct investigations on her own initiative, and issue reports and recommendations on systemic human rights problems.
100. The Chancellor may also attend and speak at sessions of the parliament and all cabinet meetings of the government. This is a significant power, which gives her the opportunity to advise national authorities on human rights matters in a timely manner. The Chancellor submits an annual report to the *Riigikogu*.
101. Since 2007, the Chancellor of Justice functions as national preventive mechanism under the Optional Protocol to the UN Convention against Torture ([OP-CAT](#)) and conducts regular inspection visits to prisons, police stations, psychiatric hospitals and social care homes, as

⁷³ "Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Estonia from 25 to 27 March 2013," 20 June 2013, available at: <https://rm.coe.int/16806db799>.

⁷⁴ "Principles relating to the status of national institutions", adopted by UN General Assembly Resolution 48/134 of 20 December 1993, available at: <https://ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

⁷⁵ "Chancellor of Justice Act", available at: <https://www.riigiteataja.ee/en/eli/507042016001/consolide>.

mentioned above. Since 2011, the Chancellor of Justice also acts as Children's *Ombudsman*, meaning that she promotes and protects the rights of children in line with the UN Convention on the Rights of the Child ([CRC](#)), by reviewing relevant legislation, hearing children's complaints, publishing reports, and visiting children's institutions.

102. The Commissioner was informed that the Chancellor's office continues to be well resourced, with over 50 staff. Until now, the successive expansions of the mandate have been met with additional resources. According to information provided by the Chancellor's office, in 2016-2017, the Chancellor of Justice received a total of 4314 complaints, around 30% of which led to the opening of a case. In the same period, the office conducted 56 inspection visits and presented a topical report to the *Riigikogu* on the constitutionality of electoral campaign finance and advertising regulation.
103. During the Commissioner's visit to Estonia, the *Riigikogu* adopted [amendments](#) to the Chancellor of Justice Act that further expand the mandate. As of 1 January 2019, the Chancellor will act as national independent monitoring body under the UN Convention on the Rights of People with Disabilities (CRPD), a function which entails monitoring and promoting the implementation of the Convention, and protecting the rights of persons with disabilities, in collaboration with civil society, in particular people with disabilities and their representative organisations.
104. The Commissioner was also pleased to note that the adopted amendments designate the Chancellor of Justice as Estonia's NHRI, which is a welcome development. As a next step, it will be important for the Chancellor of Justice to obtain international recognition, through accreditation from the UN Global Alliance of NHRIs (GANHRI) in Geneva. In making its decision, GANHRI's Sub-Committee on Accreditation examines whether a national structure meets, formally and *de facto*, the criteria set-out in the UN Paris Principles, including: broad mandate and powers based on international human rights standards, autonomy from the government, independence guaranteed through the state's constitution or by statute, pluralism of composition, sufficient resources and sufficient powers of investigation.⁷⁶
105. In this regard, the Commissioner observes that the Chancellor of Justice would appear to fulfil most of the functions and criteria associated with NHRIs, apart from that of a pluralist representation in its composition. This is also important for its new function as monitoring body for the CRPD to ensure representation of persons with disabilities. The Commissioner was informed that this could be addressed through the creation of a pluralist advisory board, a step which would not require further legislative changes. As a formal NHRI with international accreditation, the Chancellor of Justice will be able to benefit from and participate in European and international cooperation among NHRIs, including UN activities reserved for accredited NHRIs. The new Chancellor of Justice Act will enter into force on 1 January 2019.

3.1.2 THE GENDER EQUALITY AND EQUAL TREATMENT COMMISSIONER

106. The Equality Commissioner is Estonia's equality body. The Equality Commissioner is an independent expert appointed for a five-year period by the Ministry of Social Affairs. The current Commissioner is Ms Liisa Pakosta. Pursuant to the Gender Equality Act and Equal Treatment Act, the Equality Commissioner fulfils a number of functions in the field of

⁷⁶ Description of GANHRI's accreditation process, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>.

equality and non-discrimination, which she can monitor in both the public and private sectors. These functions include advising and assisting people who submit individual complaints of discrimination, giving (non-binding) opinions and recommendations on specific cases of discrimination, advising the authorities on legislation and equality matters, researching systemic issues, and publishing reports. During the visit, the Equality Commissioner informed the Commissioner that her key areas of work have been: discrimination based on gender, including work/life balance and family duties, on age, on disability and on ethnicity.

107. In the past, various human rights actors, including the Commissioner's predecessor, have drawn attention to certain constraints affecting the Equality Commissioner institution. These related to insufficient guarantees of independence, given the Ministry of Social Affairs' role in the nomination of the Commissioner and channelling of the budget, and serious understaffing and underfunding.⁷⁷
108. During the visit, the Commissioner learned that there had been a considerable - but temporary - increase of the Equality Commissioner's budget in 2016 (in addition to projects-specific external funding) which had made it possible to recruit several staff. NGOs have acknowledged the efforts of the Equality Commissioner, which have resulted in strengthening the institution and considerably increasing its output and visibility. However, the 2016 public budget increase was discontinued in 2017.
109. According to the Equality Commissioner, there has been a considerable increase in public interest in the mandate, with the number of individual complaints having increased from 90 in 2011 to 440 in 2017. While the Equality Commissioner has revamped her website, the latter is still not available in Russian or in an easy-to read version. Other communication tools used by the Equality Commissioner for public outreach on equality have included songs, phone ringtones and short videos. She has given lectures at universities, conducted training in private companies, as well as taking part in joint initiatives with civil society, for example the Gender Pay Gap Day. The Commissioner noted with interest the approach taken by the Equality Commissioner to approach an employer directly when she receives several connected complaints, in order to seek systemic solutions.
110. The non-renewal of the 2016 temporary public funding grant resulted in a diminution of about 60% of the resources previously available to the Equality Commissioner, which is considerable. During the visit, the Equality Commissioner informed the Commissioner that insufficient resources have direct consequences on the work carried out by the office. The Equality Commissioner had to prioritise examining individual complaints, and has reduced awareness-raising work. Although she would like to do it, the Equality Commissioner is not in a position to provide legal assistance to victims of discrimination who may wish to take their cases to courts, or to appear as expert or third party in court proceedings. She is also not able to undertake additional *ex-officio* research into topical issues (outside of specific projects with external funding). She also noted the emergence of new challenges, for example the use

⁷⁷ See "Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Estonia from 25 to 27 March 2013," 20 June 2013, op. cit.; European Commission on Racism and Intolerance, Report on Estonia, 15 October 2015, available at: <https://rm.coe.int/fifth-report-on-estonia/16808b56f1>; Advisory Committee of the Framework Convention on National Minorities, Report on Estonia, 19 March 2015, op. cit. ; UN CEDAW Concluding Observations on Estonia, 18 November 2016, op. cit.

of artificial intelligence, which can involve new types of discrimination and will require special skills on the part of equality bodies.

111. With regard to the amendments to the Equal Treatment Act which are currently under consideration and would extend the same level of protection against discrimination to all grounds (see section 2 above), the Equality Commissioner expressed concerns about her mandate being expanded without a corresponding increase of resources.

3.2 CONCLUSIONS AND RECOMMENDATIONS

112. The Commissioner welcomes the recent amendments to Chancellor of Justice Act that have designated that Office as a national human rights institution. She hopes that the Chancellor will make the necessary adjustments and apply promptly to the UN Global Alliance of National Human Rights Institutions' accreditation process, including by ensuring the pluralism of the composition of the institution, and formalising cooperation with other relevant national human rights bodies and civil society.
113. The Commissioner urges the authorities to adapt the resources available to the Chancellor of Justice as needed, to enable that institution to effectively carry out its new functions as NHRI and monitoring body under the CRPD. She urges the authorities to maintain the strong role of the Chancellor and defend against any attempts to weaken the institution.
114. The Commissioner welcomes the fact that, despite potentially overlapping portfolios, the Chancellor of Justice and the Equality Commissioner cooperate closely, exchange information regularly, and focus on complementary topics in order to avoid duplication. She notes that this approach reinforces the important contribution of both structures to the promotion and protection of human rights in Estonia.
115. The Commissioner underscores the importance of ensuring that the Equality Commissioner can function effectively. According to information provided by the authorities, a significant increase in the Equality Commissioner's budget has been proposed, starting in 2019. The Equality Commissioner should dispose of sufficient resources to carry out the various functions cited in ECRI's General Policy Recommendation No. 2 on Equality Bodies,⁷⁸ i.e. handling complaints, providing support and assistance to victims of discrimination, and promoting equality. Funding should be made sustainable over time, and adapted as appropriate if the mandate is expanded.
116. Finally, the Commissioner urges the Estonian authorities to strengthen the Equality Commissioner's institutional independence, notably by providing a transparent and merit-based election process and an independent budget line. On this subject, the Commissioner would like to draw the attention of the authorities to the standards contained in the recently-revised General Policy Recommendation No. 2 on Equality Bodies by the European Commission against Racism and Intolerance (ECRI).

⁷⁸ European Commission against Racism and Intolerance, "General Policy Recommendation No 2: Equality Bodies to combat Racism and Intolerance at the national level", 27 February 2018, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-standards>.