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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into national law?

Estonia

Anu Laas

Reporting period 1 January 2020 – 1 January 2021

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1 Introduction

1.1 Basic structure of the national legal system

Estonia belongs to the Continental European legal system, and is basically divided into private and public law. The Parliament (*Riigikogu*) is the highest legislative body and consists of 101 members elected for a term of four years. In 2019, the Centre Party, Social Democrats and conservative Pro Patria Party formed a coalition Government.¹

Ministries make legislative proposals, draft laws and hold consultations, i.e. they ask concerned interest groups and public representatives for their opinions and proposals.² A regulatory impact analysis and assessment is performed, and any draft law proposal is presented to all ministries and social partners before a draft law is produced. It is mainly the Ministry of Social Affairs that drafts equality legislation.

The Government Office of Estonia and its European Union secretariat is the central coordination unit of Estonia's European Union policy.

The Gender Equality and Equal Treatment Commissioner is an independent and impartial gender equality body that monitors compliance with the requirements of the Gender Equality Act (GEA) and the Equal Treatment Act (ETA). The Commissioner gives advice and can issue non-binding written opinions.

1.2 List of main legislation transposing and implementing the directives

- Civil Service Act (CSA, *Avaliku teenistuse seadus*);³
- Chancellor of Justice Act (CJA, *Õiguskantsleri seadus*);⁴
- Equal Treatment Act (ETA, *Võrdse kohtlemise seadus*);⁵
- Employment Contracts Act (ECA, *Töölepingu seadus*);⁶
- Family Benefits Act (FBA, *Perehüvitiste seadus*);⁷
- Family Law Act (FLA, *Perekonnaseadus*);⁸
- Gender Equality Act (GEA, *Soolise võrdõiguslikkuse seadus*);⁹
- Health Insurance Act (HIA, *Ravikindlustuse seadus*);¹⁰
- Insurance Activities Act (IAA, *Kindlustustegevuse seadus*);¹¹
- Law of Obligations Act (LOA, *Võlaõigusseadus*);¹²
- Occupational Health and Safety Act (OHSA, *Töötervishoiu ja tööhutuse seadus*);¹³
- Penal Code (PC, *Karistusseadustik*);¹⁴
- Registered Partnership Act (RPA, *Kooseluseadus*);¹⁵
- Social Welfare Act (SWA, *Sotsiaalhoolekande seadus*);¹⁶

¹ Basic principles of the Government coalition of the Estonian Centre Party, the Conservative People's Party of Estonia, and Isamaa for 2019–2023,

https://www.valitsus.ee/sites/default/files/basic_principles_of_the_government_coalition_of_the_estonian_centre_party_the_conservative_peoples_party_of_estonia_and_isamaa.pdf; a new Government formed on 26 January 2021, the Office consists of partners of the Reform Party (liberals) and Centre Party.

² Good Practice of Engagement, <https://www.riigikantselei.ee/en/good-practice-engagement>.

³ RT I, 13.03.2019, 37, <https://www.riigiteataja.ee/en/eli/525032019003/consolide>.

⁴ RT I, 26.05.2020, 11, <https://www.riigiteataja.ee/en/eli/528052020006/consolide>.

⁵ RT I, 26.04.2017, 9, <https://www.riigiteataja.ee/en/eli/503052017002/consolide>.

⁶ RT I, 29.12.2020, 25, <https://www.riigiteataja.ee/en/eli/529122020003/consolide>.

⁷ RT I, 22.03.2021, 15, <https://www.riigiteataja.ee/en/eli/531032021006/consolide>.

⁸ RT I, 27.10.2020, 15, <https://www.riigiteataja.ee/en/eli/513112020002/consolide>.

⁹ RT I, 10.01.2019, 19, <https://www.riigiteataja.ee/en/eli/516012019002/consolide>.

¹⁰ RT I, 29.12.2020, 19, <https://www.riigiteataja.ee/en/eli/530122020007/consolide>.

¹¹ RT I, 04.12.2019, 8, <https://www.riigiteataja.ee/en/eli/511122019006/consolide>.

¹² RT I, 04.01.2021, 19, <https://www.riigiteataja.ee/en/eli/512012021002/consolide>,
<https://www.riigiteataja.ee/en/eli/515012020004/consolide>.

¹³ RT I, 29.12.2020, 14, <https://www.riigiteataja.ee/en/eli/522022021001/consolide>.

¹⁴ RT I, 03.03.2021, 3, <https://www.riigiteataja.ee/en/eli/509032021001/consolide>.

¹⁵ RT I, 16.10.2014, 1, <https://www.riigiteataja.ee/en/eli/527112014001/consolide>.

¹⁶ RT I, 22.03.2021, 14, <https://www.riigiteataja.ee/en/eli/531032021007/consolide>.

- State Pension Insurance Act (SPIA, *Riikliku pensionikindlustuse seadus*);¹⁷
- The Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*);¹⁸
- The Regulation of the Government of the Republic of 10 June 2010, No. 71 (The Statute of the Gender Equality and Equal Treatment Commissioner and the Chancellery);¹⁹
- Unemployment Insurance Act (UIA, *Töötuskindlustuse seadus*);²⁰
- Victim Support Act (*Ohvriabi seadus*).²¹

1.3 Sources of law

Sources of law are the Constitution, European Union law, international agreements, national acts and regulations. The President has the power of veto as well as the power to propose amendments to the Constitution. Case law of the Supreme Court is decisive regarding the interpretation of law and addressing legal gaps.

¹⁷ RT I, 28.12.2020, 7, <https://www.riigiteataja.ee/en/eli/505012021009/consolide>.

¹⁸ RT I, 15.05.2015, 2, <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

¹⁹ *Vabariigi Valitsuse määrus nr. 71*, 10.06.2010 'Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku ning kantselei põhimäärus', RT I 2010, 33, 170 (in Estonian).

²⁰ RT I, 19.12.2020, 7, <https://www.riigiteataja.ee/en/eli/522122020002/consolide>.

²¹ RT I, 06.05.2020, 22, <https://www.riigiteataja.ee/en/eli/513052020004/consolide>.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

The Constitution of the Republic of Estonia prohibits discrimination and incitement to discrimination. Article 12 of the Constitution sets forth the general principle of equality and non-discrimination:

'Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds. Incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. Incitement to hatred and violence between social classes or to discrimination against a social class is also prohibited and punishable by law.'

The Constitution prohibits discrimination on several grounds and leaves the list open-ended.

2.1.2 Other constitutional protection of equality between men and women

Article 27 of the Constitution stipulates equal rights of spouses. The provision emphasises the equality of spouses²² and highlights their rights and duties to raise and care for their children. Case law has specified that the protection of family life means that cohabiting women and men have the same parental rights and duties as married couples.²³ In 2019, the Constitutional Judgment stressed that protected family life also includes same-sex cohabitation if living in a stable *de facto* partnership.²⁴ The Supreme Court *en banc* declared the Aliens Act unconstitutional and repealed it insofar as it precludes issuing a temporary residence permit to an alien for settling in Estonia with a registered same-sex partner who is an Estonian citizen. The Court also pointed to ECHR jurisprudence, as well as the principles of human dignity and equal treatment guaranteed under the Estonian Constitution.

2.2 Equal treatment legislation

Estonia has two main legal texts on equal treatment, with no amendments made in 2020. The Gender Equality Act (GEA) was adopted in 2004 and several amendments were made in 2009. Article 1(2)(1) of the GEA prohibits discrimination on the grounds of sex in the private and public sectors. The GEA prohibits discrimination in all areas of social life.

The Equal Treatment Act (ETA) entered into force on 1 January 2009. The ETA prohibits discrimination on the grounds of nationality (ethnic origin), race or colour in relation to education and access to vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience. The ETA also establishes prohibition of discrimination on the grounds of religion or other beliefs, age, disability or sexual orientation in relation to access to vocational guidance, vocational training, advanced vocational training and retraining, including access to practical work experience.

Articles pertaining to equal treatment exist in the Civil Service Act, Employment Contracts Act, and Penal Code. Employees are protected against discrimination on the grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual

²² In Estonian: 'Abikaasad on võrdõiguslikud'.

²³ Supreme Court of Estonia, Judgment of the Administrative Law Chamber, No. 3-3-1-16-00 of 19 June 2000.

²⁴ Supreme Court of Estonia, SC *en banc* Constitutional Judgment, No. 5-18-5 of 21 June 2019, <https://www.riigikohus.ee/en/constitutional-judgment-5-18-5>.

orientation, duty to serve in the armed forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political opinions or membership in a political party, and religious or other beliefs.

In 2008, tense disputes regarding the draft Equal Treatment Act (ETA) were held in the Parliament.²⁵ The Chancellor of Justice had found that the different levels of protection in the ETA respect EU law, but violate international human rights treaties that Estonia is party to, as well as the Estonian Constitution.

The Commissioner of Human Rights has also pointed out the problem with protected grounds and areas in Estonian legislation in 2018:

'Indeed, areas protected against discrimination are divided into two categories in the Equal Treatment 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.'²⁶

The draft of amended Article 2 of the ETA (196 SE) entered parliamentary proceedings in 2016, was debated only once and rejected on 21 February 2019 by the Government Office.²⁷ In 2019–2020, the equality legislation was neither amended nor debated by the legislature. However, the Equal Treatment Network has also expressed concern about problems of the ETA, where a protection in areas such as the provision of housing, healthcare, social welfare, education, goods and services is not provided.²⁸ The Equal Treatment Network was established in 2013 by the Estonian Human Rights Centre and brings together NGOs involved in promoting the equal rights of their representative groups.

²⁵ Human Rights Centre. Prohibition of discrimination, <https://humanrights.ee/en/topics-main/inimoigused-eestis/inimoiguste-aruanne/human-rights-in-estonia-2008-2009/prohibition-of-discrimination/>.

²⁶ <https://rm.coe.int/report-of-the-council-of-europe-commissioner-for-human-rights-dunja-mi/16808d77f4>.

²⁷ The draft was rejected due to MPs' ignorance and parliamentary election on 3 March 2019.

²⁸ Joint submission to the Third Periodic Review of Estonia: 38th UPR Session 2021.

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

Gender equality is poorly studied and legal studies on gender equality are rare. Gender studies are not integrated into a basic curriculum. The Ministry of Social Affairs carried out gender equality monitoring every three years.²⁹ Unfortunately, the monitoring was not procured by state in 2018–2020. The most recent monitoring was carried out in 2016.³⁰ There is a promise to carry out activities to support the availability of gender-based statistics and data in the areas of responsibility of all ministries in 2021–2024.³¹

There are no studies from recent years. In 2015, a study on the implementation of the Gender Equality Act was produced, which proposed indicators for impact assessment of the equality law.³² The study covered employers' awareness of, attitudes towards and practices when implementing the Gender Equality Act. The general conclusion of the study is that the awareness of the Gender Equality Act among Estonian employers is low. Only 4 % of employers claimed that they were well aware of this law. Most respondents (46 %) had heard about the Gender Equality Act, but did not know the contents of the law. In approximately half the situations in which discrimination in the workplace was described, employers were unaware whether such situations were in accordance with the law. The study shows that employers do not fully understand the aim of gender equality and therefore they do not see any reason to promote or care about gender equality.

The overview of the activities of the Chancellor of Justice covers the period from 1 September 2019 to 31 August 2020.³³ During the reporting period, the Chancellor resolved 11 petitions with complaints about discrimination. In this year, the Chancellor did not initiate any conciliation proceedings. The Chancellor received a complaint about a job interview during which the employer had first asked the person applying for employment about how many children they had and their age and then if the child had any grandparents. It is illegal to ask for such data during a job interview and people have the right to refuse to reply to such questions.

3.1.2 Other issues

Ernits' analysis of the Estonian Constitution from the perspective of participants offers interpretations of valid constitutional norms and the present author 'participated' in the debate on constitutional interpretation.³⁴ Ernits (2019) provides an overview of the interpretation and application of the equality principle by the Estonian Supreme Court. Unfortunately, there are no cases on gender discrimination decided by the Estonian Supreme Court.

²⁹ The plan has changed and the next monitoring will not be launched before 2021. (Communication with the Equality Policies Department.)

³⁰ Ministry of Social Affairs (2016), *Soolise võrdõiguslikkuse monitooring 2016* (Gender Equality Monitoring 2016), <http://sm.ee/sites/default/files/content-editors/Ministeeriumkontaktid/Uuringujaanalused/Sotsiaalvaldkond/soolisevordõiguslikkusemonitooringuraport2016.pdf>.

³¹ Ministry of Finance (2020), *State Budget Strategy 2021–2024*, <https://www.rahandusministeerium.ee/et/riigieelarve-ja-majandus/riigi-eelarvestrateegia>.

³² Turk, P., Anniste, K., Masso, M., Karu, M., Kriger, T. (2015), *Uuring Soolise võrdõiguslikkuse seaduse rakendamise ja indikaatorite väljatöötamine seaduse mõjude hindamiseks* (Study on Implementation of the Gender Equality Act and Proposed Indicators for Impact Assessment), Tallinn: Poliitikauuringute Keskus Praxis, <https://www.sm.ee/sites/default/files/content-editors/Ministeeriumkontaktid/Uuringujaanalused/Sotsiaalvaldkond/uuringuaruanne.pdf>.

³³ Chancellor of Justice (2020), *Chancellor's Year in Review 2019/2020*, <https://www.oiguskantsler.ee/annual-report-2020/>.

³⁴ Ernits, M. (2019), 'Constitution as a System' ('Põhiseadus kui süsteem'). *Dissertationes Iuridicae Universitatis Tartuensis*, No. 75. Tartu: Tartu University of Tartu Press.

Ernits (2019) has studied the systematicity of the constitution and the principle of equality in the Estonian Constitution.³⁵ 'Everyone is equal before the law', establishes the general fundamental right to equality, the sphere of protection of which embraces all spheres of life. Case law has interpreted the phrasing of Article 12 of the Constitution several times. For example, in 2002, the Constitutional Review Chamber observed, first of all, in relation to the first sentence of Article 12(1) of the Constitution that:

'...the Article does not expressly refer to a subjective right. It only states that everyone is equal before the law. Nevertheless, these words embrace the right of a person not to be treated unequally. The wording of the first sentence expresses, above all, the equality upon application of law and means a requirement to implement valid laws in regard of every person impartially and uniformly.'³⁶

Ernits states that in 2011 the new doctrine of equality was born in Estonia. In 2011, the Supreme Court *en banc* considered the previous fundamental judicial disagreement regarding the interpretation of Article 12(1) of the Constitution. The decision contained four key points regarding the new doctrine:

- interpretation of Article 12(1) of the Constitution: the first and second sentence should be combined to generate a comprehensive, uniform, equality right;
- clarification of the question of statutory reservation of the general equality right;
- provision that the principle of proportionality should be used if justifications of unequal treatment are reviewed;
- a balancing rule was added: a distinction should be drawn between personal attributes acquired by act of will, such as language skills and, to a certain extent, religion or beliefs, which are changeable, and attributes that exist independently of the will of the person, which include race, age, disability, genetic characteristics, or mother tongue.³⁷

In 2011, the Supreme Court *en banc* considered, that in principle, there are no stand-alone special equality rights; and that the specific guarantees cover only sub-segments of the general principle of equality:

'The list of prohibitions against discrimination of the fundamental right comprised in Article 12(1) of the Constitution is not exhaustive and is therefore an example. That the list is an example is also indicated by the fact that the characteristics in the list are of different levels of importance. In addition to the characteristics irrespective of the people's intentions, the list in the second sentence also includes language, which can usually be learned, and religion and opinions, which can be changed to some extent. If unequal treatment is based on the characteristics irrespective of the people's intentions (e.g. race, age, disability, genetic characteristics, and also native language), better reasons must generally be found as justification.'³⁸

Ernits analysed whether, after the judgment in 2011, there are any special equality rights that differ from the general right. According to the SC's *en banc* judgment, one must ask whether the *differentia specifica* is dependent on the will of the person: if the *differentia specifica* is dependent on the will, then the requirements for justification of the particular unequal treatment will be lower; whereas if there is no dependence on the will, then the

³⁵ Ernits, M. (2019), 'Constitution as a System' ('Põhiseadus kui süsteem'). *Dissertationes Iuridicae Universitatis Tartuensis*, No. 75. Tartu: Tartu University of Tartu Press.

³⁶ Supreme Court of Estonia, Constitutional Review Chamber Judgment, No. 3-4-1-2-02 of 3 April 2002, <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-2-02>, para. 16.

³⁷ Ernits, M. (2019), 'Constitution as a System' ('Põhiseadus kui süsteem'). *Dissertationes Iuridicae Universitatis Tartuensis*, No. 75. Tartu: Tartu University of Tartu Press, 138-139; Supreme Court of Estonia, SC *en banc* Judgment, No. 3-4-1-12-10 of 7 June 2011, para. 31, <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-12-10>.

³⁸ Supreme Court of Estonia, SC *en banc* Constitutional Judgment, No. of the case 3-4-1-12-10 of 7 June 2011, para 32, <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-12-10>.

requirements will be higher. In the case of a prohibition of discrimination, the requirements for the justification are lower where the unequal treatment ground is dependent on the will of the person, and higher where this is not the case.³⁹

3.1.3 General overview of national acts

Equality legislation has not been amended for a decade. Amendments to the Penal Code and the Victim Support Act were made due to the ratification process of the Istanbul Convention (IC). The IC entered into force on 1 February 2018.

3.1.4 Political and societal debate and pending legislative proposals

The high and persistent gender pay gap has been a serious issue in political and societal debate.

The Equal Treatment Act (ETA) divides the protected areas depending on the ground of discrimination. The ETA covers discrimination based on religion or belief, age, disability and sexual orientation only in the area of employment (as required by Directive 2000/78/EC), while, in addition, discrimination based on racial or ethnic origin and colour is covered in the area of services and social protection (as required by Directive 2000/43/EC). The draft of amended Article 2 of the ETA (196 SE) entered parliamentary proceedings in 2016; the aim of the bill was to eliminate the unequal treatment of social groups, and to ensure uniform protection against discrimination for all people.⁴⁰ In order to achieve this, a new wording of Article 2(1) and Article 2(2) was necessary. However, the Bill on Amendments to the Equal Treatment Act was not sent for further readings in 2016-2019 and was finally rejected on 21 February 2019 by the Government Office. There was no wider societal debate on the issue. The Minister of Justice, Mr. Reinsalu, expressed his strong opposition to this bill in May 2018.⁴¹ Mr. Reinsalu holds the position of the Minister of Foreign Affairs since May 2019.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

In Estonian, only 'sugu' is used; there is no distinction between the words 'sex' and 'gender'.⁴² Each person's identity number is printed on all national identification documents, such as ID-card, passport, and residence permit. The first number of the ID-code of 11 digits points to biological sex.

3.2.2 Protection of transgender, intersex and non-binary persons

Sexual identity is not on the list of protected grounds. Sexual orientation is mentioned in the GEA and the ETA.

In Estonia, transsexuals are discriminated against in several areas of life, including facing unequal treatment by the Health Insurance Fund, harassment at work and additional questions about appearance in recruitment process. A transsexual person's marriage is void after gender reassignment.

³⁹ Ernits, M. (2019), 'Constitution as a System' ('Põhiseadus kui süsteem'). *Dissertationes Iuridicae Universitatis Tartuensis*, No. 75. Tartu: Tartu University of Tartu Press, 157.

⁴⁰ <https://www.riigikogu.ee/en/sitting-reviews/equal-treatment-bill-passed-first-reading/>.

⁴¹ Ministry of Justice (2018), Vastuskiri võrdse kohtlemise seaduse muutmise seaduse eelnõule (*Response to the Bill on Amendments to the Equal Treatment Act*), 31 May 2018. available in Estonian at: <http://eelvoud.valitsus.ee/main#T8L4R253>.

⁴² It is important to understand what is meant when 'sugu' is used in a text. However, a translation of 'gender' could be 'sotsiaalne sugu' (*sugupool*), whereas sex would be 'bioloogiline sugu'. Taking into account the context, different words are used in translation, such as 'seksuaalne' or 'sooline'.

Transsexuals are seen as a medical problem in Estonian law.⁴³ The Regulation of the Minister of Social Affairs of 1999 on medical requirements for gender assignment is still in force. A medical doctor, Maie Väli, has written about gender reassignment problems in Estonia, pointing out that many transsexuals only go through hormone therapy and do not move on to gender reassignment.⁴⁴

Gender reassignment is not defined in Estonian legislation. There is a need to draft a comprehensive legal framework regarding gender reassignment and related services. Intersex and non-binary persons are ignored by Estonian legal texts and debates. Estonia ranks 21st in Europe (out of 49 countries) in its treatment of LGBTI+ minorities, according to the Rainbow Europe ranking; its position is unchanged from last year.⁴⁵

There is still quite a complicated process as regards the ending of a marriage after the sex change of one spouse. The marriage is rendered void, but a legal procedure (divorce) still needs to be completed. Reforming the marriage into a registered partnership is legally impossible. The first step would have to be a divorce (state fee EUR 50) and after that is possible to enter into a registered partnership (notary service fee EUR 101.60). Article 1(1) of the Family Law Act (FLA) stipulates that a marriage is contracted between a man and a woman. Article 9(1)(7) of the FLA provides that a court may annul a marriage by an action if the spouses are of the same sex due to sex reassignment during marriage. Article 12(1) of the FLA provides that an action for annulment of marriage may be filed by both spouses or by the minister responsible for the area – from 2019 this is the Minister of Population Affairs. There has not yet been a case where the two spouses did not want to divorce, but in theory the Minister could initiate a court case under such circumstances. However, this is not obligatory; the Minister has discretionary power.

The Supreme Court of Estonia ruled that the Family Law Act does not prohibit the recognition of same-sex marriages registered in other countries.⁴⁶ The decision involved an Estonian-US lesbian couple initially forced to leave Estonia after the authorities had refused to provide one of the partners with a residence permit. The Administrative Law Chamber of the Supreme Court emphasised that the Constitution does not provide for the right of same-sex persons to enter into marriage in Estonia. However, the protection of family life, as well as the ban on discrimination laid down in the Constitution, does apply to same-sex couples. The text of the Constitution does not make the issue of the protection of family life from state intervention dependent upon the gender or the sexual orientation of the family members. Furthermore, cohabitation by same-sex persons is not banned or punishable under Estonian law.

As is explained further below (see Section 3.2.3), the implementing regulations of the Registered Partnership Act have not yet been adopted, so any issues⁴⁷ concerning same-sex partners must be solved in the court. In December 2019, the Supreme Court held that the Registered Partnership Act also imposes a mutual maintenance obligation on registered partners, not only on married couples.⁴⁸ The Social Tax Act stipulates that if a person raising a child under the age of eight does not work, the state pays social tax on his or her behalf if his or her spouse is employed and thus pays social tax. The legislator has proceeded from the presumption that in such a situation, the working spouse maintains

⁴³ *Sotsiaalministri määrus nr. 32, 07.05.1999 'Soovahetuse arstlike toimingute ühtsed nõuded'* (Regulation of the Minister of Social Affairs No. 32 of 7 May 1999 'Common Requirements for Medical Operations for gender reassignment'), <https://www.riigiteataja.ee/en/eli/509072019001/consolide>.

⁴⁴ Väli, M. (2015), 'Transseksualism – kui loodus eksib' (Transsexualism – if nature is mistaken) *Tervis Postimees*, 5 April 2015, <http://tervis.postimees.ee/3144087/transseksualism-kui-loodus-eksib>.

⁴⁵ <https://www.rainbow-europe.org/country-ranking>.

⁴⁶ Supreme Court of Estonia, Judgment of the Administrative Law Chamber, No. 3-3-1-19-17 of 27 June 2017.

⁴⁷ Parenthood, adoption and registration of a child, parental leave and benefit, social security, residence permit.

⁴⁸ Supreme Court of Estonia, Judgment of the Constitutional Review Chamber, No. 5-19-42 of 19 December 2019. Available in Estonian at: <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=261266301>.

the non-working spouse, as the spouses have a mutual maintenance obligation arising from the Family Law Act. The Social Tax Act was amended in this regard.

In 2019, the review of constitutionality declared the Aliens Act unconstitutional regarding conditions for temporary residence permit and repealed certain restrictive provisions, namely Article 118 clause 1 and the Regulation of the Minister of Interior No. 7 of 12 January 2017, insofar as they preclude issuing a temporary residence permit to an alien for settling in Estonia with a registered same-sex partner who is an Estonian citizen.⁴⁹

3.2.3 Specific requirements

Estonian law allows people to change their forename and other aspects of civil status. Article 7(3)(2) of the Names Act stipulates that a name should correspond to the gender of the person in question. Any changes to first names and ID data are strictly regulated, but it is a time-consuming process. In Estonia, it is possible to obtain a new identity after a lengthy medical examination process. There is no need to have a certificate of sex reassignment surgery. From 1 January 2018, there is a requirement that a person whose sex has been reassigned shall be issued a certificate of vital statistics data concerning the change of data on the sex. A state fee should be paid. In order to change the data in the population register due to reassignment of sex, the person shall submit a written application and the decision of a medical assessment committee on the reassignment of sex to the county town local authority.⁵⁰

Since May 2015 it has been possible to obtain education certificates with a new name and personal identity code.⁵¹

Gender-reassigned persons are discriminated against in the access to health insurance to cover necessary treatments, even when they have paid health insurance tax. Reassignment treatment for transgender persons is offered in Estonia, but the issue relates to coverage. Hormonal treatment is only partly (50 %) paid by the Estonian Health Insurance Fund. The Fund declares that the costs of health services required by a person in the event of illness are covered. People who want to have their sex changed must undergo medical examinations and procedures. Opinion No. 43 of 18 January 2016 of the Gender Equality and Equal Treatment Commissioner pointed out that the Health Insurance Fund discriminates against transgender persons regarding treatment.

The Registered Partnership Act (RPA), which is gender neutral, was adopted on 9 October 2014 and entered into effect on 1 January 2016. The RPA is a step closer towards a more tolerant and socially inclusive society. Unfortunately, the RPA has not been fully implemented: several regulations to achieve effective implementation were expected to be passed, but the Parliament rejected the bills in 2015 and there has been no positive development on this in 2016-2018. On 10 April 2018, the Constitutional Review Chamber of the Supreme Court ruled that the fact that the implementing regulations of the Registered Partnership Act have not been adopted is not enough to identify an unconstitutional gap, the Registered Partnership Act has taken effect and is valid, and the basis for the protection of the subjective rights of same-sex people already exists.⁵² In the same case, the Supreme Court held that:

‘if a person finds that the failure to enter the data of the cohabitation agreement in the population register violated his or her rights, he or she must contest the decision

⁴⁹ Supreme Court of Estonia, *SC en banc* Judgment, No. 5-18-5 of 21 June 2019. Available in Estonian at: <https://www.riigikohus.ee/en/constitutional-judgment-5-18-5>.

⁵⁰ Articles 49.1 and 49.2 of the Vital Statistics Registration Act, RT I, 18.12.2019, 5, <https://www.riigiteataja.ee/en/eli/522122019007/consolide>.

⁵¹ The first number of the ID code refers to a person's sex. For more information, see: <https://www.workinestonia.com/coming-to-estonia/personal-id-code/?lang=et>.

⁵² Supreme Court of Estonia, Order of the Constitutional Review Chamber, No. 5-17-42 of 10 April 2018. Available in Estonian at: <https://www.riigikohus.ee/et/lahendid?asjaNr=5-17-42/9>.

to refuse to make the entry in the register in court. The court does not resolve hypothetical disputes.⁵³

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

Direct sex discrimination is explicitly prohibited in Estonia. Article 5(1) of the GEA stipulates that direct and indirect discrimination based on sex, including giving orders to discriminate, is prohibited. Article 1(2)(2) of the GEA prohibits discrimination on the grounds of sex in the private and public sectors. Sex discrimination includes harassment and sexual harassment.

Direct discrimination based on sex is defined in Article 3(3) of the GEA. Direct discrimination based on sex occurs where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. Direct discrimination based on sex also means less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to their rejection of or submission to harassment.

The prohibition of discrimination is also set out in the Constitution, the Employment Contracts Act, the Public Service Act and the Penal Code.

3.3.2 Prohibition of pregnancy and maternity discrimination

According to Article 3(1)(3) of the Gender Equality Act, direct discrimination based on sex includes also any 'less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender.' A pregnant employee has legal protection not only in the employment relationship, but also in the recruitment processes. Pregnant job applicants must not be discriminated against.

3.3.3 Specific difficulties

The awareness of officials and employers about direct sex discrimination is increasing every year due to publications, training and the media. However, awareness of gender equality and human rights is neither widespread nor adequate.

The labour dispute committees of the Labour Inspectorate have solved several cases regarding the unlawful dismissal of pregnant employees, e.g. during the probationary (trial) period. Probationary periods are common and can last for four months.

A case from the Tartu County Court dealt with the dismissal of a pregnant employee during the probation period.⁵⁴ The employer argued that the employee's appearance was not correct enough for their position in the service provider. The labour dispute committee had ruled that the employer must pay six months of the average wage and EUR 1 000 for moral damage. The employer filed a court case and the county court found them liable for compensation amounting to three months' salary, with no compensation for moral damage for the dismissed employee. The court proceedings lasted two years.

The Commissioner for Human Rights of the Council of Europe visited Estonia in June 2018. The Commissioner pointed out the strange grouping of protected grounds:

⁵³ Supreme Court of Estonia, Judgment of the Administrative Law Chamber, No. 3-16-1191 of 7 June 2019. Available in Estonian at: <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=250509531>.

⁵⁴ Tartu County Court, Judgment No. 2-14-57370 of 15 March 2016.

...areas protected against discrimination are divided into two categories in the Equal Treatment 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 ETA).⁵⁵

The Commissioner expected to hear about the amendments to the Equal Treatment Act that would expand protection against discrimination in all areas of life on all grounds, including age. Nothing new can be reported in this respect.

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

Article 5(1) of the GEA prohibits direct and indirect discrimination based on sex, including giving orders to discriminate.

Article 3(1)(4) of the GEA defines the concept of indirect discrimination based on sex as an apparently neutral provision, criterion, practice or activity that would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion, practice or activity is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

There has been no relevant case law providing an interpretation of indirect discrimination in 2020, except for the disputes at the Labour Inspectorate. A mother of a child under three years old was laid off and submitted an application to the Labour Inspectorate Labour Dispute Committee. She claimed, as a person with a priority right to remain in employment in cases of redundancy, that the termination of her employment contract was against the law. In addition, the applicant pointed to the discrimination against her, insofar as the employer claimed that the applicant's qualifications had deteriorated to such an extent that she could not continue in her former position. The Labour Dispute Committee, having assessed the facts presented by the petitioner and hearing the audio recording, did not presume that there may have been discrimination against the petitioner as a parent of a child under the age of three. The Committee considered that the employer did not create a derogatory, offensive atmosphere towards the applicant and did not treat the applicant less favourably than their colleagues. Therefore, the burden of proof did not lie with the employer either.⁵⁶

Claims to the Gender Equality and Equal Treatment Commissioner are personal regarding unfair situations or violations of rights, where claimants suspect that discrimination has occurred. There have been no complaints regarding regulations and orders.

In 2019, the Gavriloski report found a lack of clarity or lack of understanding of the concept of indirect discrimination by national courts. Furthermore, while some states participating in the study (Estonia, Slovenia and Finland) lacked case law interpreting indirect discrimination.⁵⁷

3.4.2 Statistical evidence

Statistical evidence is difficult to find due to poor sex disaggregated data. There is no institution responsible for collecting such data.

⁵⁵ <https://rm.coe.int/report-of-the-council-of-europe-commissioner-for-human-rights-dunja-mi/16808d77f4>, paras 49, 50.

⁵⁶ Case No. 4-1/2000/20 of 26 July 2020, https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Toeoevaidlused/tvk_ebavordne_koht_lemine_2020.pdf.

⁵⁷ Gavriloski, Z. (2019), *Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region*, Opinion-Nr.: NDISCR/TAJ/329/2018, <https://www.osce.org/odihr/434810?download=true>.

Estonia has a low average life expectancy and there is a remarkable difference between the genders. In 2019, life expectancy at birth by sex was 74.4 for men and 82.8 for women. What is also worrying is the average number of healthy years, that is disability-free life expectancy at birth, which is 54.1 for men and 57.6 for women.⁵⁸ This is a serious issue, also due to the pensionable age which is 65 years and is to be equalised for women and men in 2026. On 12 December 2018, the Parliament decided to increase the pensionable age from 2027 and to take the average life expectancy into account. This means that retirement age will be 65 years and over, in spite of the low average number of healthy years for women and men in Estonia.⁵⁹ The statistical data were not taken into account. The calculation of the retirement age will be based on the average life expectancy (not healthy years) of men and women aged 65 and over published annually by Statistics Estonia. These legal amendments to the State Pension Insurance Act mainly affect those who are born in 1962 or later and reach retirement age after 2026.

In the view of the author of this report, the above-mentioned legal amendment could be interpreted as an indirect discrimination based on age.

In the suspected discrimination case against the Tartu City Government, the defendant presented the staff data by age groups to prove non-discrimination on grounds of age.⁶⁰

3.4.3 Application of the objective justification test

Article 3(1)(1) provides the meaning of gender equality (the equal rights, obligations, opportunities and responsibility of men and women in professional life, when entering education, and when participating in other areas of social life) and Article 3(1)(2) defines the equal treatment of men and women, which means that there is no discrimination whatsoever based on sex, either directly or indirectly.

3.4.4 Specific difficulties

Only a few direct discrimination cases have been brought to court and there is no case law on indirect discrimination, which could indicate that knowledge of this concept is insufficient. There are no debates on indirect discrimination and no legal analysis.

It could be argued that the legal obligation of children and grandchildren to take care of their elderly parents constitutes an issue of indirect discrimination against women because the majority of informal carers are women. State policies and rigid gender roles force women more than men into the domestic sphere and taking care of the elderly. Elderly care is almost an informal care obligation and unpaid work, but health insurance for the caregiver is covered by the state.⁶¹ Therefore, it could be stated that Estonia has legally supported familistic policies, where care work is seen as an issue to be solved within family. Right-wing Cabinet Members have expressed misogynistic views more than once.⁶²

⁵⁸ Health Statistics and Health Research Database, https://statistika.tai.ee/pxweb/et/Andmebaas/Andmebaas_01Rahvastik_06TEaastad/TE75.px/table/table_ViewLayout2/.

⁵⁹ *Riikliku pensionikindlustuse seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus* (Amendments to the State Pension Insurance Act and Related Acts), RT I, 03.01.2019, 1.

⁶⁰ Judgment of the Tartu Circuit Court of 19 November 2020 in administrative matter no. 3-19-504, <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=281122751>.

⁶¹ 160 % of the social benefit rate for persons with profound disability (EUR 40.91 a month in 2019).

⁶² <https://www.theguardian.com/world/2019/may/21/racism-sexism-nazi-economics-estonia-far-right-in-power-ekre>; <https://news.err.ee/1014547/kaljulaid-apologizes-to-finnish-president-for-helme-s-comments>; <https://estonianworld.com/opinion/editorial-a-new-low-in-estonias-politics-as-an-openly-homophobic-minister-neither-apologises-nor-resigns/>.

3.5 Multiple discrimination and intersectional discrimination⁶³

3.5.1 Definition and explicit prohibition

There is no explicit mention of multiple discrimination in the legislation. Due to the wide scope of the GEA other laws could be applied in conjunction with the GEA.

3.5.2 Case law and judicial recognition

Among discrimination claims submitted to the Gender Equality and Equal Treatment Commissioner in 2019, the main grounds of discrimination were: sex (mostly in connection with pregnancy and parenting), disability and age.⁶⁴

There have been no court cases regarding multiple discrimination. There was potential to discuss discrimination on grounds of gender and age in the case of *Inslar v. Tax and Custom Board*, but the county court rejected some parts of the initial claim.⁶⁵

There is one case where the court acknowledged discrimination on grounds of age. The case concerned a female police officer who was fired due to attaining the pensionable age. The appellant explained that Article 6(2)7) of the Gender Equality Act (GEA) establishes that the activities of an employer shall also be deemed to be discriminating if the employer terminates an employment relationship or promotes the termination thereof due to reasons connected with gender. For the purposes of Article 3(2) of the GEA 'employee' also means a public servant within the meaning of the Public Service Act. The circuit court is of the opinion that the two groups the police officers who have attained pensionable age and the police officers who have not yet attained that age – are not incomparable. The circuit court that it is in regard to police officers that the public interest in replacing the older members of the police staff is so weighty that it justifies the earlier release of female officers, is not justified or convincing. At the same time the circuit court had failed to explain why it was of the opinion that the police would be significantly less efficient if men and women were released at equal age. The Supreme Court *en banc* did not see a reasonable ground for releasing a female police officer from police service earlier than a male police officer. The Supreme Court *en banc* was of the opinion that in the situation where retirement ages of women and men are different and a woman reaches the retirement age, the balance cannot be significantly tipped in favour of the public interest at the cost of women with the justification that subsistence is guaranteed to women in the form of old age pension. The mere justification that a police officer's occupational pension has been established cannot serve as a ground for interfering in the women's freedom to choose an area of activity and deprive them – differently from men – of the possibility to earn a bigger income through a freely chosen work than would be guaranteed by pension. In fact, the difference of the age limits for women and men for continuing to be in police service often results in the granting of different amounts of police officer's occupational pension to women and men.⁶⁶ The Court *en banc* held the opinion that in this case, the main ground for discrimination was age rather than sex.

⁶³ See for more information Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

⁶⁴ Gender Equality and Equal Treatment Commissioner (2020), *Annual report 2019*. Available in Estonian at: <https://volinik.ee/voliniku-2019-aasta-tegevuste-ulevaade/>.

⁶⁵ Supreme Court of Estonia, Judgment of the Civil Chamber, No. 2-16-708 of 21 November 2018.

⁶⁶ Supreme Court of Estonia, SC *en banc* Judgment, No. 3-3-1-41-09 of 20 November 2009, para. 50, <https://www.riigikohus.ee/en/constitutional-judgment-3-3-1-41-09>.

3.6 Positive action

3.6.1 Definition and explicit prohibition

Positive action is explicitly allowed in Article 5(2)(5) of the GEA: the application of temporary specific measures that promote gender equality and give advantages to the less-represented sex or reduce gender inequality is not deemed direct or indirect discrimination based on sex. The meaning of 'temporary' has not been specified in law or case law.

In the view of the author of this report, this definition does not entirely comply with the EU definition found in Article 157(4) TFEU. The ultimate goal to ensure full equality in practice between men and women in working life is not mentioned in Article 5(2)(5) of the GEA. However, Article 1(1) of the GEA declares that the promotion of equality of men and women is a fundamental human right and that the GEA is applicable for the public good in all areas of social life. The GEA states the process, rather than the goal of ultimate equality.

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

In Estonia, 'equal opportunities' and 'positive action' are seen in the context of equality promotion. 'Equal opportunities' is seen as a something to be achieved, created and supported. The process for creating equal opportunities is connected to reducing exclusion and the removal of barriers and obstacles. Temporary specific measures can be applied in order to create equal opportunities.

Articles 9 to 11 of the GEA set out activities for gender equality promotion. Article 9(1) of the GEA provides that state and local government authorities are required to promote gender equality systematically and purposefully. Their duty is to change the conditions and circumstances that hinder the achievement of gender equality. In planning, implementation and assessment of national, regional and institutional strategies, policies and action plans, the authorities must take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society.

3.6.3 Specific difficulties

Article 5(2)(5) of the GEA is an abstract and general statement and there is no requirement that such temporary measures must be compatible with the principle of proportionality.

It might be easier to apply temporary specific measures in conjunction with articles of the Constitution. Article 27(4) of the Constitution provides for the protection of parents and children. Article 28(4) of the Constitution could be applied in the context of positive discrimination, given that it stipulates that families with a large number of children as well as people with disabilities enjoy the special care of the national Government and of local authorities. Article 50 of the Constitution provides protection for national minorities and their culture.

The Gender Equality Act provides an equality promotion duty for employers, but enforcement of the law is modest, and remedies or sanctions do not guarantee its implementation. State agencies and private sector employers are not encouraged and dedicated to promoting gender equality. Attention is paid to unequal treatment, but gender equality promotion remains on the edges of policy.

3.6.4 Measures to improve the gender balance on company boards

In Estonia, in 2018, the representation of women on the boards of the largest listed companies, advisory boards and board of directors was 8 %.⁶⁷ Estonia has not taken steps to improve gender balance on company boards. Employers' organisations and legislators have opposed ideas for improving women's position in business and entrepreneurship. State-owned companies have a legal obligation to take gender into account in recruiting for managerial positions. Article 9(4) of the GEA stipulates that the membership of committees, councils and other collegial bodies formed by state and local government authorities must, if possible, include both sexes.

Female participation is a reliable indicator of the gender equality policy adopted by countries and companies, and of progress. Pachocka et al. (2018) state that there is a lack of EU legislation on women's representation on corporate boards, resulting in divergence or the absence of such regulation at national level in EU Member States, including in Poland and Estonia, which hinders the achievement of gender equality in this area.⁶⁸

According to the Welfare Development Plan 2016-2023, awareness-raising measures will be implemented in the coming years to raise entrepreneurs' awareness of the need and opportunities for improving gender balance at the management level of organisations.⁶⁹ Most of the plans are for soft measures that provide more information on gender stereotyping and prejudices, while the requirement to promote gender equality by business owners will be explained. Attention will be paid to the career path of women and their educational choices and opportunities. Further attention is given to attracting girls to study science, technology and engineering. A need to support women's entrepreneurship is stressed, but no resources are provided.

3.6.5 Positive action measures to improve the gender balance in other areas

In order to create more diversity among entrepreneurs of technology start-ups, where applications for funding are of equal standing after the ranking procedure, funding will be awarded to applicants of the underrepresented gender.⁷⁰

The State Budget Strategy 2020–2023 contains a promise to promote equal treatment, carry out awareness-raising activities within the framework of the Diversity Day, and those activities will continue on a diversity workplace label.⁷¹ The label is administered by the Estonian Human Rights Centre, which is the coordinator of the Estonian Diversity Charter, in cooperation with the Ministry of Social Affairs.⁷²

Awareness raising in support for the possible use of a zipper system in electoral lists has gained some success. However, the first attempt to amend the electoral law failed on 13 June 2017 and there have been no further legal developments in this field since then.

⁶⁷ 2019 Report on equality between women and men in EU, https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en.pdf.

⁶⁸ Pachocka, M., Szczerba-Zawada, A., Eerma, D. (2018), 'Women on corporate boards in Poland and Estonia in the context of the EU gender equality policy', in: Aluchna, M. & Aras, G. (eds), *Women on Corporate Boards: An International Perspective*, London: Routledge.

⁶⁹ Ministry of Social Affairs (2016), *Welfare Development Plan 2016-2023* (adopted on 30 June 2016), https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf.

⁷⁰ Estonian Research Council (2019), 'Guidelines for Evaluating Personal Research Funding Applications for Start-Up Grants', <https://www.etag.ee/wp-content/uploads/2019/03/PSG-hindamisjuhend-2019.pdf>.

⁷¹ Ministry of Finance (2019), *State Budget Strategy 2020 – 2023 and Stability Programme*, p. 66.

⁷² <https://humanrights.ee/en/topics-main/diversity-and-inclusion/mitmekesise-tookoha-margis/>.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

In the view of the author of this report, the definition of harassment complies with the EU definition in Article 2(1)(d) of Directive 2006/54. It is included in Article 3(1)(3) of the GEA, Article 3 of the ECA and Article 157.3 of the Penal Code (PC). Article 3(1)(6) of the GEA refers to gender-based harassment as unwanted conduct or activity related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment.

Harassment is criminalised and defined by Article 157.3 of the Penal Code; the amendment entered into force on 6 July 2017. Article 157.3 of the Penal Code provides that repeated or consistent attempts to contact another person, watching him or her or interfering in the privacy of another person against the will of such person in another manner, if the intent or effect thereof is to intimidate or humiliate the other person or disturb him or her in any other manner. Harassment is punishable by a pecuniary punishment or up to one year's imprisonment.

3.7.2 Scope of the prohibition of harassment

Estonian legislation provides that sexual harassment is direct discrimination based on sex. Article 3(1)(3) of the GEA stipulates that direct discrimination based on sex also means less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to their rejection of or submission to harassment. Article 2(1) of the GEA states that the GEA is applicable to all areas of social life. The GEA is applicable in areas of social protection, provision of goods and services, healthcare and housing. The GEA is not applicable to religious organisations, and in family and private life (Article 2(2) of the GEA).

3.7.3 Definition and explicit prohibition of sexual harassment

Article 3(1)(3) of the GEA defines any less favourable treatment based on the person's rejection of or submission to such conduct as direct discrimination based on sex. Article 3(1)(5) of the GEA provides the definition of sexual harassment and Article 3(1)(6) of the GEA relates to gender-based harassment.

Article 3(1)(5) of the GEA defines sexual harassment as any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature that occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment.

In the view of the author of this report, the definition of sexual harassment in the GEA complies with the EU definition found in Article 2(1)(c) of Directive 2006/54.

In 2017, due to the ratification process of the Istanbul Convention, it was proposed that sexual harassment should be categorised as a misdemeanour and be placed in the section on offences against equality in the Penal Code. The new Article 153.1 of the PC defines sexual harassment as 'an act of physical sexual nature committed intentionally against somebody's will and aiming to degrade', which is punishable by a fine of up to EUR 1 200 or detention.

A legal person can be held accountable for sexual harassment and may be punished with a fine of up to EUR 2 000. The punishment for sexual harassment (Article 153.1 of the PC)

is milder than that for stalking (Article 157.3 of the PC).⁷³ The act of stalking is punishable by a pecuniary punishment or up to one year of imprisonment.

Lumiste (2019) has studied perception of sexual harassment and found that many people who have experienced sexual harassment have defined it more broadly than the legislator in the Penal Code. Survivors of violence have admitted that various verbal attacks, i.e. inappropriate jokes or comments, should be addressed as sexual harassment. Many of the respondents also talked about cases that could qualify as more serious crimes, i.e. rape or physical abuse. This means that victims of sexual harassment understand sexual harassment more broadly than the legislator confirmed.⁷⁴

3.7.4 Scope of the prohibition of sexual harassment

The GEA is applicable in all areas of social life. Although the Estonian legislation ensures protection from sexual harassment in employment relationships, allowing the use of various legal remedies, the practical application of these legal remedies has been challenging. The law is also applicable to job applicants. The Gender Equality and Equal Treatment Commissioner has pointed out that it is prohibited to make degrading comments based on stereotypical prejudices about women and men.⁷⁵

Article 6(2)(5) of the GEA stipulates that the activities of an employer are deemed to be discriminatory if the employer harasses a person in relation to the sex of the person or sexually. Employers must ensure the protection of employees from gender-based harassment and sexual harassment in the working environment.

According to the Istanbul Convention, sexual harassment is subject to criminal or other legal sanctions. In Estonia, sexual harassment is defined and prohibited by the Gender Equality Act (GEA). In 2009-2017, there were no court cases concerning sexual harassment due to the poor enforcement of the GEA.

3.7.5 Understanding of (sexual) harassment as discrimination

Gender-based harassment, sexual harassment and less favourable treatment of a person due to their rejection of or submission to harassment are direct discrimination based on sex.

In 2018, 19 complaints were made to the labour dispute committees in relation to unequal treatment; the labour dispute committee made a decision that there had been unequal treatment in 11 cases.⁷⁶ The majority of complaints related to bullying at work (eight cases), with one case on sexual orientation. Estonian law does not refer to sexual identity. The expression 'bullying' is missing in law, but is used by law enforcement agencies. Statements about discrimination are rare, however, according to the law, such cases have the features of direct discrimination cases: there was an effect of violating the dignity of a person and an intimidating, hostile, degrading, humiliating or offensive environment was created. The discrimination ground is not referred to, but 'bullying' as general term is stressed. It seems that there may be a naming issue here, and that the term 'discrimination' is avoided due to its negative connotations, such as being weak, and being a victim.

⁷³ <https://www.riigiteataja.ee/en/eli/506032020002/consolide>.

⁷⁴ Lumiste, K. (2019), '*Seksuaalse ahistamise õiguslikust regulatsioonist karistusseadustikus ja seksuaalse ahistamise ohvrite kogemustest kannatanutena regulatsiooni valguses*' ('The legal regulation of sexual harassment in the Estonian Penal Code and experiences of harassment victims with reference to that regulation'), Master's thesis, University of Tartu, https://dspace.ut.ee/bitstream/handle/10062/64191/lumiste_kaisa.pdf?sequence=1&isAllowed=y.

⁷⁵ Available in Estonian at: <https://www.volinik.ee/artiklid/mis-on-sooline-ahistamine/>.

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https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Tooevaidlused/TVK_menetluses_ol_nud_diskrimineerimisvaidlused_2018.pdf.

3.7.6 Specific difficulties

Unfortunately, sexual harassment has come before the courts on only a couple of occasions and further exploration of the concept has been modest. There is still a problem in getting testimonies from people who have experienced harassment or sexual harassment. Reporting is low due to rejection of victim's position, fear of victim blaming, lack of effective court cases, and the specificity of being a small country, which makes it easy to identify the person. The Civil Chamber and the Criminal Chamber of the Supreme Court follow wordings in civil and criminal law and due to a narrow meaning provided in the Penal Code these chambers have different understanding of sexual harassment. Article 3(1)(5) of the Gender Equality Act understands sexual harassment as any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment. Article 153.1 of the Penal Code understands sexual harassment as a misdemeanour and defines it as an intentional physical act of a sexual nature against the will of another person with degrading objectives or consequences.

AA v. University of Tartu began as an extrajudicial proceeding in the Labour Dispute Committee (LDC) and continued as a court proceeding initiated by the University of Tartu in 2018. The case was brought to the Supreme Court.⁷⁷

On 29 August 2018, the (male) director AA of the library of the University of Tartu was dismissed due to 'inadequate behaviour' and was asked to leave immediately. An employer may extraordinarily cancel an employment contract with good reason arising from the employee. In this case, the dismissal on the basis of loss of trust was based on claims by female library employees, who made accusations of sexual harassment against the director. The employer found that the director had breached Articles 3(1)(3) and 3(1)(5) of the Gender Equality Act and had lost the university's trust. The fired Director claimed that the employer had no right to extraordinarily cancel the employment contract according to Articles 88(1)(3)¹ and 88(1)(5)¹ of the Employment Contracts Act.⁷⁸

There was a problem with the employees who accused the director of sexual harassment and gave their statements to the University of Tartu management (the library is an institution within the university): these employees did not appear to give their statements to the labour dispute committee and were not ready to present as witnesses in the court. Therefore, the labour dispute committee and the Tartu County Court found the extraordinary cancellation of the director's contract by the university unlawful and in September 2019, the court ruled that monetary compensation of EUR 90 000 should be paid to the fired director. On 20 February 2020, the Tartu Circuit Court found the employer's decision to terminate the employment contract due to loss of trust rightful.⁷⁹ The decision of the Circuit Court came into force on 17 June 2020, when the Supreme Court upheld the decision in a closed procedure. The decision of the civil case will not be made public. The Chief Justice of the Supreme Court has stated in the Annual Report 2019, that the bottlenecks in access to files are particularly acute after the conclusion of closed proceedings. Whereas the Codes of Civil and Administrative Court Procedure clearly state that files discussed in closed proceedings cannot be accessed, the Code of Criminal

⁷⁷ Supreme Court of Estonia, Judgment of the Civil Chamber, No. 2-18-19202/90 of 17 June 2020; no information is available on the courts' website yet. Some information comes from the media, available at: <https://news.err.ee/976822/tartu-county-court-finds-university-librarian-was-unfairly-dismissed>; the Supreme Court found the dismissal lawful, judgment of 17 June 2020 is classified (5 July 2020).

⁷⁸ Employment Contracts Act, <https://www.riigiteataja.ee/en/eli/502062021007/consolide>; More could be found in Estonian: Judgment of the Tartu Circuit Court of 20 February 2020 in civil matter No. 2-18-19202/85, <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=283318821>.

⁷⁹ Judgment of the Tartu Circuit Court of 20 February 2020 in civil matter No. 2-18-19202/85, <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=283318821>.

Procedure has no such provision. Therefore, it is unclear who has the right to access files and who can grant that right and on what basis.⁸⁰

The decision of the Tartu Circuit Court is not available in entirety, but the legal explanation could be followed by some disclosed paragraphs. The Civil Chamber of the Circuit Court explored the meaning of sexual harassment in paragraphs 27-32 and recalled that the employer should ensure that employees are protected from gender-based harassment and sexual harassment in the working environment, as provided by Article 11(1)(4) of the Gender Equality Act.

Moreover, a criminal case was filed against AA by the Prosecutor's Office; the prosecutor brought charges against AA on two counts under a section of the Penal Code dealing with coercion into sexual activity or other sexual acts and exploiting the victim's dependence on the accused. The victim of the accused was AA's former colleague from Tartu University Library. On 18 March 2020, AA was convicted by the Tartu County Court and sentenced to suspended imprisonment as well as to pay non-pecuniary damages to the victim. On 3 September 2020, the Tartu Circuit Court held that there was no sexual assault, but relationship based on consent, however, the survivor did not agree with this conclusion.⁸¹ The decision came into force on 1 December 2020 after the Supreme Court dismissed the appeal. The court ruled to acquit AA of the charge filed against him pursuant to Article 143(1) of the Penal Code; the explanatory part of the decision is not publicly available.⁸²

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

According to the GEA, direct and indirect discrimination based on sex, including giving instructions to discriminate is prohibited. It must be emphasised that the GEA does not only prohibit discrimination and thereby demand equal treatment of women and men. Article 5(1) of the GEA stipulates that direct and indirect discrimination based on sex, including giving orders to discriminate, is prohibited.

Article 1(1) of the GEA provides that the purpose of the act is to ensure equal treatment of men and women as provided for in the Constitution of the Republic of Estonia and to promote equality of men and women as a fundamental human right and for the public good in all areas of social life. Article 1(2) of the GEA specifies that discrimination on the grounds of sex in the private and public sector is prohibited and that state and local government authorities, educational and research institutions, and employers should promote gender equality.

3.8.2 Specific difficulties

There have been no cases reported.

3.9 Other forms of discrimination

Article 6(3) of the GEA stipulates that less favourable treatment of a person on grounds of sex in connection with his or her membership in an organisation of employees or employers, or in any organisation whose members are engaged in a particular profession,

⁸⁰ Kõve, V. (2020), Development of the Legal and Judicial System. Presentation at Plenary of Judges, 14 February 2020, Tallinn. <https://aastaraamat.riigikohus.ee/en/development-of-the-legal-and-judicial-system/>.

⁸¹ Judgment of the Tartu Circuit Court of 3 September 2020 in criminal matter no. 1-19-4170, <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=279879292>.

⁸² Sexual intercourse or commission of another act of sexual nature with a person against his or her will by taking advantage of the dependency of the victim on the offender but without using force or outside a situation where the person was not capable of initiating resistance (Article 143(1) of the PC).

including in connection with the person's participation in its work and the benefits provided for by such an organisation will also be deemed to be discrimination.

The position of women in political parties depends on the party democracy, structure and culture. It is evident that women hold lower positions in party hierarchies and electoral lists, but there are no complaints by members.

Article 6(3) of the GEA is not applied by Estonian courts.

The GEA not only prohibits discrimination and thereby demands equal treatment of women and men, but also requires the promotion of gender equality as a fundamental human right and public good in all areas of social life. Therefore, the avoidance of gender stereotyping and prejudices is indirectly stipulated in the GEA. The Gender Equality and Equal Treatment Commissioner's Office published a handbook in both Estonian and Russian on how to avoid prejudice and using stereotypes, including those related to gender, when preparing information materials.⁸³

The *Coleman* case⁸⁴ was quoted by the judgment of the Supreme Court in the *Tagel v. Tax and Customs Board* case from 2010. Mr Tagel claimed that he had been discriminated against as a result of his role in representing employees of the Estonian Tax and Customs Board. Discrimination was not found as Mr Tagel was unable to provide facts that proved that the management's rejection of his planned business travel was caused by his activities in representing employees.⁸⁵

3.10 Evaluation of implementation

Harassment and sexual harassment is a still hidden phenomenon. The law is rather mild for such offences and reporting is low.

Since July 2017, sexual harassment is considered a misdemeanour under the Penal Code and the Police and Border Guard Board should conduct summary proceedings. Sexual harassment is punishable by a fine of up to EUR 1 200 (300 fine units) or by detention. In May 2018, several women reported to TV journalists that they had experienced unwanted physical contact of sexual nature by a healer and astrologist named Igor Mang. Some women were interviewed on TV about the unwanted physical contact that they had experienced during consultations by Mang. After the TV weekly programme '*Pealtnägija*' (Eyewitness), more accusations were reported. Only one complaint was filed with the police. The police fined the perpetrator EUR 96.⁸⁶

Between 1 January and 18 July 2018, the police investigated 11 cases of harassment. The penalties issued were generally low. Eight cases were solved with fines ranging from EUR 20 to EUR 300; three cases resulted in the detention of the perpetrator. In 2018–2019, the prosecutors have initiated 90 investigations in the Northern district.⁸⁷

⁸³ Kuusik, A., Davidjants, B., Papp, Ü.-M. (2016), *Teabematerjalide koostamine: kuidas vältida stereotüüpe ja eelarvamusi. Käsiraamat, Võrdõigusvoliniku kantselei ühtekuuluvuspoliitika fondide võrdõiguslikkuse kompetentsikeskus*. The handbook is available in Estonian at: http://kompetentsikeskus.volinik.ee/wp-content/uploads/2018/01/Teabematerjalide-koostamine_eestik.pdf.

⁸⁴ CJEU, Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, C-303/06, ECLI:EU:C:2008:415.

⁸⁵ Supreme Court of Estonia, Judgment of the Administrative Law Chamber, No. 3-3-1-13-10 of 17 May 2010. <https://rikos.rik.ee/?asjaNr=3-3-1-13-10>.

⁸⁶ ERR (2018), 'Politsei Mangi juhtumist: trahvi eesmärk on ennekoike ära hoida järgnevad süüteod' (Police on the Mang case: a fine aim is to prevent subsequent offences above all), <https://www.err.ee/847528/politsei-mangi-juhtumist-trahvi-eesmark-on-ennekoike-ara-hoida-jargnevad-suuteod>.

⁸⁷ There are four Prosecutor's Offices in Estonia, four districts, <https://www.prokuratuur.ee/en/prosecutors-office/contacts>; No data available on national level.

3.11 Remaining issues

There is a problem in relation to the reporting of discrimination; victims do not report discrimination due to low expectations of the likelihood of fair judgment through legal proceedings. Knowledge about reporting sexual harassment to the police has slightly increased. In order to prosecute someone, sufficient evidence of the crime must be gathered.

Lack of case law makes work for investigation complicated. For example, the law does not stipulate whether a victim should clearly state that unwanted messages and contacts are not welcome. Harassers sometimes argue that their behaviour was welcomed.⁸⁸

⁸⁸ Toming, K. (2020), *Ahistav jälitamine on kuritegu* (Stalking is criminal). Available in Estonian at: <https://aastaraamat.prokuratuur.ee/prokuratuuri-aastaraamat-2019/ahistav-jalitamine-kuritegu>.

4 Equal pay and equal treatment at work (Article 157 of the Treaty of the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

Estonia has the highest gender pay gap recorded in the EU. According to Statistics Estonia, the gender pay gap in Estonia was 17.1 % in 2019. Despite continued decrease in gender pay gap (compared to 2018, the gender pay gap decreased by 0.9 %), it is still significantly higher in Estonia compared to other EU Member States: 21.7 % according to preliminary data of Eurostat 2019.⁸⁹ According to preliminary data of Statistics Estonia, in October 2019, there was a gender pay gap in all economic activities. The pay gap was biggest in wholesale and retail trade (28.7 %) and in financial and insurance activities (27.1 %). Statistics Estonia carries out the 'Structure of Earnings Survey' every four years in October. The data from the survey reflect the number of employees, structure and earnings by occupation, economic activity, age, sex, type of contract, full-time and part-time work and education.⁹⁰

Several studies by sociologists, economists and statisticians have been carried out, but legal analysis and legal changes have not taken place. According to Paats and Lunev (2014) and Marling (2017) confirm that the explained part of gender wage gap is relatively small and the unexplained part is high.⁹¹ The variables that increase the unexplained part of the gap and therefore favour men are state sector, occupation, and enterprise ownership and management responsibilities. The variables that decrease the unexplained part of the gap and therefore favour women are enterprises' economic activity and location, also size, field of speciality, education and marriage status. Lower pay for women among managers and teachers compared with their male counterparts shows that the gender wage gap is not just due to the gender segregated labour market.

The Gender Equality and Equal Treatment Commissioner, in cooperation with universities, carries out the research project Income, Wealth and Gender (InWeGe), which explores gender differences in income and wealth over a person's life cycle. The first articles have already been published. Masso et al. (2020) found that firm-specific pay differentials are an important source of wage inequality and can be decomposed into a combination of sorting (women are less likely to work at high-paying firms) and bargaining (women negotiate worse wage bargains with their employers than men) effects.⁹²

During the years 2018-2021, the wage survey is targeted at uncovering the reasons for the gender wage gap. Measures to tackle the gender wage gap are detailed in the *Welfare Development Plan 2016-2023* and highlighted in the *State Budget Strategy 2021-2024*.⁹³

4.1.2 Surveys on the difficulties of realising equal treatment at work

The *Welfare Development Plan 2016-2023*⁹⁴ is coordinated by the Ministry of Social Affairs. The plan is seen as a gender equality strategy document and provides research findings

⁸⁹ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics.

⁹⁰ <https://www.stat.ee/news-release-2019-122>. <https://www.stat.ee/en/find-statistics/statistics-theme/work-life/wages-and-salaries-and-labour-costs/gender-pay-gap>.

⁹¹ Paats, M., Lunev, M. (2014), *Palgaerinevuste statistika parem kättesaadavus: kasutatavad andmeallikad*, Statistikaamet; Marling, R. (2017), *Gender Equality in Estonia*, in: Örtenblad, A., Marling, R. and Vasiljević, S. (Eds.). *Gender Equality in a Global Perspective*. New York: Routledge, pp. 246-260.

⁹² Masso, J., Merikull, J., Vahter, P. (2020), The role of firms in the gender wage gap, <https://majandus.ut.ee/sites/default/files/mtk/dokumentid/febawb120.pdf>.

⁹³ Ministry of Finance (2020), *State Budget Strategy 2021-2024*.

⁹⁴ *Sotsiaalministeerium* (2016) *Welfare Development Plan 2016-2023* (adopted on 30 June 2016), https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf.

for national action plans.⁹⁵ The strategy points out shortcomings in policies and the legal framework, including a need to achieve a substantial reduction in the gender pay gap and to define equal work for equal value in law. The strategy also notes the need for a supervisory power to monitor whether women and men receive equal pay for the same work and work of equal value. The Labour Inspectorate's mandate could be extended and the budget increased to carry out such monitoring and an Equal Pay Competence Centre should be established. Policy makers have planned to start with the public sector.

Outreach and analysis activities shall be continued with the aim of increasing the awareness of society and various institutions about the gender pay gap, its causes, and impacts. To contribute to the equal remuneration and evaluation of women and men for the equivalent work, the introduction of job evaluation and payment systems based on transparent and objective criteria will be encouraged, mainly through raising awareness and supportive activities.

A study on the implementation of the Gender Equality Act was carried out in 2015.⁹⁶ Under the Gender Equality Act, employers should collect sex-disaggregated statistical data on employees to enable, if necessary, the relevant institutions to monitor and assess whether the principle of equal treatment is complied with in employment relationships. The results of the survey showed that collecting statistical data on personnel is not widespread: 46 % of employers record working time, a little less (38 %) collect data on salaries, overtime (36 %) and on the use of annual leave. According to the authors of the study, sex-disaggregated data are collected by only few employers, as most of them do not see any good reason for doing it.

Masso et al. (2020) found that within-firm bargaining plays a larger role in the gender wage gap than similar prior papers suggested.⁹⁷ This could be related to lenient labour market institutions, as reflected in low minimum wages and union power, and to lower bargaining skills of women. Employee protection is low and employees' willingness to fight for their rights is low. Union density was at around 7 % in Estonia in 2015.⁹⁸

4.1.3 Other issues

Employers' pay systems and practice are not monitored and the majority of employers do not carry out wage analyses from a gender perspective. It is hoped that the administrative burden of carrying out such analysis will reduce with the introduction of innovative digital solutions. However, there is a workforce shortage in the ICT sector, outsourcing is widely used and gender equality promotion is dependent on the human resources policies of the enterprise. The Estonian state provides foreign recruitment support, as part of the 'Work in Estonia' project. Gender equality is not a priority issue in this context.

The public sector is seen to be an influence on the private sector, but pay discrimination continues to exist in the public sector. In 2013, a new Civil Service Act entered into force, which changed the employment status of some workers in the public sector. The public

⁹⁵ Estonia Beijing +25, https://www.unece.org/fileadmin/DAM/Gender/Estonian_national_Beijing25_review_report.pdf.

⁹⁶ Turk, P., Anniste, K., Masso, M., Karu, M., Kriger, T. (2015), *Uuring Soolise võrdõiguslikkuse seaduse rakendamise kohta tööandjate seas ja indikaatorite väljatöötamine seaduse mõjude hindamiseks* (Study on Implementation of the Gender Equality Act by Employers and Proposed Indicators for Impact Assessment), Tallinn: Poliitikauuringute Keskus Praxis, https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/uuringuaruanne.pdf.

⁹⁷ Masso, J., Meriküll, J., Vahter, P. (2020), The role of firms in the gender wage gap, <https://majandus.ut.ee/sites/default/files/mtk/dokumendid/febawb120.pdf>; Anspal, S.; Rõõm, T. (2010), Gender Pay Gap in Estonia: Empirical Analysis, https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Valjaanded/gender_pay_gap_estonia_analysis.pdf; Meriküll, J., Mötsmees, P. (2017), Do you get what you ask? The gender gap in desired and realised wages. *International Journal of Manpower*, 38(6), 893-908.

⁹⁸ Data from Statistics Estonia, no recent data, www.stat.ee.

The main problems leading to the failure of the draft law are connected to the lack of goodwill among legislators and politicians. In addition, the rise and growing influence of the right wing movement has added louder voices against increasing transparency.¹⁰²

There are some issues concerning confidentiality of pay information. Article 28(13) of the Employment Contracts Act stipulates that the employer has no right to disclose information about wages calculated, paid, or payable to the employee without the employee's consent or without a legal basis. Pay secrecy could be a workplace policy that prohibits employees from discussing how much money they make. The Gender Equality and Equal Treatment Commissioner has a right to ask for all documents about working conditions and wage policy.

4.2 Equal pay

4.2.1 Implementation in national law

Pay and income inequalities are a serious issue in Estonia. The principle of equal pay for equal work or work of equal value is not implemented.

The principle of equal pay for equal work of equal value is indirectly defined in national legislation and several articles about non-discrimination in professional life were added in 2009. Article 6(2)(3) of the GEA stipulates that the activities of an employer are deemed to be discriminatory if the employer establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship that are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value.

Article 3 of the ECA explores the principle of equal treatment. Employers must ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the ETA and the GEA. In several of its articles, the ECA refers to agreements between the employee and employer. The Government is responsible for establishing by regulation the minimum wage corresponding to a specific unit of time, and a regulation on the conditions and procedure for the payment of average wages. The national minimum wage is agreed annually upon by social partners and the Government. The position of the unions is weak in Estonia. The unionisation rate of employees is low, which is an obstacle to addressing forms of pay differentials. However, due to the large gender pay gap, in 2012, a national action plan was adopted to tackle this. Reducing the gender pay gap is also highlighted in the *Welfare Development Plan 2016–2023*.¹⁰³ The amended Civil Service Act (CSA) entered into force on 1 April 2013 and since then, attention has been paid to salary guides.¹⁰⁴

The state shared service centre at the Ministry of Finance provides nationwide financial, HR and payroll accounting services.

4.2.2 Definition in national law

The ECA entered into force on 1 July 2009.¹⁰⁵ A clear legal definition of pay is not provided in the ECA. Pay is remuneration for work according to a (written) agreement. Article 1(1)

¹⁰² Opinions on the draft law by social partners regarding 683 SE.

¹⁰³ *Sotsiaalministeerium* (2016), *Welfare Development Plan 2016–2023* (adopted on 30 June 2016), https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf.

¹⁰⁴ The Minister of Finance is responsible for the implementation of the CSA and pay policies in the public sector. The Ministry of Finance website states that the salary system is more transparent and fair, as it considers the employment market and each person's responsibility and competitiveness: <https://www.rahandusministeerium.ee/en/personnel-policy-state>.

¹⁰⁵ The Wage Act (from 26 January 1994 to 30 June 2009), where Article 2 provided a definition of pay, was repealed; <https://www.riigiteataja.ee/akt/13100033>.

and 1(2) is about the employment relationship between employee and employer, where a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays the employee remuneration for such work. The wage is a monetary reward (Article 29(3) of ECA) or, if agreed, an in-kind or other form of benefit (Article 29(4) of ECA).

This definition complies with the definition of Article 157(2) TFEU, where the meaning of 'pay' is the same. Articles 157(2)(a) and 157(2)(b) have not been directly transposed into Estonian legislation. The ECA stipulates that there should be set working conditions and a pay agreement between employer and employee. There is also a general anti-discrimination article, which requires that employers ensure the protection of employees against discrimination (Article 3 of the ECA).¹⁰⁶

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Article 6(2)(3) of the GEA provides that discrimination occurs when the employer establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship that are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value.

4.2.4 Related case law

An interesting case from 21 November 2018 was the Supreme Court judgment in *Insler v. Tax and Customs Board*.¹⁰⁷ The Tax and Customs Board cited economic reasons for cancelling the employment contract of a female lawyer in a regional office in December 2015. The lower level courts briefly discussed possible discrimination in relation to issues around the extraordinary cancellation of the employment contract and possible compensation to be paid to the claimant. The claimant stated that the defendant had not followed the principle of equal treatment and had breached Articles 3 and 89(4) of the Employment Contracts Act, Articles 1(1) and 2(3) of the Equal Treatment Act and Articles 1(1), 5(1) and 6(2)(7) of the Gender Equality Act. The claimant stated that she was discriminated against when she was paid a lower wage compared to male colleagues and lawyers in Tallinn office for the same work. She had worked for the Tax and Customs Board since 2004, and, due to the new law on the civil service,¹⁰⁸ had been given a new employment contract in March 2013. Salary guides were adopted on 8 April 2013. The claimant had been given an amended employment contract in March 2013, before the Tax and Customs Board adopted the salary guide. The claimant noted that her salary level had stayed at the lowest level, but claimed that, due to her long career and high competence, she should be paid at the higher pay level for lawyers. The claimant asked for compensation for the unpaid part of pay in April 2013–December 2015. The claimant was asked to provide the names of all comparators, e.g. names of male employees doing the same work. The claimant rejected the request and stated that names are not necessary as a proof in discrimination case. The Circuit Court ruled that the claimant had not fulfilled the requirement to provide exact evidence and so it ignored the discrimination claim.¹⁰⁹ The court decided that the claimant had discontinued the claim on discrimination and so did not discuss the issue. The Civil Chamber of the Supreme Court found several procedural mistakes and determined that the cancellation of the employment contract was

¹⁰⁶ No specific sanctions have been laid down for employers violating this regulation but where the rights of a person have been violated due to discrimination, he or she may demand from the person who has violated the rights that the harmful activity be terminated and that the damage be compensated for on the basis of and pursuant to the procedure provided by law.

¹⁰⁷ Supreme Court of Estonia, Judgment of the Civil Chamber, No. 2-16-708 of 21 November 2018.

¹⁰⁸ The Civil Service Act entered into force on 1 April 2013, the number of civil servants was reduced and specialists were given the position of employees. The civil service is made up of officials and employees. An official is a person who is in the public administration service and is appointed to a post and an employee is someone recruited for a job in an authority.

¹⁰⁹ <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=238029596>.

void due to the absence of a legal basis or the non-conformity with the law or nullified due to a conflict with the principle of good faith. The Court ruled that the former employer should pay the employee compensation. Unfortunately, the Supreme Court did not explore possible discrimination against the employee.

4.2.5 Permissibility of pay differences

There is no information about gender pay differentials due to the promotion of equality.

Pay differences are used in some public sector institutions in some regional branches to attract officials and employees. Such a measure is intended to be gender neutral, but could lead to indirect sex discrimination. It is also claimed that specialists, women and men, from abroad should be paid more.

In Estonia, individual pay agreements between the employer and employee are very common and it is often claimed that women agree to work for lower pay. CV Online has launched a website, Palgad.ee, which offers wage comparisons according to different sectors and positions.¹¹⁰

4.2.6 Requirement for comparators

In order to establish unequal treatment, comparable persons or groups have to be determined. After that, the appropriateness and the necessity of the legitimate goal of action and proportionality have to be assessed.

On 4 January 2012, the Supreme Court of Estonia announced its judgment resolving a case in favour of Olympic Casino. The ruling in civil case 3-2-1-135-11 is one of the very few Supreme Court judgments in discrimination cases in Estonia. The Supreme Court explained that two different types of legal measures applied to two employees cannot be deemed as discrimination if these two employees cannot be considered to be comparable persons.¹¹¹ Further, there is no discrimination if two employees are indeed treated differently from each other, but that difference is due to objective reasons that are not related to the gender of the employees. The Supreme Court also set aside the required compensation for non-proprietary damage caused by the dismissal because the claimant referred to economic harm (the lack of a job, the lack of income) and was unable to prove non-proprietary damage. This decision by the Supreme Court makes it extremely complicated in the future, if not even impossible, to apply for non-proprietary damage as is stipulated in Article 13 of the GEA.¹¹² The major arguments made by the Supreme Court were that the claimant was in a higher position, had damaged the reputation of the employer and showed no remorse for what had happened. The decisive factor was the fact that, unlike his colleague, the assistant manager had greater responsibility and his violation of the rules was more serious. Consequently, the difference in the employees' treatment was justified by the employer.

4.2.7 Existence of parameters for establishing the equal value of the work performed

A definition of work of equal value is lacking in the GEA and there is also no relevant national case law. The terms 'same work' and 'work of equal value' occur in Article 6(2)(3).

The definition of the concept of pay could be derived from several articles.

¹¹⁰ Palgad.ee is operated by CV Online and the website offers a comparison of the salaries of about 500 positions. The list of positions reflects the labour market in Estonia and is constantly updated. More: <https://www.palgad.ee/en/methodology>.

¹¹¹ Supreme Court of Estonia, Judgment of the Civil Chamber, No. 3-2-1-135-11 of 4 January 2012.

¹¹² Gender Equality Act (GEA), RT I 2004, 27, 181.

pay gap in public service by authorities is presented in the public service annual report each spring, but the gender pay gap is not analysed and gender pay gap audits are not carried out.¹¹⁸

Article 65(3) of the Civil Service Act stipulates that the salary guide of the authority must be disclosed on the web page of the authority. Article 63(1) of the CSA stipulates that a salary guide is a procedure for the determination and payment of salaries. The salary guide prescribes the basic salary or the basic salary range for the position, the conditions and procedure for payment of the variable salary, additional remuneration and benefits provided by law and the time and manner of the payment of the salary. The CSA provides a list of institutions and authorities (head of authorities, ministers, high-level representatives), which should establish salary guides. Article 10(5) of the CSA stipulates that the procedure for drafting the salary guide and determination of the salary components for other public bodies should be specified by a Government regulation. The CSA entered into force on 1 April 2013. The regulation entered into force on 24 May 2013.¹¹⁹ It could be said that the salary system is more transparent and fair, as it takes into account the employment market and each person's responsibility and competitiveness.

4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

No measures have been adopted since Recommendation 2014/124/EU was passed. Some measures for pay transparency were planned by national strategies¹²⁰ and the draft of the Gender Equality Act and Other Acts Amendment Act (683 SE) was prepared. The act was not passed in the Parliament due to opposition by some women's organisations, the equality body, and trade union and employers' representatives.¹²¹ The draft act aimed to tackle the gender pay gap: it was intended to give more responsibilities and rights to the Labour Inspectorate and was targeted at public sector employers with 10 or more employees. A lack of common understanding and opposition to the draft law enabling effective monitoring of implementing equal pay for women and men lead to lengthy parliamentary debates (six-months' long) and to the failure of the draft act.

Arguments against the draft act also related to: the sector selection (why it applied only to the public sector); the creation of an increased administrative burden (for employers with 10 or more employees); and the poor use of pre-existing capacities, such as gender equality bodies and agencies (questioning the necessity to establish yet another institution in the form of the competence centre).

The Ministry of Finance has made a promise for the future. Namely, in order to reduce the gender pay gap in 2021–2024, the introduction of transparent and objective evaluation of work and pay systems, including making available to employers an analysis of the

¹¹⁸ Ministry of Finance, *Ametnike palkade avalikustamine* (Disclosure of the wages of civil servants), <https://www.rahandusministeerium.ee/et/riigi-personalipoliitika/personali-ja-palgastatistika>; Fontes together with Mercer LLC is conducting the Mercer Total Remuneration Survey (TRS) in the Baltics. TRS is a salary and compensation survey that is carried out in more than 120 countries using the same methodology (www.fontes.ee).

¹¹⁹ Regulation of the Government of Republic No. 76 of 16 March 2013 on administration of the state personnel and payroll database remuneration levels (*Riigi personali- ja palgaarvestuse andmekogusse andmete esitamise ja arvestuse toimingute teostamise kord. Vabariigi Valitsuse määrus nr 76*), 16.05.2015.

¹²⁰ The Welfare Development Plan 2016–2023; National Action Plan 2016–2019, State Budget Strategy 2019–2022; Action plan of Estonia 2020 for 2018–2020 (Adopted by the Government of the Republic of Estonia on 26 April 2018), https://www.riigikantselei.ee/sites/default/files/content-editors/Failid/nrp_estonia2020_action_plan.pdf.

¹²¹ <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/920bb10b-1e71-48fa-896d-c8f2c473867a/Soolise%20v%20d%20oiguslikkuse%20seaduse%20muutmise%20ja%20sellega%20seonduvalt%20teiste%20seaduste%20muutmise%20seadus>.

organisation's gender equality situation and a digital tool to facilitate and support gender equality planning are encouraged.¹²²

4.2.12 Other measures, tools or procedures

Employers have expressed concern about the increasing administrative burden of carrying out pay analyses from a gender perspective. The Estonian e-governance project, Reporting 3.0, is aimed at developing an automated data transmission channel for various bodies, such as the Tax and Custom Board and Statistics Estonia.¹²³ There is a pilot project that involves transmitting accounting data directly from the institutions' IT systems, which would enable the employers to make pay analyses without creating additional datasets. Such initiatives could contribute to reducing the resources that are required to carry out pay audits.

On 23 April 2020, Statistics Estonia presented a wages and salaries application, which visualises median wages by Estonian regions and counties for the 110 most common occupations.¹²⁴ The wages and salaries application uses data from the Employment Register (TÖR) and Estonian tax declaration forms. From the first half of 2019, employers are obligated to enter the job title, workplace location and working hours of employees into the Employment Register.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

According to Article 6 of the GEA, in professional life, education and other areas of social life, men and women are entitled to equal rights, obligations, opportunities and liabilities.

National law does not have a definition of 'worker'. However, Article 3(2)(1) of the GEA defines 'an employee' as a person employed under an employment contract (working under the ECA) or a contract for the provision of services (working under the LOA), an official or any other person working under the CSA. Persons applying for employment or service are also deemed to be employees.

The meaning of the term 'worker' in the Estonian language and international legal texts should be explored. In Estonia, making a clear distinction between 'an employee' and 'a worker' is complicated. An employee and a worker could both be translated as 'töötaja' or 'tööline', and a person who works under the CSA is 'teenistuja'. In Estonian, 'worker' has a broader meaning and an employee is associated with contractual relations. In legal texts, there is a quite clear distinction in English between an employee and a worker. In this sense it could be concluded that workers in the legal sense exist in Estonia. For the most part, their work is covered by the Law of Obligations Act (LOA). There are also seasonal workers who do not have written (employment) contracts, but whose work is based on oral agreements, where both the ECA and the LOA could be applied, depending on the agreement.

The LOA covers two types of contracts for work: authorisation agreements and contracts for services. In both cases the work provider is defined. Article 619 of the LOA defines 'a mandatary' as a person who undertakes to provide services to another person (the mandator) pursuant to an agreement (an authorisation agreement to perform the

¹²² Ministry of Finance (2020), State Budget Strategy 2021–2024, <https://www.rahandusministeerium.ee/en/state-budget-and-economy>.

¹²³ <https://news.err.ee/933124/new-project-speeds-up-data-transmission-within-estonia>; on 17 October 2019, Statistics Estonia and the Government Office presented a new web application called the Tree of Truth. It is a gauge of important national indicators, giving a simple, honest and objective picture of how the country is doing, <https://www.stat.ee/news-release-2019-123>.

¹²⁴ Statistics Estonia (2020), 'Statistics Estonia's application adds transparency to the labour market', *News Release No. 51*, <https://www.stat.ee/2128379>.

mandate), under which the mandator undertakes to pay remuneration to the mandatary. Article 622 of the LOA specifies that it is presumed that a mandatary will perform the mandate in person. A mandatary also has the right to use the assistance of third parties in performing the mandate.

Article 635 of the LOA defines a contractor as a person who undertakes to manufacture or modify a thing or to achieve any other agreed result by providing a service (work), and the other person (the customer) undertakes to pay remuneration as agreed by the contract of services.

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

Article 29 of the Constitution concerns the right to choose the area of activity, profession and position of employment. Sex discrimination in professional life is prohibited by Article 6 of the GEA.¹²⁵

Article 2(1)(1) of the ETA explicitly stipulates that if restrictive conditions are set for the access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as for promotion, it is discrimination and is prohibited. The ETA highlights grounds for discrimination in connection with access to employment: nationality (ethnic origin), race or colour.

Article 3(1)(1) of the GEA relates to access to gender equality, which covers the equal rights, obligations, opportunities and responsibility of men and women in professional life, when entering education and when participating in other areas of social life.

Article 10 of the GEA specifies that educational and research institutions and institutions engaged in the organisation of training must ensure the equal treatment of men and women in vocational guidance, acquisition of education, professional and vocational development and re-training.

Article 11 of the GEA provides that in the promotion of equal treatment of men and women, an employer must act in such a way as to support both men and women to apply for vacant positions and ensure that persons of both sexes are employed to fill vacant positions.

The scope is the same as the scope of Article 14(1) of Recast Directive 2006/54.

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

Article 5(2) of the GEA explains situations that are not considered to be discriminatory. It describes differences in treatment due to a person's sex in relation to certain activities (compulsory military service for men only, joining women-only or men-only organisations), in access to employment, including the training required for employment, and when supplying goods and services. There can be several reasons and justifications for differences in treatment (context and nature of activities, sex as determining requirement etc). Such differences in treatment should be justified by a legitimate objective and must be proportional to the objective.

¹²⁵ <https://www.riigiteataja.ee/en/eli/516012019002/consolide>.

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

Article 92 of the Employment Contracts Act prohibits the cancellation of an employment contract of the pregnant employee and of any employee who has important family obligations. Job applicants are seen as employees and a pregnant job applicant has the same rights as employees with an employment contract. In redundancy situations, an employee who is raising a child under three years has the preferential right of keeping their job.

The Gender Equality and Equal Treatment Commissioner reports an increasing number of claims in connection with pregnancy.¹²⁶

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

Article 5(2)(1) of the GEA stipulates that provisions concerning the special protection of women in connection with pregnancy and childbirth are not considered to be direct or indirect discrimination based on sex. Pregnancy and maternity protection is explicitly stipulated in the ECA, CSA and OHSA.

A pregnant employee and an employee who has the right to pregnancy and maternity leave have the right to demand that the employer temporarily provide them with work corresponding to their state of health.

4.3.6 Particular difficulties

Due to strong gender segregation in the labour market there might be a need to introduce specific temporary measures to give advantages to the underrepresented sex. It is possible that discrimination exists in relation to access to work, vocational training, employment and working conditions.

Discrimination in professional life is prohibited and situations where discrimination may occur are listed in Article 6 of the GEA. Article 6 entered into force in October 2009. However, pregnant women and persons with family obligations still find it difficult to get a job. Article 6(4) of the GEA stipulates that employers and legal persons or sole proprietors entered in the register of economic activities as labour-market service providers must not request information (such as information relating to pregnancy, childbirth, parenting, performance of family obligations or other circumstances related to gender) which may place a job applicant in a less favourable situation.

According to Article 11 of the ECA, in pre-contractual negotiation processes, including job advertisements or job interviews, only questions with a legitimate interest can be asked. Hidden discrimination exists. It is common practice in Estonia for job applicants to be asked questions about their personal life.¹²⁷ The Gender Equality and Equal Treatment Commissioner has highlighted in the media and brought up in the annual report, that discriminatory job advertisements are prohibited.¹²⁸

¹²⁶ <https://volinik.ee/voliniku-2019-aasta-tegevuste-ulevaade/>.

¹²⁷ The media (newspapers, the internet) are popular labour-mediation services providers. In CV forms, employers will usually ask for the applicant's sex and age, and often about family and children. The Labour Inspectorate has documented a testimony in Case No. 4-1/598/20 of 10 March 2020: *Tööle asumisel uuris Tööandja väga täpselt avaldaja eraelu kohta, st mitu last avaldajal on; kas tal on plaanis veel lapsi saada ning kas Töötajal on keegi, kes lastega haiguste ajal kodus on.* (Available in Estonian at: https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Tooevaidlused/toovaidluskomisjoni_menetluses_olnud_ebavordse_kohtlemisega_seotud_toovaidlusasjad_01012019_kuni_30062020.pdf).

¹²⁸ Gender Equality and Equal Treatment Commissioner (2020), *Annual Report 2019 (Voliniku 2019. aasta tegevuste ülevaade)*. Available in Estonian: <https://volinik.ee/voliniku-2019-aasta-tegevuste-ulevaade/>.

The Gender Equality and Equal Treatment Commissioner received in total 308 claims and communications in 2019; 160 claims were gender-related and 116 regarding employment. According to the Annual Report of the Gender Equality and Equal Treatment Commissioner, claims in connection with pregnancy and fulfilling parental obligations have increased in recent years.¹²⁹

The Chancellor of Justice received a complaint about a job interview during which the employer had first asked the person applying for employment about the number of children they had and their age and then if the child had any grandparents. After having heard that the child was six years old and the grandparents were not residing in Estonia, the employer refused to carry on with the job interview. The Chancellor explained that it was illegal to ask for such data during a job interview and people had the right to refuse to reply to such questions.¹³⁰ The complainant did not initiate conciliation proceedings.

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

There are no positive temporary measures to achieve full equality between men and women in working life in Estonia. The only positive temporary measures that have been used in the public sector were aimed at people with disabilities.

4.4 Evaluation of implementation

Estonia is an ageing society and the consequent labour shortage is a problem. There are projects targeted at encouraging the older generation (aged 50 and above) to stay in the labour market or to get a job.

The priorities of Estonia's Active Ageing Development Plan 2013–2020 include creating an age-friendly society, ensuring quality of life for the elderly, and creating equal opportunities for the elderly in social, employment, education and health policy.¹³¹

On the other side of the equation, older people are not the preferred employees, and age discrimination in recruitment processes is widespread. There are no court cases on direct discrimination regarding recruitment processes, but there are some cases on the extraordinary cancellation of employment contracts of pregnant employees and older employees.

The law provides support to employees who are fulfilling family-related duties, but pregnant women and parents fulfilling family obligations often experience serious problems, although the majority of cases remain unreported.

4.5 Remaining issues

Puur and Vsevirov (2018) point out that family policies should be complemented by appropriate measures in other sectors (e.g. labour market policies, housing policies, integration policies). It also is important for policy developers to consider the heterogeneous needs and preferences of individuals and families.¹³²

According to data from the Tax Board and Custom Board, there are 53 200 people who have (work) contracts on the basis of the Law of Obligations Act (LOA), and out of them

¹²⁹ <https://volinik.ee/voliniku-2019-aasta-tegevuste-ulevaade/>.

¹³⁰ Chancellor of Justice (2020), Chancellor's Year in Review 2019/2020, <https://www.oiguskantsler.ee/annual-report-2020/equal-treatment>.

¹³¹ Available in Estonian at: https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalhoolekanne/Eakatele/aktiivsena_vananemise_arengukava_2013-2020.pdf.

¹³² Puur, A., Vsevirov, H. (2019), 'Eesti sündimusareng ja perepoliitika võimalused' (Fertility development and family policies in Estonia), *Akadeemia*, 2019(3), pp. 387–429.

25 800 do work on the basis of the LOA only.¹³³ Such contracts are an authorisation agreement or service relationship without the employer or mandator. This means that, in all likelihood, the only income of these people is the income from agency work or contract work. Persons whose work is based on a contract of services have no right to the holidays provided by the Employment Contracts Act (like base holiday, study leave). At the same time, the employee carries out work at a freely selected time, but on time.

Contracts of services must describe the work to be provided, specify the remuneration and the duration of the work. Often, however, the nature of the work corresponds to the characteristics of an employment contract. This means that the contractor has no power to choose how and when to perform the work.

No specific legal instrument has been adopted to combat algorithmic discrimination in Estonia. There is no information about case law regarding selection or recruitment in connection with the use of algorithms. There are difficulties in discovering, proving or assessing algorithmic discrimination due to lack of information, knowledge and experience. There is a challenge for legislatures. Measures adopted must be appropriate to achieve the objective they pursue and not go beyond what is needed. There is different logic of legal norms and algorithms. Legal norms cannot be described as unambiguous variables inherent in the algorithm.

From 12 March to 17 May 2020, an emergency situation due to the COVID-19 pandemic was in force in Estonia. A total of 137 470 employees of 17 534 companies and institutions have received salary compensation for the period March-June 2020, and the total cost of the compensation was approximately EUR 256 million. Wholesale and retail establishments accounted for the largest share of the compensated institutions, i.e. 21 %, the manufacturing industry was in first place among the number of compensated employees (24.8 % of the beneficiaries worked in the manufacturing industry. Looking at the total number of institutions in Estonia, the highest salary compensation was received in the field of accommodation and catering, where almost half of the institutions in the field received compensation. About a quarter of the institutions received compensation in the areas of health and social work, manufacturing and other service activities. Based on the number of employees, the share of salary compensation recipients was largest in the field of accommodation and catering.¹³⁴ Indirect discrimination may be suspected due to the requirement that the compensation was possible for employees working with an employment contract only; service contractors were excluded.

¹³³ Aliorg, Ü. (2020), 'Jurist selgitab: kas võlaõiguslepinguga töötajal saab olla õigusi sotsiaalsetele garantiidele?' (*The lawyer explains: can an employee with a contract of obligations have the right to social guarantees?*), Tarbija24, 09.04.2020, <https://tarbija24.postimees.ee/6945035/jurist-selgitab-kas-volaõiguslepinguga-tootajal-saab-olla-õigusi-sotsiaalsetele-garantiidele>.

¹³⁴ https://www.tootukassa.ee/sites/tootukassa.ee/files/tootasu_huvitise_luhianaluus_raport.pdf.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)¹³⁵

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

Biin (2017) has studied problems with the generous but rigid parental leave system in Estonia and legal developments to tackle these issues.¹³⁶

The nuclear family type is not the only type of family anymore. Today, families are diverse and complex. In Estonia, the proportion of children living in single parent households is 16 %, which is slightly below the European Union average. 31 % of children are raised in households with parents cohabiting, compared to 14 % across the European Union.¹³⁷ Kutsar and Raid (2019: 88) describe a common family type of present times being blended families, which consists of both biologically, semi-biologically and non-biologically related people whom the child could subjectively consider as members of his or her family.

The Family Law Act stipulates that children and grandchildren should take care of their parents and grandparents. In relation to care of persons other than children, Tarum and Kutsar (2017) found that 80% of fragile older people receive informal care. They have studied whether this is because the carers themselves feel solidarity and choose informal caring or because they lack alternatives.¹³⁸ The research findings determine that informal carers' choice between work and care is shaped by threefold pressure (Tarum and Kutsar 2017):

- the legally supported familistic policy-making that impedes the development of formal eldercare services and fiscal support;
- the older generation's own strong filial norms, i.e., internalised compulsory family solidarity;
- the informal carers' (often female family members') personal position where they have internalised the compulsory family solidarity norm that is further enhanced by strong subjective filial norms.

Consequently, informal carers are left with no choice but to find their own solutions for family care and this can affect their employment if the care needs of the older family members increases. In a situation where individuals are obliged to provide maintenance for their older family members, they have basically four options:

- to take care of their older family members by themselves;
- to place them in residential care, paid for by the family and/or the older person (pension);
- to place them in a residential care facility that is funded to some extent by the local

¹³⁵ See Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment* European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

¹³⁶ Biin, H. (2017), 'Estonia: Reform of the parental leave and benefit system to better reconcile work and family life', *ESPN Flash Report* 2017/62, www.ec.europa.eu/social/BlobServlet?docId=18228&langId=en.

¹³⁷ Kutsar, D., Raid, K. (2019), When traditional measurement practices fail: who are the child's family? In: Kutsar, D. and Raid, K. (Ed.). *Children's Subjective Well-Being in Local and International Perspectives* (85–93). Tallinn: Statistikaamet.

¹³⁸ Tarum, H., Kutsar, D. (2017), Compulsory intergenerational family solidarity shaping choices between work and care: perceptions of informal female carers and local policymakers in Estonia. *International Journal of Social Welfare*, 27 (1), 40–51.

- government;
- or (if available) to provide the older person with home care services, paid for by the older person or by the family.

The local government determines the conditions under which an older person is eligible for residential care that is funded to some extent by the local government, and there are no national guidelines that local authorities are obliged to follow. Local municipalities give priority to those older people who do not have any close family members who could provide informal care. Local governments have no willingness to cover costs for care.

Women make up the majority of informal carers for older family members (parents, parents in law). Tarum and Kutsar have studied elderly care in the second largest city of Estonia, Tartu, which has around 100 000 inhabitants. Eldercare provision in Tartu is a threefold system, which is typical for the Estonian eldercare system. According to the city government's data register, the largest proportion of care work at the end of 2014 was carried out by informal carers (78 % of older people with care needs received care from informal carers), followed by residential care (13 %) and home care services (9 %).¹³⁹ In rural municipalities, the amount of informal care is even higher due to scarcity of home care services.

Pall, an expert and analyst of the Social Insurance Board, asks whether it is fair to oblige children to pay all long-term care costs for their parents.¹⁴⁰ She points out that in 2018, private individuals paid EUR 53 million in Estonia for home care services. This includes the elderly's own pension and the fees paid by their children. At the same time, the state, together with local governments, spent EUR 14 million on home care services. Pall concludes that obtaining this essential social service in Estonia, as well as bearing the cost, is largely a private matter. Pall stresses the negative trend in this matter from year to year. In 2008, the expenditure of state governments on home care home services was EUR 11 million, people paid a total of EUR 17.5 million. Over the last ten years, the expenditure of the state and local governments in financing home care service has increased by EUR 3 million, while the expenditure of people has increased by EUR 36 million.

In December 2019, the Supreme Court of Estonia recalled that under Article 6(1) of the Local Government Organisation Act, one of the functions of a local authority is organising provision of social services, the grant of benefits and other social assistance, as well as welfare services for the elderly, in a rural municipality or city. Chapter 2 of the Social Welfare Act regulates assistance arranged by local authorities, laying down local authority social services. The judgment emphasised that there is no excuse not to provide these services. Welfare services should be available and cannot be replaced with monetary support.¹⁴¹ Neither the city nor the rural municipality may link the right to receive social services to the fact that the person in need has family members who could take care of him or her instead of the local government.

The State Budget Strategy for 2020–2023 contains a promise to reduce the daily burden of care-burdened family members and in order to provide better services for people in need of care, the government has approved the establishment of a sustainable long-term care system and a maintenance burden reduction plan, which aims to increase the volume of care services and reduce people's co-payment for general care services.¹⁴²

¹³⁹ Tarum, H., Kutsar, D. (2015), The impact of the policy framework on the integration of informal carers into the labour market in Tartu, Estonia. In: D. Kutsar & M. Kuronen (Eds.), Local welfare policy making in European cities (pp. 195–208). Switzerland: Springer International Publishing.

¹⁴⁰ Pall, K. (2019), 'Kas on õige panna vanemate hoolduskulud laste kanda?' ('Is it OK to let children pay all long term care costs for their parents?'), *Eesti Ekspress*, 02.10.2020, <https://ekspress.delfi.ee/arvamus/kas-on-oige-panna-vanemate-hoolduskulud-laste-kanda?id=87490743>.

¹⁴³ Supreme Court, Judgment of the Constitutional Review Chamber, No. 5-18-7 of 9 December 2019.

¹⁴² Ministry of Finance (2019), State Budget Strategy 2020–2023 and Stability Programme, 61.

5.1.2 Other issues

Negotiating working arrangements between employer and employee is possible, but there are often problems reaching mutual agreement. Article 47(1) of ECA specifies the organisation of working time.

In the author's view, more attention should be paid to specific socioeconomic and legal problems regarding elderly care. Chapter 8 of the Family Law Act stipulates an obligation to provide maintenance. According to Article 96(1) of the Family Act Law, family members are obliged to provide maintenance for family members who are unable to cope by themselves (children, disabled persons, elderly).¹⁴³ This two generations up and down legal obligation is difficult to implement in practice, due to changed family structures, the high employment rate, precarious work, the problem in relation to middle-aged persons (sandwich generation), who have to take care of their children and thus do not have enough resources to take on the additional burden of caring for old and sick relatives at the same time. The problem is that an average pension was EUR 519 (in 2020), but the monthly fee for residential care is about EUR 1 000, often more.¹⁴⁴ Older people cannot afford residential care services due to low income and social services administered by local government are also inadequate or inaccessible. Pursuant to the Social Welfare Act, a local government is obligated to provide 13 social services, apart from which also other social services may be arranged. According to the law, children and grandchildren should provide maintenance for their parents and grandparents. In 2019, 41 % of people aged 65 and over were at a persistent risk of poverty, 30 % of which men and 47 % women.¹⁴⁵

5.1.3 Overview of national acts on work-life balance issues

There are provisions in relation to pregnant employees and employees who have a right to take pregnancy leave. The ECA and CSA include articles connected with working conditions, health and job protection. Non-discrimination and equal treatment are stressed in the GEA and ETA. Less favourable treatment of a person in connection with pregnancy and childbirth, parenting, or the performance of family obligations constitutes direct discrimination.

There are both advantages and disadvantages to the job-protected three-year parental leave period. The leave was criticised for rigidity and more flexible leave arrangements were enacted. Amendments to the legal acts regarding family-related leave were adopted in 2018–2020. The Employment Contracts Act¹⁴⁶ and Family Benefits Act¹⁴⁷ were amended. Some changes entered into force on 1 March 2018 (the allowance for multiple birth of three or more children). More changes will enter into force on 1 September 2019. On 1 September 2019, transitional provisions concerning the payment of parental benefit and childcare allowance will enter into force (payment of the childcare allowance will no longer be monthly) and on 1 July 2020 (paternity leave will be extended to 30 days, paid by the state). The new paternity leave will apply to fathers, whose child is born after 30 June 2020. These legal transpositions allow for more flexibility regarding parental leave arrangements.

The period for calculating parental benefit will be changed. This is in order to avoid manipulation of the declared annual income. As of 1 September 2019, the basis for

¹⁴³ Article 96 of the Family Law Act stipulates that adult ascendants and descendants related in the first and second degree are required to provide maintenance (hereinafter *person required to provide maintenance*). Perekonnaseadus (Family Law Act), <https://www.riigiteataja.ee/en/eli/507022018005/consolide>.

¹⁴⁴ <https://www.sotsiaalkindlustusamet.ee/et/organisatsioon-kontaktid/statistika-ja-aruandlus>.

¹⁴⁵ Statistics Estonia, https://andmed.stat.ee/en/stat/sotsiaalelu_sotsiaalne-terjutus-laekeni-indikaatorid_vanemaealiste-vaesus-ja-toimetulek/LES61/table/tableViewLayout1.

¹⁴⁶ Employment Contracts Act (*Töölepingu seadus*), RT I, 29.12.2020, 25, <https://www.riigiteataja.ee/en/eli/529122020003/consolide>.

¹⁴⁷ Family Benefits Act (*Perehüvitiste seadus*), RT I, 22.3.2021, 15, <https://www.riigiteataja.ee/en/eli/531032021006/consolide>.

calculation will be the amount of income earned over the course of 12 months, but the starting point will change. The 9 months preceding the month of birth of the child will be subtracted and then the income of the previous 12 months will be the basis for parental benefit (i.e. date of childbirth minus 9 previous months and then an average of income earned over the course of the preceding 12 months).

5.1.4 Political and societal debate and pending legislative proposals

There has been no further political and societal debate due to the adoption of the legal amendments. However, due to changes to income tax, which is now progressive, there is a debate on the payment regime for pregnancy and maternity leave: it is proposed that such payments are split if they are expected to be paid at the end of the financial year.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

A pregnant employee is an employee who has informed the employer of her pregnancy and has a health certificate issued by a GP or a gynaecologist (Article 18 and 93(3) of the ECA).

This definition is consistent with the definition in Article 2 of Directive 92/85.

5.2.2 Obligation to inform employer

The employer must be informed of the employee's pregnancy.

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There are no cases from the Supreme Court regarding a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding.

5.2.4 Implementation of protective measures (Articles 4-6 of Directive 92/85)

Working conditions should correspond to the state of health of employee who has informed her employer about her pregnancy (Article 18 of the ECA). Pregnant employees and employees who have the right to pregnancy and maternity leave have the right to demand that the employer temporarily provides them with work corresponding to their state of health if the employee's state of health does not allow for the performance of the duties prescribed in the employment contract on the agreed conditions. If the employer cannot provide the employee with work corresponding to her state of health, the employee may temporarily refuse to perform the duties.

Article 18(5) of the ECA stipulates that, upon termination of pregnancy and maternity leave, a woman has the right to the improved working conditions that she would have been entitled to during her absence. Article 19(2) of the ECA states that an employee has the right to refuse to perform work if an employee is temporarily incapacitated for work. Article 21(3) of the ECA provides that a pregnant woman and an employee raising a child under the age of three or a disabled child may be sent on a business trip only with his or her consent. Article 44(5) of the ECA prescribes that working overtime cannot be demanded from a pregnant woman or an employee who has the right to pregnancy and maternity leave.

Similar protective measures are specified in the CSA. If an official is appointed to the service for a specified term, their contract will be suspended for the period while the official is on maternity, adoptive or parental leave (Article 23(4) of the ECA). The working

conditions of pregnant officials and officials who have a right to pregnancy and maternity leave are specified in Article 48 of the CSA.

5.2.5 Case law on issues addressed in Articles 4 and 5 of Directive 92/85

There are no cases on issues addressed in Articles 4 and 5 of Directive 92/85.

5.2.6 Prohibition of night work

Night work for pregnant employees is not prohibited; night work could be performed upon mutual agreement. Article 44(5) of the ECA prescribes that working overtime cannot be demanded from a minor, a pregnant woman or an employee who has the right to pregnancy and maternity leave.

5.2.7 Case law on the prohibition of night work

There are no cases on the prohibition of night work.

5.2.8 Prohibition of dismissal

Article 92(1) of the ECA and Article 100(1) of the CSA prohibit the dismissal of pregnant employees.

The dismissal of a pregnant employee is possible under the ECA and the CSA in extraordinary cases. Article 93 of the ECA provides specifications for cancelling the employment contract of a pregnant woman or person raising a child under the age of three (e.g. bankruptcy, economic difficulties of employer). Article 105(1) of the CSA provides that upon liquidation of the authority, it is allowable to release from service an official who is pregnant, who has the right to pregnancy and maternity leave or who is raising a child under the age of three.

A dismissed pregnant official or official who has the right to pregnancy and maternity leave (or who is raising a child under the age of seven) has a right to claim compensation and reinstatement.

Article 95 of the ECA requires that the cancellation of an employment contract be declared in writing. The employer must justify the cancellation. An employee must justify their extraordinary cancellation of the contract.¹⁴⁸ For instance, the employee may cancel an employment contract extraordinarily due to a reason related to the employee's state of health or family duties.

The reason for dismissal must be given to the employee in writing or a format that can be reproduced in writing. In the civil service, an administrative order should be issued (Article 103(1) of the CSA). In this administrative act, the reason for release should be specified (Article 103(2)(4) of the CSA).

5.2.9 Redundancy and payment during maternity leave

When an employee is made redundant during her maternity leave, the payment for maternity leave does not cease. Payment for pregnancy and maternity leave is calculated

¹⁴⁸ The ways in which an employment contract can be cancelled are stipulated in Articles 85-94 of the ECA. An employee is not obliged to give the employer advance notice of extraordinary cancellation if, considering all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term for advance notice. The employee may cancel an employment contract extraordinarily due to a reason related to the employee, in particular if the employee's state of health or family duties do not allow him or her to perform the agreed work and the employer does not provide him or her with suitable work.

on the basis of the former salary, regulated by the HIA and paid by the Health Insurance Fund.

5.2.10 Employer's obligation to substantiate a dismissal

In the case of a discrimination claim and a labour dispute, the employer must provide substantiation for the dismissal.

5.2.11 Case law on the protection against dismissal

Pregnant employees have special protection. However, there are few court cases from the county court where a pregnant employee has accused her employer of discrimination on the ground of pregnancy. If an employer can point to poor work results and prove that the dismissal was not due to pregnancy, the claimant will lose the case. Employers appear to have the stronger position in such disputes. This is mainly due to high litigation costs, which result in cases not being brought to the Supreme Court and only being resolved by the labour dispute committees or by the court of first instance. However, the Labour Inspectorate can conduct a more careful investigation where employers stress the incompetence of the pregnant employee as the main reason for the dismissal.¹⁴⁹

There have been some cases before the labour dispute committee, where the employer has argued that an employee had not informed them about her pregnancy and therefore the termination of the employment contract was permissible.¹⁵⁰

5.3 Maternity leave

5.3.1 Length

According to Article 59 of the Employment Contracts Act (ECA), which entered into force on 1 July 2009, a woman has the right to 140 calendar days of pregnancy and maternity leave. Pregnancy leave is 70 days, and maternity leave is 70 days – applicable only to the mother. After the maternity leave, parental leave follows, which could be taken by the father or another family member. Their job is protected until the child is three years old. Persons working under the Law of Obligations Act are not entitled to maternity leave if their contract has lasted less than one month. Self-employed women have a right to maternity benefit, but not to maternity leave.

All universal family benefits also apply to persons working under the Law of Obligations Act.

5.3.2 Obligatory maternity leave

Taking maternity leave is not obligatory and there is no obligatory minimum period of maternity leave. Girls and women who do not have an employment relationship or are not involved in studies, have no right to maternity leave. The employee has the right to take or interrupt pregnancy and maternity leave. Pregnancy leave before birth should start between 30 and 70 days prior to the expected birth, when a woman wants to get the benefit for 70 days paid by the state. During such leave, a benefit equal to the woman's average daily income is payable by the Health Insurance Fund. Pregnancy leave could be

¹⁴⁹ Labour Inspectorate (2020), *Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega/diskrimineerimisega ja töökiusuga seotud töövaidlusasjad perioodil 01.01.2019 – 30.06.2020* (Labour disputes related to unequal treatment / discrimination and bullying in the proceedings of the Labour Disputes Committee in the period 1 January 2019 to 30 June 2020), https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Tooevaidlused/toovaidluskomisjoni_menetluses_olnud_ebavordse_kohtlemisega_seotud_toovaidlusasjad_01012019_kuni_30062020.pdf.

¹⁵⁰ Labour Inspectorate (2019), *Labour disputes related to unequal treatment in 2018*, available in Estonian at: https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Tooevaidlused/TVK_menetluses_olnud_diskrimineerimisvaidlused_2018.pdf.

shorter than 30 days, but the benefit is paid for the number of days actually used as pregnancy leave. Maternity leave is 70 days and can be used only by the mother or adoptive parent. The mother can also continue to work, if there is a possibility, need or willingness. Fathers cannot take paid parental leave during the 70 days after their child is born.¹⁵¹ They can apply for paid parental leave when the child is 70 days old.

If mother has not used any maternity leave, then parental benefit will be paid from the day the child was born.

5.3.3 Legal protection of employment rights (Articles 5, 6 and 7 of Directive 92/85)

Article 18(1) of the ECA stipulates that pregnant employees and employees who have the right to pregnancy and maternity leave have the right to demand that the employer temporarily provide them with work corresponding to their state of health if the employee's state of health does not allow for the performance of the duties prescribed in the employment contract on the agreed conditions. Article 18(2) of the ECA provides that if the employer cannot provide the employee with work corresponding to his or her state of health, the employee may temporarily refuse to perform the duties.

5.3.4 Legal protection of rights ensuing from the employment contract

Maternity and subsequent parental leave are job-protected for employees and officials (working under the ECA and under the CSA). All employed mothers are eligible for maternity leave, including workers with temporary contracts if the contract lasts more than one month.¹⁵² Self-employed people and members of boards qualify for maternity benefits on the same conditions as employees and officials, even without taking up the leave.

5.3.5 Level of pay or allowance

Maternity allowance is paid by the state. Article 54(1)(4) of the Health Insurance Act (HIA) prescribes the payment of 100 % (benefit for temporary incapacity for work).

The pregnancy and maternity leave allowance is higher (100 %) than the average pay for a day of sick leave (70 %). In the event of illness, quarantine, non-work or a traffic injury and the complications or illnesses caused by it, the benefit is paid by the employer from day 4 to day 8. After day nine, sickness benefits are paid by the Health Insurance Fund.

According to Article 54(1)(4) of the HIA, maternity leave is a paid leave (100 % of the average income of the insured person per calendar day based on the data on payment of social tax available from the Tax and Customs Board). There is no ceiling.

5.3.6 Additional statutory maternity benefits

Childbirth allowance is a single benefit paid upon the birth of a child in the amount of EUR 320. In the case of triplets, the allowance is EUR 1 000 per child (EUR 3 000 in total). Some enterprises have introduced a maternity grant (single payment). Maternity benefits are paid by the state. Some local government authorities have introduced a single payment as a maternity grant.

¹⁵¹ Fathers can take 10 days paid paternity leave.

¹⁵² The law was amended; previously, there was a requirement for a contract of a minimum of three months to get social security.

5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

Special conditions exist:

- a precondition of receiving payments from the Health Insurance Fund is to be an insured person;¹⁵³
- the minimum wage (EUR 584 per month in 2020) is paid to mothers who did not work during the previous calendar year but have worked prior to the birth of a child;
- for women who have not worked before their pregnancy, the state minimum of maternity benefits will be paid (EUR 584 per month in 2020);
- people who worked under the LOA are expected to have had at least a one-month contract prior to applying for benefits.

In respect of the payment of benefits the ECA refers to the HIA. Article 58(4) of the ECA stipulates that there is a right to obtain compensation for pregnancy and maternity leave in accordance with the HIA. Article 50(3) of the HIA states that the types of benefit for temporary incapacity for work are sickness benefit, maternity benefit, adoption benefit and care benefit. The procedure for granting and the payment of benefit for temporary incapacity for work is provided in the HIA.

5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Article 18(5) of the ECA and 48(5) of the CSA provide that, upon termination of pregnancy and maternity leave, a woman has the right to the improved working conditions that she would have been entitled to during her absence.

Article 23 of the CSA provides special provisions for persons who have been appointed to the service for a specified term. Article 23(4) states that the service position will be suspended for an official who is on maternity, adoptive or parental leave.

5.3.9 Legal right to share maternity leave

Maternity leave cannot be shared.

5.3.10 Case law

There is no relevant case law.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

Adoption leave is 70 days following the date of entry into force of the court judgment approving the adoption (if a child is under 10), paid entirely by the state. An adoptive parent has all the same rights as biological parents.

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

Article 92 of the ECA provides that an employer may not cancel an employment contract on the ground that the employee is pregnant or has the right to pregnancy and maternity leave, or that the employee performs important family obligations. Article 93 of the ECA specifies the terms under which cancellation of an employment contract of a pregnant

¹⁵³ Article 5 of the HIA provides a definition of the insured person. A payer of social tax (employer, the state agency, local authority, contractor, spouse, person herself or himself) must pay social tax in accordance with the procedure, in the amounts and within the time limits provided for in the Social Tax Act. This is also true for a person considered equal to such persons on the basis of the HIA or on the basis of a contract specified in Article 22 of HIA, <https://www.riigiteataja.ee/en/eli/511012018002/consolide>.

woman or person raising a child below the age of three is prohibited. Cancellation is prohibited if the employee has notified the employer of her pregnancy or of the right to pregnancy and maternity leave before receipt of a declaration of cancellation or within 14 calendar days thereafter. At the request of the employer, the employee must submit a certificate confirming pregnancy issued by a doctor or midwife.

Estonia also provides family benefits for adoption. Adoption allowance is a single allowance paid to an adoptive parent from whom an adopted child does not descend and who is not a stepparent of the child, if childbirth allowance has not been paid to the family for the same child earlier.

The amount of the adoption allowance is a single payment of EUR 320 per adopted child.

5.4.3 Case law

There is no relevant case law.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Article 62 of the ECA relates to parental leave, and states that a mother or father has the right to parental leave until his or her child reaches the age of three. One person may use parental leave at a time.

Parental leave immediately follows maternity leave. The father of a child has the right to the parental benefit once the child has reached the age of 70 days. If the initial recipient of the parental benefit is the father, the mother must prove that she is not on parental leave. Amendments regarding additional earning and parental benefit payments and allowances for multiple births of three or more children entered into force on 1 March 2018.¹⁵⁴ During the payment of parental benefits, it will be possible for a parent to earn an income of up to half of the maximum rate of parental benefits (EUR 1 774.05 in 2020 per calendar month), without a decrease in benefits.

Parental leave is generous due to its length and payment scheme. It is possible to combine work and parental leave but the parental leave cannot be taken by the mother and father at the same time.

The share of men among parental benefit recipients has steadily increased from 6 % in 2011 to 12 % in 2019. According to Statistics Estonia, 27 989 women and 3 920 men received parental benefit in Estonia in 2019. The average monthly parental benefit paid to men (EUR 1 728) was a third higher than that paid to women (EUR 1 133).¹⁵⁵

5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

Parental leave is applicable in the public and private sectors; parental leave is also possible for third sector employees (in NPOs, NGOs).

5.5.3 Scope of the transposing legislation

The scope of the national transposing legislation includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or temporary agency workers.

¹⁵⁴ An overview of the changes regarding parental leave and benefits is available in English: <https://news.err.ee/632922/government-approves-amendments-to-estonia-s-parental-leave-benefits-system>.

¹⁵⁵ <https://www.stat.ee/en/uudised/news-release-2020-078>.

5.5.4 Length of parental leave

Parental leave is a family entitlement that can be used until the child reaches the age of three.

5.5.5 Age limits

The leave can be used until the child reaches the age of three.

5.5.6 Individual nature of the right to parental leave

Only one parent at a time may use parental leave. The entire period of the parental leave is transferable, but cannot be used by parents at the same time. There are plans to make that requirement less rigid in 2020.

Legal amendments are planned that would give an option for parents to pause and resume the payment of parental benefit on a calendar month basis in the course of three years.

5.5.7 Transferability of the right to parental leave

Parents can choose who takes parental leave (Article 62 of the ECA). Parental leave is a family right.¹⁵⁶ Someone else may use the parental leave in place of one of the parents. Article 33(1) provides that a parent, adoptive parent, parent's spouse, guardian or foster parent has the right to receive parental benefit. Family benefits are benefits in cash financed from the state budget through the Ministry of Social Affairs, which are paid to ensure the well-being of families with children. The benefit is granted until the day the child reaches 18 months of age.

Grandparents can also be carers and be entitled to parental leave.

5.5.8 Form of parental leave

Legal amendments were made regarding combining work and parental leave.

Before 1 March 2018 parents or persons giving care were expected to interrupt their parental leave if they wanted work. From 1 March 2018 it is possible to have part-time work and parental leave at the same time, but only for one parent or carer at the same time. There is a ceiling on such earnings and above that ceiling some earned income could be deducted from the final payment. Carers could work also for another employer during their parental leave, but then they would lose part of their monthly parental benefit.

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

There is no service or work requirement to be entitled to parental leave. The state pays a minimum rate for those who have not worked before getting a child. The calculation used to determine the amount of maternity and parental benefit is based on the salary at work or in service before becoming a parent during preceding calendar year. In case of successive fixed-term contracts, the sum of these contracts is taken into account for the purpose of calculating maternity and parental benefits.

5.5.10 Notice period

The notice period is 14 days, as stipulated in the ECA and in the CSA.

¹⁵⁶ Legal amendments adopted in 2019 and entering into force on 1 July 2020 make transferability possible.

5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

There are conditions of access to and detailed rules for applying for parental leave. The postponement of parental leave is not provided for and justification reasons are not accepted. The period of leave is until the child reaches the age of three. Before 1 March 2018, parents were allowed to interrupt their parental leave and go to work, but since 1 March 2018, a parent can work and take parental leave at the same time, although parental leave cannot be postponed. Legal amendments made in 2019 give more options for combining work and parental leave; the amendments enter into force on 1 July 2020.

5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

There are no special rules/exceptional conditions for access and forms of application of parental leave to the needs of parents of children with a disability or a long-term illness, but there are special childcare arrangements after the parental leave period.

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Adoptive parents have same rights as other parents.

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

A new Employment Contracts Act and the amended Gender Equality Act from 2009 provide legal protection. Article 92(2) of the ECA stipulates that cancellation of an employment contract of an employee who is pregnant or raising a child under three years of age is prohibited, unless the employer proves that it cancelled the employment contract on a basis permitted in the ECA. Article 3(1)(3) of the GEA states that less favourable treatment of a person in connection with pregnancy and childbirth, parenting, performance of family obligations or other circumstances related to gender is direct discrimination based on sex.

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

Upon the end of parental leave, a parent or caregiver has the right to get back to work and to the improved working conditions that she or he would have been entitled to during her absence.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

The worker's rights are maintained. Article 18(5) of the ECA provides that upon termination of pregnancy and maternity leave, a woman has the right to enjoy the improved working conditions which she would have been entitled to during her absence.

5.5.18 Status of the employment contract or relationship during parental leave

The employment contract is suspended during parental leave.

5.5.19 Continuity of entitlement to social security benefits

There is a continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave.

5.5.20 Remuneration

The purpose of the current parental benefit is for a person whose income decreases due to the raising of a child to retain, through a support grant by the state, their previous income, to support the reconciliation of work and family life, and for persons who have not received income to be ensured income at the rate of parental benefit. The parent receives parental benefit equal to her/his average income in the previous calendar year because the parent interrupts work in order to raise the child. The period for the right to parental benefit is 435 days until the child turns three years old.¹⁵⁷ The rest of the parental leave period is unpaid (see Section 5.5.4, above).

If the mother was not on maternity leave, the parental benefit is paid for 545 days starting from childbirth until the child turns three years old.

5.5.21 Social security allowance

A person who takes parental leave can also receive parental benefits. A parent, adoptive parent, step-parent, guardian or caregiver raising a child has the right to receive parental benefit. Guardian's allowance was EUR 240 a month in 2020.

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

In 2017, the provision of an allowance to families with many children entered into force, providing an extra EUR 300 per month in addition to the existing child allowance for families with three to six children. Families with seven or more children will receive an additional EUR 400 a month. The payment remained the same in 2020.

There is some project-based support that offers childcare, support and transport services for children with a severe or profound disability.¹⁵⁸

5.5.23 Case law

The Supreme Court judgement of 30 October 2019 declared the terms for calculating the parental benefit amount as specified in Articles 37(2) and 37(3) of the Family Benefits Act to be unconstitutional and void as of 1 September 2019. This judgment requires that, in the event of the employer's insolvency, not only social tax paid by the (former) employer, but also payments by the Unemployment Insurance Fund should be taken into account. The case was based on disagreement between the parties as to whether the Social Insurance Board was applying the law correctly in calculating family benefits, if in determining the amount of compensation paid by the Estonian Unemployment Insurance Fund, employer insolvency benefits paid by social security were not taken into account. If the Social Insurance Board took into account the social security contributions paid by insolvency benefits, the appellant's parental benefit would have been around EUR 673 higher.¹⁵⁹

¹⁵⁷ The formula for the calculation of family benefit is available at: <https://www.sotsiaalkindlustusamet.ee/en/family-and-child-protection/kinds-family-allowances#Parental%20benefit%20amount%20calculation>.

¹⁵⁸ Funded from the European Structural Fund in 2018–2020 to the extent of EUR 29.4 million.

¹⁵⁹ Supreme Court, Judgment of the Constitutional Review Chamber, No. 5-19-25 of 30 October 2019, <https://www.riigikohus.ee/et/lahendid/?asjaNr=5-19-25/9>.

There had been a problem with the parental benefit calculation in the previous law (Parental Benefit Act, 1 January 2004 – 1 January 2017) as well. The constitutional judgment of 30 June 2016¹⁶⁰ modified the rule laid down in Article 3(7) (first sentence) of the PBA, meaning that Article 3(7) (first sentence) of the PBA had to be read in conjunction with the operative part of the Supreme Court constitutional review chamber judgment of 14 May 2013. The Court *en banc* declared Article 3(7) (first sentence) of the PBA (in the wording in force from 1 September 2007 to 13 May 2013) to be in conflict with the Constitution to the extent to which it prescribed a reduction of parental benefit (because due to delay on the part of the employer, the total of the income received during the period of receiving parental benefit and the parental benefit itself was less than if the employer had not delayed payment of remuneration).

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

Fathers had a right to take 10 days of paid paternity leave until 30 June 2020. It was possible to take leave in the two months before or the two months after the birth of a child. In 2019, 58 % of new fathers used the 10 working days' paternity leave offered by the state.¹⁶¹

Legal amendments entered into force on 1 July 2020.¹⁶² Under the new arrangements, the period that forms the basis for calculating parental benefits will change, thus establishing a right for fathers to get one month of extra paternal leave (individual right) and paternal benefit. A father has the right to paternity leave to the extent of 30 calendar days in one part or in parts during the period of time from 30 days before the estimated date of birth determined by a doctor or midwife until the child attains three years of age. The employer has the right to refuse to grant paternity leave by part shorter than seven calendar days at time. From 1 July 2020, it is possible for a mother to be on parental leave and a father to be on paternity leave at the same time.

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

Parents who have a child under three years old have special protection from dismissal.

5.6.3 Case law

There have been no court cases, except some labour disputes at the Labour Inspectorate and some claims to the Gender Equality and Equal Treatment Commissioner. The opinions of the Commissioner are not legally binding.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

Article 15(10) of the Employment Contracts Act stipulates that an employee should notify the employer at the earliest opportunity of his or her temporary incapacity for work and, where possible, the presumed duration thereof. Taking time off for urgent family reasons in the case of illness or accident should be agreed with employer.

In the event of a breach of obligations, the Law of Obligations Act provides a general principle according to which the party in breach of the obligation is presumably always

¹⁶⁰ Supreme Court, Judgment of the Constitutional Review Chamber, No. 3-3-1-86-15 of 30 June 2016.

¹⁶¹ <https://www.stat.ee/en/uudised/news-release-2020-078>.

¹⁶² Amendments to the Family Benefits Act and related legal acts, RT I, 28.12.2017, 7. Available in Estonian at: <https://www.riigiteataja.ee/akt/128122017007>.

liable for the breach of their obligations, unless they prove that the breach is excusable due to *force majeure* (guaranteed liability). Article 72 of the Employment Contracts Act limits the liability of an employee and provides that if an employee has violated an obligation arising from an employment contract, the employer may use the legal remedies prescribed in the Law of Obligations Act only if the employee is guilty of the breach.

The term *force majeure* is mentioned in labour law in relation with a compensation for cancellation only. Article 100(3) of the Employment Contracts Act holds that no compensation shall be paid if the employment contract is cancelled due to *force majeure*.

5.7.2 Case law

There is no relevant case law.

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

A mother or father who is raising a child of up to 14 years of age or a disabled child of up to 18 years of age has the right to child leave without pay of up to 10 working days every calendar year. Employees can take off five unpaid working days in order to care for a sick adult or disabled person.

The minimum requirement of Article 6(1) of Directive 2019/1158 is fulfilled in Estonia. Employees have the right to carers' leave of five working days per year. According to Article 65.1(1) of the Employment Contracts Act, an adult employee has the right to up to five working days of leave per calendar year for caring for an adult with a profound disability and these five days are paid on minimum wage level. This legal amendment entered into force on 1 July 2018 in Estonia.

5.8.2 Case law

The Social Tax Act stipulates that if a person raising a child under the age of eight does not work, the state pays social tax on his or her behalf in the case that his or her spouse is employed and thus pays social tax. In December 2019, the Supreme Court held that the Social Tax Act should apply not only to married spouses, but also to people living in registered partnerships.¹⁶³

5.9 Leave in relation to surrogacy

Surrogacy is prohibited. The child has a mother (the term 'mother' is connected with delivery, the woman who has given birth) or is adopted. Adoptive parents are entitled to parental leave.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

There is a legal right to reduce working time upon agreement. Article 43(1) of the Employment Contracts Act (ECA) stipulates that it is presumed that an employee works 40 hours in a period of seven days (full-time work), unless the employer and the employee have agreed on a shorter working time (part-time work).¹⁶⁴

¹⁶³ Supreme Court of Estonia, Judgment of the Constitutional Review Chamber, No. 5-19-42 of 19 December 2019. Available in Estonian at: <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=261266301>.

¹⁶⁴ Employment Contracts Act (ECA, *Töölepingu seadus*), RT I 2009, 5, 35; RT I, 13.03.2019, 173, <https://www.riigiteataja.ee/en/eli/520032019008/consolide>.

If the employer is not willing to consider the employee's request, working hours cannot be reduced. The employee's care needs do not give the right to advantages for setting an exceptional working-time regime. The employer's statement about the organisation of work and working-time arrangements in the company is taken into account. On the other hand, research findings show that flexible organisation of work can positively affect productivity and make employees happier.¹⁶⁵

The employer should notify a full-time employee of the possibility of working part-time and a part-time employee of the possibility of working full-time, considering the knowledge and skills of the employee (Article 28(10) of the ECA).

5.10.2 Right to adjust working time patterns

Employers and employees can negotiate working arrangements. Article 47(1) of the ECA specifies the organisation of working time.

5.10.3 Right to work from home or remotely

Article 6 of ECA regulates working conditions in special cases. Article 6(4) of the ECA stipulates that if an employer and employee agree that the employee does work, which is usually done in the employer's enterprise, outside the place of performance of the work, including at the employee's place of residence (teleworking), the employer must notify the employee that the duties are performed by way of teleworking and it should be stated in an employment contract. Many companies have written internal regulations, specifying work organisation.

Working from home or remotely is a widespread phenomenon and is often used due to changing forms of work and for reasons of labour force scarcity. During the COVID-19 pandemic, working from home has increased and some companies have entirely reorganised their organisation of work and communication channels.

5.10.4 Other legal rights to flexible working arrangements

Article 47(1) of the ECA specifies organisation of working time. Employees must perform duties at the employer's enterprise or facilities at the normal time (organisation of working time), unless agreed otherwise. The organisation of working time includes, in particular, the start and end of the working time and breaks during the working day.

Additional free days for care stipulated by law expire at the end of the year and cannot be collected and compensated.

5.10.5 Case law

There is no relevant case law.

5.11 Evaluation of implementation

Estonia provides a long parental leave period, which can last until the child reaches three years old, with 435 days of parental benefit paid at 100 % of former income. Only one parent at a time is entitled to use the parental benefit. The state guarantees health insurance (until the child turns three years old) to the parent (or caregiver) who is the recipient of parental allowances. The parental leave system was rigid and reforms have been introduced to enable more flexible leave arrangements and the option to combine

¹⁶⁵ Rebane, M., Hein, H., Hazak, A. (2017), 'Does flexible work make R&D employees happier?', *TUT Economic Research Series*, (1), TUTECON Research Brief No. RB-2017/1, <https://www.ttu.ee/projektid/teadusarendus-too-aeg-3/uurimuste/kas-paindlik-tookorraldus-teeb-ta-tootajad-onnelikumaks/>.

work and family. These reforms contribute to women's career choices and could prevent disadvantaging women in the future in respect of their pension calculation.

Some amendments entered into force on 1 March 2018 (the ability to combine part-time work and parental leave), some amendments entered into force on 1 September 2019 and some legal changes enter into force on 1 July 2020 (30 days paternity leave, option to choose the parental benefits payment for 435 days within the three-year period, option for parents to take some part of parental leave at the same time).

The law is poorly implemented in relation to allowing employees who have taken parental leave to go back to the same work and to receive the same wage paid to other employees with an equivalent job.

5.12 Remaining issues

Substitute home services and family-based care services organised by the state were reshaped into substitute care and aftercare services organised by local government. A nationwide register for care families was created at the beginning of 2018. EUR 0.8 million has been allocated from the 2018 budget of the Ministry of Social Affairs for improving the quality of substitute care and facilitating family-based substitute care, while EUR 17.8 million has been allocated from the local government support funds for organising substitute and aftercare services.

From 2017 to 2020, the state has been supporting local government authorities and the private sector with EUR 2.5 million from ESF funds in order to establish new childcare and kindergarten places.

Viira et al. (2020) have studied the work of parents and how families cope in an emergency and found that restrictions related to the coronavirus emergency have brought challenges to families with children in reconciling work and family life and ensuring economic well-being (the number of respondents was 605). The survey results revealed that about 44 % of these parents consider home-based living due to an emergency situation to be burdensome and stressful to a greater or lesser extent.¹⁶⁶

The Chancellor of Justice received several complaints about access to, organisation of and fees for local childcare facilities. The Chancellor of Justice sent a circular of 17 August 2020 to local governments regarding legal requirements and reminded of the duty to support kindergarten and childcare services.¹⁶⁷

The Ministry of Social Affairs in Estonia issued the first 'family-friendly employer' labels and 62 companies were awarded in 2020.¹⁶⁸ The labels acknowledge employers who have made efforts to ensure a family-friendly environment and equal treatment of their employees. The State Budget Strategy 2021–2024 states that in the field of equal treatment, activities will continue to promote diversity (diversity workplace label, diversity agreement, diversity day).¹⁶⁹

Lone parents had problems in getting child support from the other parent. The state ensures the accrual of a EUR 100 maintenance allowance for the child per month, which

¹⁶⁶ Viira, A., Turk, P., Ilisson, K. (2020), 'Lapsevanemate töötamine ja perede toimetulek eriolukorras' ('Work of parents and coping of families in an emergency'), https://www.sm.ee/sites/default/files/content-editors/Uudised_pressiinfo/koroona_lapsevanemad_aprill2020.pdf.

¹⁶⁷ https://www.oiguskantsler.ee/sites/default/files/field_document2/Lasteaia-%20ja%20lapsehoiuteenuse%20toetamine.pdf; Chancellor of Justice (2020), Chancellor's Year in Review 2019/2020, <https://www.oiguskantsler.ee/annual-report-2020/children-and-young-people>.

¹⁶⁸ <https://www.tooelu.ee/et/tooandjale/tootamist-toetavad-tegevused/peresobralik-tooandja/peresobraliku-tooandja-margis>; <https://arileht.delfi.ee/artikkel/91777839/fotod-tunnustati-eesi-koige-peresobralikumaid-ettevotteid-vaata-kas-sinu-tooandja-on-ka-nende-hulgas>.

¹⁶⁹ <https://www.rahandusministeerium.ee/en/state-budget-and-economy>.

is collected from the debtor of maintenance allowance. In 2019, EUR 4.58 million was allocated to the maintenance allowance fund. Amendments to the law will be introduced in order to enable the payment of maintenance allowance during the course of a bankruptcy procedure against the parent who is liable to pay maintenance.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

Estonia has not managed to create a system for occupational accident insurance and occupational disease insurance. The Occupational Health and Safety Act has been in force since July 1999.¹⁷⁰ In 2019, there were 4 265 registered accidents at work (2 775 with men) and by economic activity, the most dangerous sphere is manufacturing (1 366 cases).¹⁷¹ It could be assumed that this is due to a high prevalence of temporary employees, but this has not been studied.

The Ministry of Social Affairs has prepared a concept paper on occupational accident insurance. There are plans to establish a private occupational accident insurance fund.¹⁷² There have been no developments in 2020.

There is a concept paper on a mandatory insurance system for healthcare professionals.¹⁷³

6.1.2 Other issues related to gender equality and social security

There are no other issues related to gender equality and social security.

6.1.3 Political and societal debate and pending legislative proposals

The most burning issues under public debate are issues regarding the investigation and registration of occupational accident and occupational diseases, unpaid sickness allowance for the four first days, and low pensions.

In July 2018, the Ministry of Social Affairs proposed introducing a Government-regulated private occupational insurance system. The costs would be covered by the employer, rather than by the Health Insurance Fund and Unemployment Insurance Fund.¹⁷⁴ According to the proposal, the Government-regulated private occupational accident insurance system would be compulsory, and employers would have to insure employees against accidents at work. There was an active consultation period. Some consultees expressed the view that there was a need to establish a legal entity under public law. The Estonian Employers' Confederation opposed occupational accident insurance due to high costs for employers.¹⁷⁵

There has been a debate about the need for an insurance system for specialists who have caused (health) damage, although this suggestion has not had any success; there is an issue with health professionals bearing the full liability for medical errors.

¹⁷⁰ The Occupational Health and Safety Act provides for the occupational health and safety requirements set for work performed by employees and officials (hereinafter *employee*), the rights and obligations of an employer and an employee in creating and ensuring a working environment which is safe for health, the organisation of occupational health and safety in enterprises and at state level, the procedure for challenge proceedings, and the liability for violation of the occupational health and safety requirements. There should be a working environment specialist who is an engineer competent in the sphere of working environment, or any other specialist who has received training concerning working environment and whom the employer has authorised to perform occupational health and safety duties.

¹⁷¹ www.stat.ee.

¹⁷² https://www.sm.ee/sites/default/files/content-editors/Uudised_pressiinfo/toonnetuskindlustus.pdf.

¹⁷³ Estonian Medical Association (2016), 'Tervishoiuteenuse osutajate kohustusliku kutsekindlustuse süsteemi loomine Eestis: Värskenдатud kontseptsioon'. Available in Estonian at: https://arstideleit.ee/wp-content/uploads/2016/02/SoM_vastutuskindlustus_varskenдатud_kontseptsioon.pdf.

¹⁷⁴ Ministry of Social Affairs (2018), 'Tööõnnetuskindlustuse väljatöötamise kavatsus' (Intention to develop an occupational accident insurance system). Eelnõude infosüsteem.

¹⁷⁵ Social dialogue available in Estonian at: <https://adr.rik.ee/som/dokument/5869783>.

6.2 Direct and indirect discrimination

Article 1(1) of the GEA prohibits discrimination in all areas of social life. The GEA is applicable in the areas of social protection, provision of goods and services, healthcare and housing.

Article 5 of the GEA prohibits direct and indirect discrimination based on sex. Article 6 of the GEA prohibits sex discrimination in professional life, e.g. discriminatory conditions for remuneration or conditions for the provision and receipt of benefits related to employment.

Article 126(1) of the Insurance Activities Act (IAA) stipulates that differences between the insurance premiums and insurance indemnities of women and men must not be based on the use of gender-based actuarial factors.¹⁷⁶ Article 126(2) of the IAA specifies that neither pregnancy nor maternity should affect the amount of insurance premiums and insurance indemnities.

6.3 Personal scope

The personal scope specified in Article 6 of Directive 2006/54 applies to all members of the working population, including self-employed persons. In Estonia the personal scope is more restricted.

Article 1(2) of the OHS Act includes a long list of working persons and explicitly mentions certain professions, but persons who work under Law of Obligations contracts are left out. The Labour Inspectorate has conducted awareness campaigns for people to understand the difference between employment contracts and authorisation agreements or service contracts. Work contracts under the LOA do not offer any social security if the required amounts of social contributions are not paid. However, when applying gender equality and the GEA, people who work under the LOA are also seen as 'employees'. There is some space for an improvement of the legal text.

There are serious disparities between people working in the private sector and those working in the public sector. Disabled people are poorly paid, but they have (a minimum level of) security from the statutory security system.

6.4 Material scope

Payments to voluntary occupational social security schemes by employees and employers are rare.

If employers pay for employees' sports activities, the fringe benefit tax should be paid. Some companies make contributions to the employees' pension fund. Granting a special pension through the third pillar, however, requires an agreement between an official and the state. As such, insurance is voluntary.

The Constitution stipulates the duty of the state to ensure public assistance in cases of old age, incapacity for work, or loss of a provider of livelihood. At the same time, the Constitution provides a person's right to health protection. Implementation of the OHS Act has required many regulations for occupational safety requirements for different occupations, including a list of occupational diseases, but occupational social security schemes are scarce. Occupational safety rules at workplaces are compulsory. The Labour Inspectorate handles state supervision regarding compliance with occupational health and safety requirements.

¹⁷⁶ The new version of the IAA was motivated by the EU insurance supervision reform. Insurance Activities Act (IAA), <https://www.riigiteataja.ee/en/eli/511122019006/consolide>.

On 1 April 2013, the amended CSA entered into force, introducing a distinction between officials (state or local government officials who perform the functions of the authority) and support personnel. The period of employment in the civil service (from 1 April 2013, for officials only) determines the right to increased old-age pensions according to the person's position and years of service.

Several professions in the public sector have been given special occupational pensions. Reforming this system is now under debate due to the high costs involved. The right to a special pension is still granted to the officials of the defence forces and police. The law enforcement system is male dominated. There are various opinions regarding whether the special pensions system of law enforcement should be changed or completely abolished. Judges were opposed to changes and won the decision that retired judges have a right to receive pensions connected with the growing wages of acting judges.¹⁷⁷ The amount of a judge's old-age pension and superannuated pension is 75 % of the salary of his or her most recent position, which was in force on the day as of which the pension is granted. Article 82(1) of the Courts Act stipulates that a judge's pension is to be recalculated when there is a change in the amount of salary payable for this position according to which a judge's pension is calculated.

6.5 Exclusions

There are no exclusions.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

There is no relevant case law.

6.7 Actuarial factors

Sex is not used as an actuarial factor in occupational social security schemes.

6.8 Difficulties

Estonia did not manage to create a system for occupational accident insurance and occupational disease insurance. Only some insurance companies offer employees' insurance to corporate clients. Employers can conclude employees' insurance contracts (accident insurance, employer's health insurance, travel insurance, pension supplements to the third pillar).

Fringe benefits are taxable at the level of the employer. The employer pays income tax and social tax on fringe benefits. On 1 January 2015, an amendment to the Income Tax Act (ITA) entered into force to support employers' tax burdens when they employ persons with a partial loss of capacity for work. Article 48(5.4) of the ITA stipulates that fringe benefits do not include expenses made for granting medical devices to an employee whose loss of capacity for work has been established to be 40 per cent and more (in the case of an auditory disability, decrease of auditory ability of 30 decibels and more) or whose degree of disability has been determined and the value of which does not exceed 50 per cent of the total size of payments subject to social tax made to the employee during one calendar year.

Life insurance is optional. Life insurance is in many aspects highly gendered and there might be some indirect discrimination. It is offered to people with dangerous jobs (e.g. drivers, builders, policemen, or people working with machinery and other similar mechanisms). Estonia has a gender-segregated labour market and in some fields of

¹⁷⁷ Supreme Court of Estonia, Judgment of the Constitutional Review Chamber No. 3-4-1-1-14 of 26 June 2014, <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-14>.

activities more work accidents occur. In 2015-2017, the number of accidents at work increased.¹⁷⁸ In 2019, a number of accidents declined. There was 4 265 accidents at work (65 % involving men) were registered.¹⁷⁹

Life insurance is also offered to persons who are the main or sole providers in their family. In 2016, there were about 44 200 single-parent households. Women head the majority of single-parent families.

6.9 Evaluation of implementation

Estonia has not created an occupational accident insurance scheme.

6.10 Remaining issues

There are no remaining issues.

¹⁷⁸ Labour Inspectorate, <https://www.ti.ee/et/statistika/toonnetused>.

¹⁷⁹ Labour Inspectorate, https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Uuringud_ja_ulevaated/TOOKESKO_ND_A4_2020_eestikeeles.pdf.

7 Statutory schemes of social security (Directive 79/7)

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

The old-age pension consists of three parts: base amount, length-of-service component and insurance component. The full pension is indexed annually, based on consumer price increases and social contribution revenues. The current legal principles of the state pension insurance system have been effective since 1999-2000. At that time, the old-age pension was linked to the amount of social tax paid by or on behalf of the person over their full career. Mandatory funded pensions started from 2002. Possibilities for supplementary funded pensions were created in 1998.

Estonia now has one of the smallest gender pension gaps, due to the influence of the pensionable years until 31 December 1998. After the indexation of state pensions of 1 January 1999, the insurance component is taken into account when calculating the pension amount. The insurance component is personal, depends on the social tax paid for the person. This means that the salary size has an influence of the insurance component. Women in average, have paid less than men, women, therefore women often did not 'earn' the 1.000 index, and their work for one year is valued less than one year.¹⁸⁰

Ventsel (2018) has studied gender equality regarding social benefits. Ventsel found that gender equality is not guaranteed in paying parental benefits and pensions. It also became evident that both pension and parental benefit is influenced by part-time working, because this keeps parents away from the labour market.¹⁸¹

After the paid parental leave period, parents have social security, but on a minimum level, and therefore the indexed pension year will be at the minimum level (0.222). That means that caring for children is punished in a monetary sense through the lower pension. However, the state offers parents the possibility of claiming an old-age pension under favourable conditions, in the right to receive an old-age pension one to five years earlier.¹⁸²

Starting from 1 January 2018, an additional pension supplement in the amount of one yearly rate (EUR 7.104¹⁸³ as of 1 April 2020) will be calculated for one parent for each child born before 1 January 2013, and who was raised for at least eight years. An application and the written consent of the other entitled person must be presented to the Social Insurance Board to receive the pension supplement. If several people are entitled to a pension supplement for the same children, they must reach an agreement who shall use this right. The agreement must be fixed in writing.

¹⁸⁰ Starting from 1 January 1999, the pension accumulation period calculation is based on the social tax. Under Article 26(7) of the State Pension Insurance Act, the Social Insurance Board calculates the pension; Index 1.000 is the annual social tax paid by all taxpayers. If the social tax paid was lower than the Estonian average wages, the insurance component is also lower and the amount of one yearly rate is lower. If the salary was 50 % of Estonian average wage, then the index is 0.500 and the value of pension year is also 50 % the calculated yearly rate (6 euros and 161 cents)

¹⁸¹ Ventsel, A. (2018), *Soolise võrdõiguslikkuse tagamine sotsiaaltoetuste maksmisel* (Ensuring gender equality in paying social benefits), https://enut.ee/files/ventsel_angela.pdf.

¹⁸² State Pension Insurance Act, Article 10 <https://www.riigiteataja.ee/en/eli/504022019001/consolide>.

¹⁸³ Index is expressed with with three decimal digits (thousandths); EUR 7.104 here means 7 euros and 10.4 cents.

7.1.2 Other relevant issues

On 14 June 2012, Parliament adopted the Act on Amendments to the Social Tax Act and Other Acts, which entered into force on 1 August 2012.¹⁸⁴ This Act ensures the equal treatment of female and male sole proprietors and offers an opportunity for equal social protection of spouses participating in the activities of sole proprietors' businesses. This amendment does not include life partners or people who are freely cohabiting – being married is a precondition for this arrangement.

7.1.3 Overview of national acts

According to Article 11(1) of the State Pension Insurance Act and Article 9 of the Funded Pensions Act, the old-age pension depends on the years of pensionable service and on the second pillar income, and for that reason the gender pay gap has an influence on the future pensions of women and men.

7.1.4 Political and societal debate and pending legislative proposals

In 2018, a conservative party, Pro Patria, proposed to make a fundamentally important change to the funded pension system and to give people the right to decide over the use of their second pension pillar.¹⁸⁵ On 8 April 2019, a coalition agreement was signed, where the Pro Patria proposal was fixed. In 2019, low pensions and the ageing society were widely debated by the new Coalition and in the media. The Coalition planned to restructure the second pillar of the funded pension.¹⁸⁶ On 14 November 2019, the Government of the Republic initiated the Draft Act on amending the Funded Pensions Act and related Acts (reform of the mandatory funded pension). The amendments to the Funded Pensions Act were approved and were adopted on 29 January 2020. The law was planned to enter into force in January 2021.

The main aim is to diminish the power of banks and to give people more freedom to have a say about their money and investments. Persons who were born between the years of 1942 and 1982 had the option to voluntarily subscribe to the funded pension system. These people, if they chose the second pillar payments, have contributed monthly, but the pension funds administered by banks had high investment costs and low returns, if any, on investments (ROI). There was no possibility to unsubscribe from the funded pension and the right to receive funded pension payments becomes effective when a person reaches the retirement age. There is an additional restriction: the bank calculates the monthly supplement, which is rather low. People did not have the right to make plans about their money in their own pension fund.

There was an application by the President of the Republic to the Supreme Court to declare unconstitutional the Act on amending the Funded Pensions Act and related Acts (reform of the mandatory funded pension) adopted by the *Riigikogu* on 11 March 2020. The Supreme Court dismissed the application on 20 October 2020.¹⁸⁷ The Supreme Court *en banc* ascertained that the contested Act results in instances of interference with fundamental rights. However, no violation of the Constitution could be concluded with sufficient certainty in the frame of abstract constitutional review and based on existing forecasts, and the aims of the reform outweigh the ascertained instances of interference resulting from it.

¹⁸⁴ Amendments to the Social Tax Act and related legal texts Act (*Sotsiaalmaksuseaduse ja teiste seaduste muutmise seadus*), 14 June 2012, <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/be4d767a-e504-4521-9b58-0080007ea808/Sotsiaalmaksuseaduse%20ja%20teiste%20seaduste%20muutmise%20seadus>

¹⁸⁵ <https://news.err.ee/873025/pro-patria-proposes-updates-to-second-pension-pillar>.

¹⁸⁶ <https://www.rahandusministeerium.ee/en/restructuring-second-pillar-funded-pension>.

¹⁸⁷ Supreme Court of Estonia, SC *en banc* Constitutional Judgment, No. 5-20-3 of 20 October 2020, <https://www.riigikohus.ee/en/constitutional-judgment-5-20-3>.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

The principle of equal treatment for men and women in matters of social security was implemented in national legislation. Equal treatment for men and women is provided in Article 1(1) of the GEA, Article 126 of the IAA and in the OHSA.

Article 1(1) of the GEA states that the purpose of the GEA is to ensure equal treatment of men and women as provided for in the Constitution of the Republic of Estonia and to promote the equality of men and women as a fundamental human right and for the public good in all areas of social life.

Article 126 of the IAA stipulates that the differences between insurance premiums and insurance indemnities of women and men must not be caused by the use of the gender factor in the assessment of the insured risks. Neither pregnancy nor maternity should affect the size of the insurance premiums and insurance indemnities.¹⁸⁸

Although the retirement age is currently different for women and men, it will be the same by 2026, when the pensionable age will be 65. There is a transition period, starting in 2017 for the people born in 1954-1960; their retirement age will gradually increase by three months for every year of birth. From 2027, a steady increase of the retirement age is planned, according to legal amendments adopted on 12 December 2018.

7.3 Personal scope

Protection is ensured by state pension insurance on two levels. National pensions (the first pillar) is ensured for all residents of Estonia, and there are no gender differences, based on solidarity. The national pension rate was EUR 221.63 from 1 April 2020 (in 2021, EUR 225.18). The first pillar is financed by social contributions of 20 % of gross salaries, paid solely by employers and administered by the Social Insurance Fund. The second pillar is the mandatory funded pension, which is dependent on income earned (this was universal before 1998, but was index-linked from 1 January 1999). This could lead to indirect discrimination against women due to the significant gender pay gap (25 %). An average old-age pension was EUR 519 in 2020.

Old-age pension, incapacity-for-work and survivor's pensions are based on former income and pensionable years. Women and men have the right to receive old-age pension if the person has reached the age of 65 and has at least 15 years of the Estonian pension qualifying period.

Retired people can also work. However, judges are released from office once they reach 68 years of age, unless the maximum term of office is increased, in the event of substantial public interest from the point of view of the administration of justice. Judges are 'motivated' to give up their office due to high pensions (75 % of the salary of his or her most recent position, recalculated every year accordingly).¹⁸⁹

In the event of old age, incapacity for work or loss of a provider the state pays monthly financial social insurance benefits: a state pension. If self-employed persons have paid a minimum of social tax (the minimum payment is regulated by the state), in the event of their illness, work inability or retirement, their income will be very low.¹⁹⁰

¹⁸⁸ The article on the gender factor in risk assessment follows the requirements in EU Directive 2004/113/EC. Insurance Activities Act (IAA), <https://www.riigiteataja.ee/en/eli/529012018003/consolide>.

¹⁸⁹ <https://www.riigiteataja.ee/en/eli/502022021001/consolide>.

¹⁹⁰ More information on issues arising in relation to self-employed people is available at: <http://www.praxis.ee/wp-content/uploads/2017/09/Estonian-Paper-Peer-Review-on-Reconciling-Family-Life-and-Entrepreneurship.pdf>.

7.4 Material scope

There is a problem regarding the low wages of women (the gender pay gap being 25 % in 2017),¹⁹¹ which leads to a gender pension gap in the future. Old-age, incapacity-for-work and survivor's pensions are based on former work input. Furthermore, women's life expectancy is higher than men's.

7.5 Exclusions

National law did not apply the exclusions as specified in Article 7 of Directive 79/7.

7.6 Actuarial factors

Until 2026, the retirement age for women and men will be slightly different in Estonia.

7.7 Difficulties

The Estonian social protection system is structured around three contributory social security schemes: pension insurance, health insurance and unemployment insurance. Pension insurance and health insurance are financed from a social tax, while unemployment insurance is funded by unemployment insurance contributions. The other schemes – family benefits, state unemployment allowances, national pension, death grants and social benefits for the disabled – are non-contributory, being financed from general state revenues.

Pensions are financed from social tax (13 % of gross pay) and payments for sick leave also depend on social taxes (20 % of gross pay). This means that income inequalities of women and men are persistent – women are paid 25 % less today and their pensions will be lower.

Estonia started implementing a work ability reform on 1 January 2016¹⁹² and the goal is to bring people with reduced working ability back into the labour market and to make a shift in attitudes to reduced work capacity and/or ability to work. Permanent incapacity for work could be total or partial (10-90 %) if a person is able to do some work. Work incapacity of 40-100 % gives a right to apply for work incapacity pension and it also gives health insurance. It is estimated that two thirds of these pensioners are employed. There were more than 100 000 people with reduced work capacity in Estonia in 2015. The employer will be compensated for workplace adjustment costs. There are more disability pension recipients and early-retirement pensioners among men than among women.¹⁹³ The proportion of older adults (50+ years) in Estonia rating their health as fair or poor is one of the largest in Europe (71 % according to the SHARE survey).¹⁹⁴

There are serious problems with paid sick leave for insured persons, because the first days are unpaid, then there is a period during which the employer pays and finally, the state pays. Employers and sole proprietors pay a compulsory part of social tax for health insurance coverage. Although there are payments, protection is poor. Also, there are serious problems in connection with unemployment. Employers and sole proprietors make compulsory payments to an unemployment insurance fund, but compensation in case of unemployment and related services is limited.

¹⁹¹ Eurostat, https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics.

¹⁹² Ministry of Social Affairs (2018), *Work ability reform*. The Ministry of Social Affairs is planning a reform by which every fifth incapacitated person would start working. According to the planned reform, partially incapacitated persons who work and earn Estonian average wages should be able to manage without any supplementary allowance starting from 2020 at the latest. The Unemployment Insurance Fund started assessing work ability and paying work ability allowances on 1 July 2016.

¹⁹³ <https://www.tlu.ee/sites/default/files/Instituudid/ÜTI/EDK/PDF%20failid/SHARE-kogumik-12.09.pdf>.

¹⁹⁴ <http://bmjopen.bmj.com/content/7/6/e013257>.

7.8 Evaluation of implementation

Voluntary pension funds were introduced in 1998 and can take two forms: pension insurance policies provided by life insurance companies or voluntary pension funds managed by asset managers. Public policy does not promote occupational pension provision. Employers can make contributions for their employees in the third pillar, but unfavourable tax treatment is an obstacle.

7.9 Remaining issues

Working part-time keeps parents away from the labour market and thus influences parental benefit. In the view of the author of this report, part-time jobs enable the reconciliation of work and family life but the subsequent influence on parental benefit and pension, among other things, aggravates problems regarding women's employment.¹⁹⁵

There is a problem with older men's inclusion in voluntary or community work.¹⁹⁶ A content and thematic analysis revealed latent factors that may hinder older men's learning, such as loneliness, expectations about masculinity inherited from the cultural background, a restrictive domestic comfort zone, and a lack of demand for older men's experience. The main finding from the analysis is that older rural men in Estonia do not feel responsible for their own social health.

¹⁹⁵ Ventsel, A. (2018), *Soolise võrdõiguslikkuse tagamine sotsiaaltoetuste maksmisel* (Ensuring Gender Equality in Paying Social Benefits), <http://dspace.ut.ee/bitstream/handle/10062/59987/ventselangela.pdf?sequence=1&isAllowed=y>.

¹⁹⁶ Tambaum, T., Tuul, R., Sirotkina, R. (2018), 'What is missing – older male learners or a community strategy?' DOI: 10.4312/as.25.2.67-79; Metsmägin, M. (2018), *Eesti vanemaealiste meeste kogemused vaba aja sisustamiseks kogukonnas* (Estonian Senior Men's Experiences in Spending Free Time in a Community), Master's thesis, University of Tartu, Faculty of Social Sciences, Institute of Social Studies.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

Surveys on entrepreneurship and micro enterprises from a gender perspective are rare. The Estonian Institute of Economic Research has studied creative industries.¹⁹⁷ Artists, musicians and other creative industry entrepreneurs are combining sole proprietorship with other business forms, e.g. acting as a limited company, while actually being a one-person company. This person can be both owner and board member.

Rugina (2018)¹⁹⁸ states that while the formal entrepreneurship environment is considered to be very developed in the Baltic countries, women are underrepresented among the population of entrepreneurs, and there is gender-based sectoral segregation of female entrepreneurs in Estonia, Latvia and Lithuania. Unfortunately, Rugina's analysis is very general and lacks a gender sensitive approach.

Meronen (2015)¹⁹⁹ found that the main factors that motivate women to start a business are greater independence and freedom, work related challenges, career opportunities, implementation of innovative ideas and difficulties or discrimination in a previous workplace. The main factors that hamper women's entrepreneurship are related with willingness to have a small business in service, care or education sector (least profitable businesses) fear of asking for help, the lack of the necessary knowledge or skills, low self-esteem, fear of taking risks, and family-related responsibilities. Women often have to choose whether to focus on the success of their business or to fulfil their family-related responsibilities. Meronen pointed out that female business owners in Estonia see the business environment much more positively than female entrepreneurs in Finland. The positive side of the Estonian business environment is the access to necessary information.

8.1.2 Other issues

Estonian entrepreneurship and industry policy does not mention women and female entrepreneurship. Policy makers do not accept the idea that an entrepreneur's gender has any relevance in business. There are no other relevant issues.

8.1.3 Overview of national acts

In Estonia, the largest group of self-employed persons are sole proprietors. The definition of self-employed persons includes people working under non-standard contracts who offer goods or services for a fee in their own name, and members of companies' management boards.²⁰⁰

On 14 June 2012, Parliament adopted the Act on Amendments to the Social Tax Act and Other Acts, which entered into force on 1 August 2012.²⁰¹ This Act ensures equal treatment

¹⁹⁷ Eesti Konjunkturiinstituut (2018), *Eesti loomemajanduse uuring ja kaardistus* (Mapping Estonian creative industries). Available in Estonian at:

https://www.kul.ee/sites/kulminn/files/1_eesti_lm_olukorra_uuring_ja_kaardistus_yldosa.pdf.

¹⁹⁸ Rugina, S. (2018), 'Female entrepreneurship in the Baltics: formal and informal context', *International Journal of Gender and Entrepreneurship*, <https://doi.org/10.1108/IJGE-05-2018-0055>.

¹⁹⁹ Meronen, K. (2015), *Naiste ettevõtetus ning töö- ja eraelu tasakaalustamine* (Women's Entrepreneurship and Work-Life Balance), thesis, University of Tartu, https://dspace.ut.ee/bitstream/handle/10062/49754/meronen_karin.pdf?sequence=1&isAllowed=y.

²⁰⁰ Commercial Code (*Äriseadustik*), RT I, 17.11.2017, 22, <https://www.riigiteataja.ee/en/eli/519122017001/consolide>.

²⁰¹ Amendments to the Social Tax Act and related legal texts, 14 June 2012 (passed in Parliament on 14 June 2012), <http://www.riigikogu.ee/tegevus/eelnoud/eelnou/be4d767a-e504-4521-9b58-0080007ea808/Sotsiaalmaksuseaduse%20ja%20teiste%20seaduste%20muutmise%20seadus/#>.

of female and male sole proprietors and offers an opportunity for equal social protection of spouses participating in the activities of sole proprietors' businesses. Amendments were made to the Social Tax Act (STA), the Taxation Act (TA), the Health Insurance Act (HIA), the State Pension Insurance Act (SPIA), and the Labour Market Services and Benefits Act (LMSBA). There was no need for substantial amendments to the Gender Equality Act (GEA) and the Equal Treatment Act (ETA).

Estonia has explicitly amended the law to comply with Article 7 of Directive 2010/41/EU. From 1 August 2012, sole proprietors can register their husband/wife as an assisting spouse with the Tax and Customs Board office. Sole proprietors should pay a monthly minimum in social taxes for the spouse (Article 5(3)(3.1) of the HIA).

8.1.4 Political and societal debate and pending legislative proposals

In Estonia, tax payment by one-person companies has been discussed in the recent years. The Tax and Customs Board has studied strategies of tax avoidance by Estonian micro enterprises.²⁰² There is a suspicion that business entities such as limited companies, avoid tax given that the tax share on dividends is lower compared with personnel costs. To avoid tax, dividends are paid to 'shareholders' instead of wages.

8.2 Implementation of Directive 2010/41/EU

The Health Insurance Act has been amended. From 1 January 2016, two additional groups of self-employed persons obtained social protection:

- members of the management or controlling bodies of legal persons for whom the legal person(s) have paid social tax;
- persons receiving remuneration or service fees on the basis of a contract for services, a mandate or another contract for the provision of services under the Law of Obligations Act, who are not registered as self-employed persons in the commercial register, and for whom the other party to the contract pays social tax.²⁰³

8.3 Personal scope

8.3.1 Scope

The Commercial Code (CC) defines 'an entrepreneur' as a natural person and/or a company.²⁰⁴

Persons who provide work under the Law of Obligations Act (LOA) are defined as 'a mandatary' (presuming that the mandatary performs the mandate in person, usually the duration and deadlines are specified) and 'a contractor' (presuming that the contractor is not required to perform the obligations arising from the contract in person, usually the duration and deadlines are specified). Mandataries and contractors working under the LOA are covered by the GEA, but they enjoy far less protection.²⁰⁵

²⁰² <https://news.postimees.ee/3360701/taxman-takes-ax-to-acting-ou>.

²⁰³ Health Insurance Act (HIA), Article 5(2)(4) and 5(2)(5)
<https://www.riigiteataja.ee/en/eli/511012018002/consolide>.

²⁰⁴ Article 1 of the Commercial Code mentions 'ettevõtja', which can be translated into English as an 'undertaking'.

²⁰⁵ Mandataries and contractors do not have any rights to holidays paid by the mandator or customer as expected for work done under the ECA. The mandatary and contractor do not have childcare and parental leave. Social security for persons working under the LOA depends on their own contributions. There is an option for the pregnant mandatary (or contractor) to apply for social security from the contractual partner if the work performed (working time, control, management, instructions and regulations by the customer) had all features of the work performed under the ECA in the framework of an employment contract. Then a claim could be made for a revision of the contractual relationship and if the Labour Inspectorate or court finds it applicable, the mandatary could also be entitled to all social guarantees applied to the ECA with the employment contract.

Performance of certain work in a specified period without social security obligations for the customer is attractive for third-sector organisations, where a lot of work is done on either a project or voluntary basis.

8.3.2 Definitions

The Commercial Code (CC) defines 'an entrepreneur' as a natural person and/or a company.²⁰⁶ According to the CC, a natural person offers goods or services in his or her own name and the sale of goods or provision of services is his/her permanent activity.

8.3.3 Categorisation and coverage

All self-employed workers are considered part of the same category and all categories are covered.

8.3.4 Recognition of life partners

Estonian legislation only recognises married spouses. However, the Registered Partnership Act (RPA) was adopted in 2014 and it entered into force on 1 January 2016. However, it has not been implemented as the implementing regulations were not adopted by Parliament in 2016-2018 due to political disagreements.

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

The principle of equal treatment was already a legal requirement before the transposition of Directive 2010/41. Article 3(2) of the GEA stipulates that 'equal treatment of men and women' means that there is no discrimination whatsoever based on sex, either directly or indirectly. Article 5(1) of the GEA prohibits direct and indirect discrimination including giving orders. This article entered into force in October 2009.

8.4.2 Material scope

The material scope of national law relating to equal treatment in self-employment is the same as specified in Article 4 of Directive 2010/41/EU.

8.5 Positive action

Every year there are some projects to promote female entrepreneurship and encourage young women to start their own business. The state has been quite passive, but non-governmental organisations have taken the initiative. There are no Government initiatives to support female entrepreneurship.

8.6 Social protection

Self-employed persons have the same rights as employees if they have applied for social security and have paid social taxes. Social protection of self-employed persons covers pension and health insurance.

Payment of social taxes is a precondition for obtaining revenues required for pension insurance and state health insurance. Estonian health insurance relies on the principle of solidarity. If a self-employed person has paid social taxes (advanced payment), her or his sick leave compensation depends on the amount paid. If payment was at the minimum level, the compensation for sick leave is also very low. When a self-employed person needs

²⁰⁶ Article 1 of the Commercial Code mentions 'ettevõtja', which can be translated into English as an 'undertaking'.

a doctor and treatment, there is no need for additional payment, in spite of the fact that only a symbolic amount of money was paid to the social fund. Significant differences appear later on, when pensions of self-employed people appear low due to low social security contribution.

Applying for social protection is voluntary for adults in Estonia. Individuals can make additional payments that are higher than 33 % of their earnings. Self-employed persons should make mandatory contributions to a funded pension scheme depending on their social tax payments. This is mandatory for employers, and self-employed persons are obliged to pay a mandatory minimum amount. The state sets the annual minimum amount to be paid to get social protection.

The Social Tax Act (STA) includes an exception that applies to sole proprietors who are incapable of working. They are not required to meet the minimum obligation of payment of social tax if they do not receive any income. The minimum obligation means that if no income is earned, social tax must be paid during the year in an amount equal to 12 times the monthly rate.

To get social protection for spouses, they must be registered with the Tax and Customs Board and social contribution payments are mandatory.

Statutory social security schemes are applicable.

8.7 Maternity benefits

The Directive requires that women are granted a maternity allowance and a leave of at least 14 weeks. In Estonia, a woman has the right to 140 calendar days (20 weeks) of pregnancy and maternity leave. However, self-employed female workers and assisting spouses of sole proprietors (FIEs) can receive maternity benefits, even without pregnancy and maternity leave. The precondition for these benefits is payment of social security contributions in the past year(s). A minimum payment is mandatory. Self-employed persons have health insurance and free-of-charge medical aid (universal right for insured persons), but sick leave benefits depend on previous social tax payments (see section 8.1 above for more information). Parental benefits are universal benefits and not related to employment status. If social taxes have not been paid before childbirth, the national minimum parental benefits will be paid. If the mother was not on a maternity leave, the parental benefit is paid starting from childbirth until the child turns 18 months old.

There is a serious problem with the absence of services supplying temporary replacements for sole proprietors (FIEs) who are on pregnancy or maternity leave. Some business associations (farmers' associations) have created some project-based social services. For micro-enterprises such as those of FIEs, there are also many subjective obstacles for creating national social services supplying temporary replacements.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

National law has not implemented the provisions regarding occupational social security for self-employed persons.

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

No exceptions apply.

8.9 Prohibition of discrimination

Article 6 of the GEA prohibits discrimination in professional life. Article 2 of the ETA explores the material scope. Gender is not explicitly mentioned as a ground of discrimination in the ETA. Article 3 of the CC allows any natural person to be a sole proprietor (self-employed).²⁰⁷ A sole proprietor shall submit a petition for his or her entry into the commercial register before commencing the activity.

8.10 Evaluation of implementation

Transposition of Directive 2010/41/EU and the Recast directive requirements regarding self-employment into national law is satisfactory, however there is no provision of occupational social security for self-employed persons.

8.11 Remaining issues

In 2020, self-employed people (FIE) accounted for 3 % of all business undertakings, but they were somehow forgotten from COVID-19 support measures and only a small number of self-employed people were supported by the temporary subsidy programme (salary compensation).²⁰⁸ In spring 2021, self-employed persons whose business income in 2020 was 50 % lower than in 2019 can apply for compensation from the temporary subsidy programme administered by the Unemployment Insurance Fund.²⁰⁹ The amount of compensation for an FIE is EUR 584 per month; this is a minimum salary amount for 2021.

²⁰⁷ <https://www.riigiteataja.ee/en/eli/519122017001/consolide>.

²⁰⁸ https://www.tootukassa.ee/sites/tootukassa.ee/files/tootasu_huvitise_luhianaluus_raport.pdf.

²⁰⁹ <https://www.tootukassa.ee/eng/content/subsidies-and-benefits/temporary-subsidy-program-0>.

9 Goods and services (Directive 2004/113)²¹⁰

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

The author of this report can find no studies in this area.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

Representatives of civil society and the equality body (EB) are not yet tackling problems regarding discrimination in digital technologies and the collaborative economy. Involvement in public debate is limited due to low knowledge and awareness as well as poor technological capacity. People are aware that algorithm bias exists, and that Google and Instagram do not offer some job vacancies to women.²¹¹ Possible discrimination of platform workers is hidden due to lack of information of this group of people.

9.1.3 Political and societal debate

The Estonian Government Office and the Ministry of Economic Affairs and Communications have launched a cross-sectoral project to analyse and prepare for the implementation of artificial intelligence tools, known as *kratts*, as well as develop a test environment in Estonia in November 2016.²¹²

9.2 Prohibition of direct and indirect discrimination

Article 7.1 of the GEA provides a duty for the supplier of goods or services to provide explanations for alleged discrimination (the provision entered into force on 23 October 2009). Within 15 working days of receipt of a written application describing the facts relating to a possible case of discrimination, a supplier of goods or services is required to provide the person who believes that he or she has been discriminated against in relation to access to or supply of goods or services on the grounds of sex, a written explanation concerning the activities of the supplier. The GEA does not specifically mention discrimination regarding housing, but Article 2(1) states that the GEA is applicable to all areas of social life.

Article 126 banning the use of gender-based factors in the assessment of insured risks was added to the IAA, and the amendments entered into force on 1 January 2016.

Articles 2(1)(5) and 2(1)(7) of the ETA prohibit discrimination of persons on grounds of nationality (ethnic origin), race or colour in the access to the services of social welfare, social security and healthcare, including social benefits and in the access to and supply of goods and services which are available to the public, including housing. The ETA does not prohibit discrimination on grounds of religion or other beliefs, age, disability or sexual orientation in access to the services and supply of goods that are available to the public, including housing. Gender reassignment as a specific ground of discrimination is not protected under Estonian legislation.

²¹⁰ See e.g. Caracciolo di Torella, E. and McLellan, B. (2018), *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

²¹¹ <https://www.catalyst.org/research/trend-brief-gender-bias-in-ai/>.

²¹² In Estonian mythology, a Kratt is a creature brought to life from hay or household objects.

9.3 Material scope

In Estonia the scope is more restricted than that of the Directive. Article 5(1)(4.1) of the GEA includes some exceptions and differences available in the treatment of persons due to their sex in the supply of goods and services. In Estonia, non-discrimination principles relating to the access to goods and services are followed, but a proactive approach is lacking. For example, no attention is paid to the adoption of specific measures to prevent or compensate for disadvantages linked to sex.

9.4 Exceptions

National law has not applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education.

9.5 Justification of differences in treatment

Services specifically aimed at supporting women represent a justifiable exception to the prohibition of gender discrimination in the consumption and supply of goods and services (e.g. shelters). Estonia has a regulated women's support service and most shelters for victims of domestic violence are prepared to meet victims' needs, e.g. women can be accompanied by children, although male victims are uncommon.²¹³

Activity of banks is not a public issue and contracts are confidential. In recent years several women have published stories in social media about banks who do not lend to a single mother, even if her salary is higher than average. The Gender Equality and Equal Treatment Commissioner has explained the unlawfulness of such activity and suggested asking banks for an explanation in writing.²¹⁴

9.6 Actuarial factors

The differences between the insurance premiums and insurance indemnities of females and males must not be caused by the use of the gender factor in the assessment of the insured risks. There are currently no complaints concerning a violation of the unisex principle by insurance companies.

However, there is a problem with women on maternity leave and women and men who have a right to parental leave, but would like to work, since the interruption of parental leave could cause the loss of right to unemployment assistance. The UIA needs to be amended to avoid discrimination against clients who have paid unemployment insurance tax.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

Insurers have not used sex as a risk-rating factor in life insurance since December 2012. On 10 June 2015, a new version of the Insurance Activities Act was adopted and a chapter on the protection of clients' rights was added. Article 216(1) of the IAA provides that the differences between the insurance premiums and insurance indemnities of females and males must not be caused by the use of the gender factor in the assessment of the underwriting risks. Article 216(2) of the IAA states that neither pregnancy nor maternity can affect the size of the insurance premiums and insurance indemnities.

²¹³ Social Insurance Agency (2019), *Naiste tugikeskuse teenusekirjeldus 2019* (Specification of the women's support service), available in Estonian: <https://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/naiste-tugikeskused#Naiste%20tugikeskuse%20teenusekirjeldus%202018>.

²¹⁴ https://www.aripaev.ee/arvamused/2021/03/25/liisa-pakosta-pangad-ei-tohi-inimest-tema-soo-tottu-halvemaks-pidada?fbclid=IwAR0CzdpIDdvVs8Y7wET0IK89AC7tzI6Jb6cipMmOQE_DAvWrlW01jbYlksQ.

9.8 Positive action measures (Article 6 of Directive 2004/113)

Article 5(2) of the GEA has provided the basis for positive action measures in relation to the access to and supply of goods and services. However, no positive action measures have been identified.

9.9 Specific problems related to pregnancy, maternity or parenthood

Padu (2015) has analysed problems with the implementation of the equality principle in the Estonian Unemployment Insurance Act (UIA).²¹⁵ Padu pointed out a problem connected with statutory childcare leave: an insured person who has used a pregnancy leave, maternity leave, adoptive leave or parental leave in the relevant 36 months and has worked at the same time is treated differently from persons who did not work. The 36-month period must be extended by the time spent on leave if there is no information in the unemployment insurance database concerning the person's unemployment insurance period. Currently, if a parent chooses to work, it will not be extended. The effect of the regulation is to discourage parents from working while at home with a baby.

Only some insurance companies in Estonia provide standard travel and health insurance covering risks related to pregnancy, but health documentation stating the current length of the pregnancy must be provided. As a rule, insurance cover is provided if the term of pregnancy is up to 36 weeks, although some companies only provide cover for 28 or 18 weeks. Medical insurance has unlimited compensation and the insured person receives compensation for all medical expenses incurred as a result of premature childbirth and hospitalisation as well as the costs of transportation back home. The price of such an insurance policy is two to three times higher compared to ordinary travel insurance without additional protection. However, the pregnant traveller should be cautious when selecting an insurance company and should carefully read the travel policy terms and conditions, because sometimes there are extra clauses concerning pregnancy complications and their consequences (except for complications resulting from accidents), and childbirth, premature birth, abortion, fertility and related treatment are also sometimes not covered.

9.10 Evaluation of implementation

The Estonian Consumer Protection Board and Technical Regulatory Authority received 3 229 complaints in 2017, but there were no sex discrimination complaints.²¹⁶

9.11 Remaining issues

Awareness about insurance policies is low among the general public in Estonia. A survey on insurance coverage was carried out by the Estonian Insurance Association and media company Mindshare in December 2017.²¹⁷ Survey findings show that: home insurance coverage was about 60 %, but only 40 % of respondents had an accident or life insurance policy; 38 % of respondents say that the price of accident and life insurance is too high; and 25 % of respondents do not take a need for accident or life insurance seriously or think that it is important.

A new survey on insurance coverage was carried out by the Estonian Insurance Association in 2019. Results show that only 26 % of respondents had a life insurance policy and 39 %

²¹⁵ Padu, K. (2015), *Võrdse kohtlemise põhimõtte probleeme Eesti töötuskindlustusõiguses* (Problems of Implementing Equality Principle in Estonian Unemployment Insurance Law), Master's thesis, University of Tartu, http://dspace.utlib.ee/dspace/bitstream/handle/10062/4756/padu_kristiina.pdf?sequence=1&isAllowed=y.

²¹⁶ Estonian Consumer Protection Board (2018), *Yearbook of the Estonian Consumer Protection Board 2017*, <https://issuu.com/tarbijakaitseamet/docs/tarbijakaitseametiaastaraamat20174071fd29315242>.

²¹⁷ Media reflection of 16 December 2017 about the survey available in Estonian at: <http://www.pealinn.ee/tagid/koik/veerand-inimestest-ei-pea-onnetus-ega-elukindlustust-vajalikuks-n208631>.

of respondents do not have savings.²¹⁸ Those most likely to hold a life insurance policy tend to be men with higher incomes, aged 41-50 and with children.

The Chancellor of Justice has found that during the reporting year (cut-off date 30 June 2020), many complaints concerned decisions to close or refusal to open a bank account. A person not allowed to have even a single bank account in Estonia is largely sidelined from the normal functioning of society. Unfortunately, data by gender were not provided.²¹⁹

Women who gave birth in 2020 experienced an extra burden and stress due to lockdown, when women's clinics did not allow their partners and doulas to accompany them at childbirth.²²⁰

²¹⁸ Summary available in Estonian at: <https://www.postimees.ee/6788073/uuring-pooled-koguvad-saaste-ja-veerandil-on-elukindlustus>.

²¹⁹ Chancellor of Justice (2020), Chancellor's Year in Review 2019/2020, <https://www.oiguskantsler.ee/annual-report-2020/equal-treatment>.

²²⁰ A doula is a trained companion who is not a healthcare professional and who supports another individual (the doula's client) through a significant health-related experience, also providing support at childbirth.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

According to the annual report on crime in Estonia, 3 987 cases classified as domestic violence were registered in 2020, making up 15 % of all crime.²²¹ This share is the same as in 2019. Domestic violence constitutes half of all crimes of violence and 84 % of domestic violence cases were classified as cases of physical abuse and 11 % as a threat.²²² This shows that other forms of violence are neither reported nor taken seriously.²²³ Perpetrators were partners or ex-partners (67 % out of all domestic violence cases), but also children or stepchildren (7 %). This shows that there is underreporting by older victims and elder abuse remains a hidden issue. 88 % of perpetrators were men and 81 % of victims were women in domestic violence cases. 97 % perpetrators were men in cases of sexual harassment.

Narits, Kaugia and Pettai have published two analyses of surveys from 2014 and 2017.²²⁴ The authors found that legal practitioners perceived numerous bottlenecks and unsolved problems in relation to the existing legislative regulation and legal practice addressing domestic violence.²²⁵ The participants in the surveys perceived an increasing need for cooperation with law-enforcement agencies in this regard (i.e., to concentrate on collaboration in relation to domestic violence). However, the authors consider that it is undoubtedly important to increase the involvement of specialists in the domestic violence field.

In 2019, in physical abuse cases (Articles 121(2)(2) and 121(2)(3), close relationship and subordination) investigated by the Prosecutor's Office, 341 were solved through the settlement procedure, 70 through the alternative procedure and only 41 passed through the general procedure.

A target was set to increase the proportion of criminal cases regarding physical abuse in domestic violence cases (Article 121(2)(2) of the Penal Code) reaching a final procedural decision within one week, but actually the share declined from 8 % in 2019 (125 cases out of a total of 1 578 cases) to 4 % in 2020 (86 cases out of a total of 1 971 cases).²²⁶

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

On 1 January 2015, amendments to Article 121 of the Penal Code on physical abuse entered into force, enabling aggravating circumstances. Namely, if physical abuse which causes pain was committed in a close relationship or relationship of subordination or committed repeatedly, the crime can be punished by a pecuniary punishment or up to five

²²¹ Tamm, K. (2021), 'Perevägivald ja ahistamine' ('Domestic violence and harassment'), *Kuritegevus Eestis 2020 (Crime in Estonia in 2020)*, Ministry of Justice, <https://www.kriminaalpoliitika.ee/kuritegevus2020/perevagivald-ja-ahistamine>.

²²² Article 121 and Article 120 of the Penal Code.

²²³ There is a problem with psychological abuse, which is often not brought to court; there are complaints of coercive control which cannot be addressed due to shortcomings in the Penal Code.

²²⁴ Narits, R., Kaugia, S., Pettai, I. (2016), 'The significance of recognising domestic violence, in light of Estonian legal expert opinion and the prospects for systematising the relevant legislation', *Juridica International*, 128–138; Narits, R., Kaugia, S., Pettai, I. (2018), 'Towards a single Government approach via further consolidation of law and order in Estonia, with domestic violence as an example', *Juridica International*, 104–116.

²²⁵ Amendments to the Penal Code entered into force on 6 July 2017.

²²⁶ Uku, H. and Nahkur-Tammiksaar, D. (2021), *Prokuratuuri tegevus 2020. aastal* (Activities of the Prosecutor's Office in 2020), https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Prokuratuuri%20tegevus%202020.aastal_2.pdf.

years' imprisonment.²²⁷ In 2020, a judgment by the Supreme Court of Estonia highlighted that an 'ex-partner' should be defined case by case, and the mere existence of common children and common property is not sufficient to refer to a close relationship between the victim and the accused.²²⁸

In 2017, the Penal Code (PC) was amended in relation to stalking, female genital mutilation (FGM), forced marriages and the prohibition of buying sexual services from trafficking victims. The minimum requirements of the Istanbul Convention were taken into account. In 2020, there were 225 cases of stalking registered and 77 % were related to domestic violence. No case reached the Supreme Court, but in some circuit court cases a concept of stalking is explored and Article 157.3 of the PC is explained. In its judgment No. 1-19-4428 of 21 February 2020, the Tallinn Circuit Court has dealt very thoroughly with the definition of harassing pursuit and the acts of conduct that qualify under it.²²⁹ In its opinions, the panel proceeded from the explanatory memorandum annexed to the Council of Europe Convention on preventing and combating violence against women and domestic violence. Also the explanatory memorandum of the Bill on Amendments to the Penal Code and Related Acts (385 SE) was considered.²³⁰

According to the Istanbul Convention, sexual harassment must be subject to criminal or other legal sanctions. The new Article 153.1 of the PC defines sexual harassment as 'an act of physical sexual nature committed intentionally against somebody's will and aiming to degrade', which is punishable by a fine or detention. This wording has failed to follow Article 40 of the Istanbul Convention, where the Estonian legislature has freely added 'an intention'. In 2020, there were 34 sexual harassment cases registered; the accused often argue that their behaviour was unintentional.²³¹

On 19 May 2020, the guidelines for local governments and social service providers were issued by the Ministry of Social Affairs.²³² The guidelines stress that in cases of domestic violence, local governments must pay attention to ensuring accommodation for people who have used violence against their family members, who have got an emergency barring order against them and who do not have alternative accommodation. The police have the option of taking the abusive person (including COVID-19 positives) to a detention centre for a short period (up to 48 hours), but then their accommodation (no transport required) should be provided by the local government. Information should be shared between local governments and police about institutions that organise such accommodation (including outside working hours).

Article 141.1 of the Code of Criminal Procedure (CCP) about temporary restraining orders was amended in May 2020.²³³ Namely, in urgent cases, the protection order may be established by an order of a prosecutor's office and regardless of the consent of the victim. In this case, the prosecutor's office shall inform a court of the establishment of the protection order within two working days and the court decides, taking into consideration the consent of the victim, on the admissibility of the protection order. Article 69 (tele-hearing) and 69.2 (written testimony) of the CCP were amended. Before this legal amendment, courts only decided on a temporary restraining order, but this process was

²²⁷ Articles 121(2)(2) and 121(2)(3) of the Penal Code, <https://www.riigiteataja.ee/en/eli/506032020002/consolide>; These cases consists majority of domestic violence cases, but could not be used for statistical analysis due to poor wording and there is no specification to victim-offender relationship. Perpetrator could be coach or boss etc.

²²⁸ Supreme Court of Estonia, Judgment of the Criminal Chamber, No. 1-19-3377 of 9 March 2020.

²²⁹ Judgment of the Tallinn Circuit Court No. 1-19-4428 of 21 February 2020.

²³⁰ <https://www.riigikoju.ee/tegevus/eelnoud/eelnou/f9a7291c-8c46-4ad8-a740-4e1c55c83964>.

²³¹ <https://www.kriminaalpoliitika.ee/kuritegevus2020/perevagivald-ja-ahistamine>.

²³² The COVID-19 pandemic-related emergency situation took place from 12 March to 17 May 2020; <https://www.equalitylaw.eu/downloads/5177-estonia-effective-protection-for-victims-of-domestic-violence-after-covid-19-emergency-period-75-kb>.

²³³ Article 141.1 of the Code of Criminal Procedure, RT I, 06.05.2020, 14, <https://www.riigiteataja.ee/en/eli/518052020007/consolide>.

slower. The number of temporary restraining orders doubled in 2020 (44) compared with 2017 (22).²³⁴

Amendments to the Victim Support Act (VSA) entered into force on 1 January 2017.²³⁵ The VSA provides the basis for state organisation of: victim support and conciliation (Article 6.3); the women's support centre service (Article 6.5); the victim support service for victims of human trafficking and sexually abused minors; and compensation for the cost of the psychological care given within the framework of provision of victim support and the payment of state compensation to victims of crimes of violence. A victim support service is defined in Article 3(1) of the VSA. The victim support service is a public service for maintaining or enhancing the coping abilities of people who have fallen victim to a criminal offence, negligence, mistreatment or physical, mental or sexual abuse. Article 5(5) of the VSA stipulates that the Estonian National Social Insurance Board exercises administrative supervision over the provider of victim support services. The amendments concerned the addition of the definition of psychotherapist services and violence against women, changing the definition of a victim of violence against women, and Article 6.5 provides specifications on the women's support centre service.²³⁶ Article 6.5(2) of the VSA defines a victim of violence against women as 'a woman against whom physical, sexual, mental or economic harm or suffering has taken place either in her public or private life by gender violence committed against her or a threat thereof'.

In 2020, amendments to the Victim Support Act were drafted and consulted upon; the draft law is planned to reach the Parliament in 2021.²³⁷

10.1.3 National provisions on online violence and online harassment

Article 157.3 of the Penal Code on harassing pursuit, stalking, entered into force on 6 July 2017. Repeated or consistent attempts to contact another person, watching him or her or interference in the privacy of another person against the will of such person in another manner, if the intent or effect thereof is to intimidate, humiliate the other person or disturb him or her in any other manner is punishable by a pecuniary punishment or up to one year's imprisonment. Cyberbullying as bullying online with the help of technologies, and cyberstalking as a repetitious activity with the use of technology to threaten, are tackled in court proceedings.

Younger women are the victims of the most common computer crimes (fraudulent calls, seizing e-mail and social media accounts), the majority of fraudulent calls are in Russian.²³⁸

Estonia has tried to tackle online violence through prevention and a couple of web-constables were hired in 2011. Web-constables are police officers working on the internet. They respond to notifications and letters submitted by people via internet and train children as well as adults in issues of internet security. The purpose of web-constables is to give advice – they do not process offences themselves.

²³⁴ Uku, H. and Nahkur-Tammiksaar, D. (2021), *Prokuratuuri tegevus 2020. aastal* (Activities of the Prosecutor's Office in 2020), https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Prokuratuuri%20tegevus%202020.aastal_2.pdf.

²³⁵ Victim Support Act (*Ohvriabi seadus*), RT I, 28.12.2017, 52, <https://www.riigiteataja.ee/en/eli/509012018004/consolide>.

²³⁶ Social Insurance Agency (2019), *Naiste tugikeskuse teenusekirjeldus 2019* (Specification of the women's support service).

²³⁷ EIS. Intention to develop the Victim Support Bill. File No. 20-0792; Ministry of Social Affairs (2020). *Ohvriabi seaduse eelnõu väljatöötamiskavatsus* ('Intention to develop the Victim Support Bill'), 15 June 2020; Frequent changes in the law (30 amendments made) have now led to a situation where the current Victim Support Act has become difficult to read and understand for those in need, for victims, specialists, and for lawyers.

²³⁸ <https://www.kriminaalpoliitika.ee/kuritegevus2020/kuberkuriteod>.

10.1.4 Political and societal debate

Court proceedings and court decisions regarding perpetrators are discussed. Specialists working with victims have brought up the issue of offenders receiving only mild punishments and impolite attitudes towards victims in the courtroom. In domestic violence cases, the most common punishment is probation (Article 73 of Penal Code) or probation with subjection of the offender to supervision of conduct (Article 74 of Penal Code).²³⁹ Some judges have even made nasty comments towards victims. There is still a culture of victim blaming, disrespect and rude attitudes towards the victim, or the absence of empathy.

Often, alternative procedures and settlement procedures are used (conciliation proceeding).²⁴⁰ In 2019, in physical abuse cases (Article 121(2)(2) and 121(2)(3), close relationship and subordination) investigated by the Prosecutors Office, 341 were solved through the settlement procedure, 70 through the alternative procedure and only 41 passed through the general procedure.²⁴¹

In 2019, there was even the case of a femicide, where judge allowed the settlement procedure and to qualify the incidents of health damage which caused a death (Article 118(1)(7) of the Penal Code, punishable by up to twelve years' imprisonment) to the killing another person through negligence (Article 118(1) of the Penal Code, punishable by up to three years' imprisonment). The perpetrator was sentenced to eight months in prison and to two years and four months as a probation period. The mother of the deceased victim did not even get funeral compensation due to the settlement procedure which she accepted due to missing legal support.²⁴²

Sutt (2017) studied court decisions regarding intimate partner violence cases.²⁴³ Sutt found that out of a total of 260 cases involving domestic violence in 2017, the court sentenced the perpetrator of domestic violence to participate in a social programme in 120 cases, which is almost 50 % of the cases.²⁴⁴ The analysis of the court verdicts also showed that in only in seven cases out of that 120, the abuser was a female. Sutt found that 63 % of the total number of cases, the perpetrator was punished for committing the physical abuse repeatedly. This shows that victims do not seek help immediately, which means that the abuser has used violence several times before they are taken to court.

Parts (2018) assessed the incidence of secondary victimisation in criminal proceedings.²⁴⁵ The author analysed the answers of 295 victims, who were interrogated from 16 January to 16 December 2016 as victims in the criminal proceedings.²⁴⁶ More than half (52 %) of

²³⁹ <https://www.riigiteataja.ee/en/eli/506032020002/consolide>.

²⁴⁰ Article 233 of the Code of Criminal Procedure on an alternative procedure and Articles 239 and 240 of the Code of Criminal Procedure on a settlement procedure, <https://www.riigiteataja.ee/en/eli/512012021001/consolide>.

²⁴¹ Väling, K. (2020), 'Korduvates vägivaldakaristatsetes kokkuleppemenetluses mõistetud karistuste analüüs' ('Analysis of sentences imposed in conciliation proceedings for repeated violent crimes'). In: Prokuratuur (2020), 'Aastaraamat 2019' ('Yearbook 2019'). Available in Estonian at: <https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/KLM%20karistuste%20analüüs%202019.pdf>.

²⁴² Judgment of the Harju County Court No. 1-19-3342 of 27 June 2019, <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=256118866>.

²⁴³ Sutt, M. (2018), *Perevägivaldsete kohtlemine kriminaalhoolduses* (Domestic violence perpetrators in Estonian probation system), Master's thesis, University of Tartu, <https://dspace.ut.ee/bitstream/handle/10062/61188/suttma2018.pdf?sequence=1&isAllowed=y>.

²⁴⁴ This shows a great improvement considering the statistics from 2011 (when only 20 cases out of 200 required the perpetrator to take part in a social programme).

²⁴⁵ Parts, K. (2018), *Teisene ohvristumine Eesti kriminaalmenetluses* (Secondary Victimisation in Estonian Criminal Proceedings). MA thesis, University of Tartu, Faculty of Social Sciences, School of Law, <https://dspace.ut.ee/bitstream/handle/10062/61127/partsma2018.pdf?sequence=1&isAllowed=y>.

²⁴⁶ Data were collected during the study of protection and treatment of victims of crime conducted by the Centre for Applied Social Sciences (CASS) at the University of Tartu.

the victims of the study felt that they did not have sufficient insight into their own procedural process.

Saar (2018) studied the Estonian criminal legal procedure and describes it as a hybrid or mixed system, 'wherein an inquisitorial model applies to pre-trial investigations and an adversarial procedure is introduced at the stage of judicial proceedings'.²⁴⁷ The hybrid system in criminal proceedings leads to the increased role of the adversarial procedure, wherein the negotiable nature of truth is rather explicit. Saar argues that 'it might be that we have been too hasty with our disregard for truth as the objective of criminal proceedings and that it is not possible to resolve practical issues arising on a regular basis efficiently without restoring the honourable position of truth in it'.

In Estonia in times of the COVID-19 pandemic, the number of reported domestic violence cases did not increase compared with 2019 (4 119 cases in 2019, 3 987 in 2020), but there was an increase in calls to victim support helpline.²⁴⁸

10.2 Ratification of the Istanbul Convention

The Istanbul Convention was ratified on 20 September 2017 and entered into force on 1 February 2018 in Estonia.²⁴⁹ In 2017, several amendments to the Penal Code and to the Victim Support Act were adopted regarding stalking, FGM, forced marriages and the prohibition of buying sexual services from victims of trafficking. The minimum requirements of the Istanbul Convention were taken into account. Sexual harassment is now defined as an offence against equality under the Penal Code: it is seen as a misdemeanour and the Police and Border Guard Board should conduct summary proceedings. The legal amendments have had a remarkable impact on the reporting of crimes of sexual harassment and stalking, which were hidden crimes before. The coordinating body for the implementation of the IC is the Ministry of Justice.

²⁴⁷ Saar, J. (2018), 'The Case of Estonian Criminal Proceedings', *Juridica International*, 2018(5), 299-306.

²⁴⁸ <https://www.kriminaalpoliitika.ee/kuritegevus2020/perevagivald-ja-ahistamine>.

²⁴⁹ Text available in Estonian at: RT II, 26.09.2017, 2, <https://www.riigiteataja.ee/akt/226092017002>.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

Legal studies from a gender equality perspective are scarce in Estonia. FRA survey results on fundamental rights from 2019 showed 84 % of women of Estonia did not report the incident of physical violence, and 73 % of women did not contact any organisation or services following the incident of physical violence. 85 % of women did not report the incident of harassment, 5 % reported to police and 6 % to some other organisation. However, 36 % of all respondents agree or strongly agree with the statement that authorities are providing easy ways to make formal complaints.²⁵⁰

Naaber (2014) has considered whether there is an opportunity in the Estonian legal system for the employee to claim for effective, proportionate and dissuasive damages when his/her rights have been violated based on his/her sex.²⁵¹ Naaber found that in Estonian case law, the court has a power to follow rules set by Article 18 of the Directive 2006/54/EC. Imposing compensation that has a dissuasive effect should be an inseparable part of non-pecuniary damage in sex discrimination disputes. The law does not state the scope of this type of compensation. Dissuasion is accomplished only when the means of remedy are suitable for the employee and they have a dissuasive effect on the employer. Article 13(2) of the Gender Equality Act and Article 134(6) of the Law of Obligations Act allow the court to award the employee who has been discriminated against in accordance to Directive 2006/54/EC Article 18, compensation that is efficient, proportional and dissuasive for the offender. Naaber concludes that awarding dissuasive compensation should be a rule, not an exception.

11.1.2 Other issues related to the pursuit of a discrimination claim

Due to legal shortcomings in the Equal Treatment Act, where a protection against discrimination in areas such as the provision of housing, healthcare, social welfare, education, goods and services is not provided to all minority groups, it is impossible to seek the advice and assistance from the Gender Equality and Equal Treatment Commissioner, and victims cannot claim damages for discrimination.²⁵²

Judges have access to training and an obligation to undertake it, but gender issues are not taught. Judges have a high workload. The term 'gender' is missing from the Code of Civil Procedure (CCP).²⁵³ However, Article 7 stipulates that the administration of justice must take place on the basis of equality ('the parties and other persons are equal before the law and the court'), which means that during either a civil or criminal trial, both sides have legally equal access to the court and neither side should be procedurally disadvantaged. If the power and resources of one party gives them an advantage, the court is obliged to take that into account in order to avoid the advantage —although without removing it. When making decisions about child custody rights between parents in domestic violence cases, the context should be taken into account given that the parties are not equal in terms of the power that they have.

²⁵⁰ FRA (2021). Fundamental Rights Survey, <https://fra.europa.eu/en/data-and-maps/2021/frs>; there were 1 067 respondents from Estonia aged 16 and older.

²⁵¹ Naaber, H. (2014), *Tõhus, proportsionaalne ja tõrjuv kahjuhüvitis soolise diskrimineerimise keelu rikkumise korral töösuhtes* (Effective, proportional and dissuasive compensation when violating prohibition of discrimination in labour relations), Master's thesis, University of Tartu. Summary in English available at: https://dspace.ut.ee/bitstream/handle/10062/43005/naaber_ma_2014.pdf?sequence=1&isAllowed=y.

²⁵² Officials of the Ministry of Social Affairs are ready for the second attempt to adopt amendments to the Equal Treatment Act in 2021. The first attempt failed in 2019. In January 2021, a new Cabinet was formed.

²⁵³ Code of Civil Procedure, <https://www.riigiteataja.ee/en/eli/512042019002/consolide>.

11.1.3 Political and societal debate and pending legislative proposals

Political and societal debate on gender is almost entirely absent. There are no legislative proposals regarding gender discrimination and access to justice.

Prejudices and stereotyping might affect the right to a fair trial and should be avoided. Some media debates encourage prejudices and gender stereotypes, which might lead to unfair judgments.

11.1.4 Gender mainstreaming

A gender perspective is poorly, often not at all, integrated into the preparation, design, implementation, monitoring and evaluation of policies. There is no gender equality strategy. The Welfare Development Plan 2016–2023 is often referred to as the gender equality strategy, but it is too narrow and does not cover all areas of life.²⁵⁴ It is actually the development plan for social security, inclusion and equal opportunities.

Policy and budgetary frameworks of national action plans are not supportive towards horizontal theme strategies. It is important to have political priority and financial support for implementing action plans. Lack of financial support and political initiative can be barriers to achieving the aims set out in action plans.²⁵⁵

From the positive side, since 2020, the Estonian Government uses activity-based budgeting, which associates state costs with activities and performance objectives. Activity-based budgeting makes it easier to integrate the gender aspect into the budget.

There is a lack of knowledge due to lack of gender-segregated data and lack of gender budgeting. Possibilities provided by the Directive 2014/24/EU for gender responsive public procurement (GRPP) is not used for gender equality promotion.²⁵⁶ Article 2(2) of the Public Procurement Act about the purpose of the Act provides that social considerations, implementation of innovation and environmentally friendly solutions are considered upon planning and carrying out public procurement.²⁵⁷ The national gender equality programme for 2021–2024 is planned too modestly, tackling the gender pay gap and gender stereotypes only; however, the importance of the need for every ministry to collect gender-segregated statistics is highlighted.²⁵⁸

11.2 Victimisation

The GEA provides a general protection against victimisation. Article 5(1.1) of the GEA stipulates that 'adverse treatment of a person, as well as causing negative consequences for that person due to the fact that that person has relied on the rights and obligations provided for in this Act or has supported another person in the protection of his or her rights provided for in this Act shall also be deemed to be discrimination'.

This Article is often ignored by employers and even by the law enforcement agencies. As an example, the Estonian National Opera director's sexual harassment scandal could be

²⁵⁴ https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf.

²⁵⁵ Ministry of Social Affairs (2021). Targeted consultation to Member States in the framework of the gender-based and domestic violence initiative.

²⁵⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, pp. 65-242. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>.

²⁵⁷ Public Procurement Act, RT I, 08.07.2020, 8, <https://www.riigiteataja.ee/en/eli/513072020002/consolide>.

²⁵⁸ Ministry of Finance (2020), State Budget Strategy 2021–2024, <https://www.rahandusministeerium.ee/et/riigieelarve-ja-majandus/riigi-eelarvestrateegia>.

brought here; the case was made public in a weekly newspaper in June 2020.²⁵⁹ Before stepping down in August 2020, different strategies were used by the director, starting with denial; rhetoric 'just a joke' or 'my humour'; female colleagues were generally happy and pleased; there had been no such allegations in the past; some female employees have personal problems, etc. Police took the case and found the former director guilty and issued a fine of EUR 400 on 21 October 2020.²⁶⁰ The former director challenged the misdemeanour decision through his counsel and on 17 February 2021, the Harju County Court found no sexual harassment. The court found that witnesses could not be trusted and the conduct of the accused does not have features constituting an offence by Article 153.1 of the Penal Code. The Police took the case to the Supreme Court in March 2021. During the period from June 2020 until March 2021, victims' names have been made public and victim blaming was fuelled by the former director's allies and by people who state that 'sexual harassment is only some negative influence of #metoo'.

Article 3(6) of the Equal Treatment Act (ETA) stipulates that discrimination also includes a situation where one person is treated less favourably than others or negative consequences follow because he or she has filed a complaint regarding discrimination or has supported a person who has filed such complaint.

Opinion No. 39 of the Gender Equality and Equal Treatment Commissioner of 2 October 2015 dealt with an employee with a child under three years old who experienced work bullying and the extraordinary cancellation of employment contract by employer.²⁶¹ The Commissioner explained that victimisation is discrimination (Article 5(1.1) of the GEA).

Article 89(5) of the Employment Contracts Act provides that upon the cancellation of an employment contract due to redundancy, employee representatives and employees who are raising a child under three years of age have the preferential right of keeping their jobs. In 2020, there was a case where a parent raising a child under three years of age was laid off but the LDC decided the case in favour of the employer.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

National courts are accessible for victims of discrimination, but there are problems of affordability. Civil proceedings are costly and time consuming. The cost of legal services is high and lawyers' fees do not have upper ceiling. There is also the fear of victimisation. Employees have less information and resources when compared with employers.

Labour dispute committees (LDCs) solve conflicts between employees and employers. If a petitioner is not satisfied with the decision, they can go to court. The labour dispute committees handle an average of 2 600 labour dispute cases a year; in 2020, there were 3 378 complaints. A majority of these cases (60 %) were connected with unpaid wages, compensation or benefits and dismissals. There were 14 cases regarding unequal treatment.²⁶²

Potential claimants have the right to ask the Equality Commissioner or the Equality Policies Department at the Ministry of Social Affairs for advice. In court proceedings, some employers have attempted to adduce other circumstances as a reason for dismissals (incompetence, emotionally unfit etc.). Article 7 of the GEA imposes a duty on the

²⁵⁹ Lehepuu, G. (2020), 'Rahvusoper Estonia töötajad: direktor Aivar Mäe alandab ja ahistab naisi' ('Employees of the Estonian National Opera state that director Aivar Mäe belittles/humiliates and harasses women'), Eesti Ekspress, 22.06.2020. Available in Estonian at: <https://ekspress.delfi.ee/artikkel/90207455/rahvusoper-estonia-tootajad-direktor-aivar-mae-alandab-ja-ahistab-naisi>.

²⁶⁰ <https://www.err.ee/1149561/politsei-maaras-aivar-maele-seksuaalse-ahistamise-eest-rahatrahvi>.

²⁶¹ http://www.volinik.ee/wp-content/uploads/2018/02/Voliniku-arvamus-39_Ohvrstamine.pdf.

²⁶² <https://www.ti.ee/et/statistika/toovaidlused>.

employer to provide explanations for any dismissal and in court cases employers' explanations were found to be stronger compared to the arguments of employees.

There is a need to increase awareness concerning the protection of rights and knowledge on how to gather evidence and how to prove discrimination or harassment cases in court.

On 1 January 2018, a new law, the Labour Dispute Resolution Act, entered into force. The law sets out the duty of a labour dispute committee, which is to conduct proceedings purposefully and efficiently and to resolve a labour dispute properly, as easily and quickly as possible and with the lowest expenses possible. The chairperson of the LDC has the additional right to make proposals, to resolve and to affirm conciliation proceedings. Article 13(2) provides that during the entire proceedings, the labour dispute committee must do everything in its power for the labour dispute or part thereof to be resolved by way of a compromise or other agreement of the parties. To this end, the chairperson of the labour dispute committee may, among other things, present to the parties a draft compromise agreement, propose to resolve the dispute in conciliation proceedings or outside the labour dispute committee. In 2020, there were 688 compromise agreements (21 % out of all petitions) resolved by conciliation proceedings and affirmed by the chairperson of the LDC.

National courts are accessible for victims of domestic violence, but victims do not always take their case to court. Prosecutors tend to suggest reconciling the victim with the perpetrator and victim blaming can occur in court. The investigation procedure does not provide adequate physical safety and security for the victim.²⁶³

There seem to be problems with decisions about child custody in domestic violence cases. Child custody and visitation issues can be difficult in any divorce or separation, and particularly challenging after a violent relationship. It is complicated to interpret the child's best interests. In Estonia, a concept widely used by courts and child protection specialists is that of parental alienation.²⁶⁴ Research findings by Lapierre et al. (2020) showed that even though several documents and key informants noted that 'parental alienation' should not be used in domestic violence situations, abused women are still seen as engaging in 'parental alienation'.²⁶⁵ This reflects a limited understanding of domestic violence, which defines it as excluding manifestations other than physical assaults and post-separation violence. Professionals of child protection services, lawyers and judges need additional training on domestic violence and coercive control, in order to better understand the complex dynamics of power and control and the distinction between domestic violence and 'high conflict'.

In Estonia, in spite of the COVID-19 pandemic, access to courts was possible and supported by the e-File system. The e-File is an online information system which allows procedural parties and their representatives to electronically submit procedural documents to courts and to observe the progress of the proceedings related to them. For example, a single parent can apply for maintenance without making a trip to the court house.²⁶⁶ However, the speed of proceedings for domestic violent crimes was hampered by the occupation of police investigators with other tasks, mainly due to the pandemic, which made it impossible to conduct expedited procedures in 2020.²⁶⁷

²⁶³ Kass, V. (2017), *Paarisuhteväguvalla kuritegude tõlgendused Eesti kohtutoimikute analüüsi põhjal* (Interpretations of intimate partner violence based on analysis of Estonian court files), Master's thesis, University of Tartu.

²⁶⁴ In the 1980s, a psychiatrist and psychoanalyst Dr. Richard A. Gardner developed a theory about parental alienation syndrome, which he said could lead children in high-conflict custody cases to falsely accuse a parent of abuse.

²⁶⁵ Lapierre, S., Ladouceur, P., Frenette M. and Côté, I. (2020), The legitimization and institutionalization of 'parental alienation' in the Province of Quebec, *Journal of Social Welfare and Family Law*, 42:1, 30-44.

²⁶⁶ <https://www.rik.ee/en/e-file>.

²⁶⁷ Uku, H. and Nahkur-Tammiksaar, D. (2021), *Prokuratuuri tegevus 2020. aastal* (Activities of the Prosecutor's Office in 2020), https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Prokuratuuri%20tegevus%202020.aastal_2.pdf.

11.3.2 Availability of legal aid

The Labour Dispute Resolution Act stipulates that filing a petition to the labour dispute committee and proceedings are exempt from state fees, but each party must cover their own procedural expenses. High costs for legal advice are an obstacle for employees or dismissed employees. Expenses arising in a labour dispute committee are extrajudicial costs. If the court proceeding starts and the action is filed not later than six months after the end of the pre-court proceedings, then the coverage of these costs depends on the court decision.

Available and affordable legal aid is a major obstacle to defending one's rights. The Human Rights Centre has been involved in a couple of strategic litigation cases pro bono a year, supported by the Ministry of Social Affairs.²⁶⁸ In 2020, there was a case against the Tartu City Government, but the claimed age discrimination was not found. The claimant lost, but the facts, interpretation by the court and the outcome of the case is a useful departure point for the next case.²⁶⁹

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

It is hard to find cases where the horizontal effect of relevant gender equality law has been raised. However, there are some cases with indirect effect for women due to higher life expectancy compared with men. In the *Mangold* judgment of 2005, the CJEU acknowledged the existence of a principle of non-discrimination on grounds of age, which must be regarded as a general principle of EU law. The *Mangold* judgment was quoted when the Constitutional Review Chamber interpreted Article 12(1) of the Constitution and answered to what purpose Article 12(1) of the Constitution allows people to be treated differently, and analysed the mutual relationship between the first and second sentence of Article 12(1) of the Constitution, and whether 'the other grounds' mentioned in the second sentence of Article 12(1) of the Constitution, on the basis of which no one should be discriminated against, can include age.²⁷⁰ The first sentence of Article 12(1) of the Constitution contains the general fundamental right to equality and the second sentence contains prohibitions against discrimination, i.e. special fundamental rights to equality. The case was about the constitutionality of Article 57(6) of the Health Insurance Act in the part where it precludes the right to sickness benefit for persons who are at least 65 years of age for more than a total of 90 calendar days per calendar year. The Supreme Court *en banc* was of the opinion that neither the worse-than-average state of health of the elderly nor the receipt of an old-age pension justify the saving on health insurance funds spent on the payment of sickness benefits to persons who are at least 65 years of age. An age limit as a formal criterion and the receipt of a state old-age pension cannot be sufficient reasons to deprive persons who are at least 65 years of age of benefits that persons below the age of 65 receive under Article 57(5) of the HIA.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

The author of this report has found neither legal analysis nor cases on disputes between private parties regarding gender equality and social rights.

The Gavriloski report (2019) points to a recent comparative study, which showed that 'constitutional provisions are generally either not directly applicable or they have vertical effect only in litigation involving the state as the respondent', and 'are deemed to be applicable in horizontal relations [among private persons and entities] in Bulgaria, Cyprus,

²⁶⁸ Strategic litigation is carried out on the project basis; <https://humanrights.ee>.

²⁶⁹ Judgment of the Tartu Circuit Court of 19 November 2020 in administrative matter no. 3-19-504.

²⁷⁰ Supreme Court of Estonia, SC *en banc* Judgment, No. 3-4-1-12-10 of 7 June 2011, <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-12-10>.

Denmark, Estonia, Greece, Iceland, Liechtenstein, Luxembourg, the Netherlands, Norway, Serbia, Slovenia, Spain and Turkey'.²⁷¹

11.5 Burden of proof

Since 2009, a shared burden of proof is stipulated in Article 4 of the Gender Equality Act. An application of a person addressing a court, a labour dispute committee or the Gender Equality and Equal Treatment Commissioner must set out the facts on the basis of which it can be presumed that discrimination based on sex has occurred.

In the course of proceedings, it is for the respondent to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, the refusal will be deemed to be equal to acknowledgement of discrimination by the person.

In labour disputes concerning discrimination, the shared burden of proof prescribed in the ETA or in the GEA applies. In Estonia, the employer must keep data on the pool of candidates in the recruitment process to be able to provide explanations in the event of a claim.

The statistical overview by the Labour Inspectorate on discrimination and unequal treatment disputes shows the importance of evidence.²⁷² In 2020, a total of 17 claims were reported (3 were not studied), out of which, 7 were connected with perceived discrimination for several reasons (due to fulfilling parental obligations, complaints about sexual harassment and one was connected with discrimination on grounds of sexual orientation). In all these seven cases the applicants were unable to provide statements and facts clarifying the basis on which unfair or discriminatory treatment took place. These cases illustrate the fact that employees, compared to employers, have less knowledge about legally applicable concepts of discrimination and equal treatment. Employees have fewer resources for getting legal advice from lawyers.

Article 231(1) of the Code of Civil Procedure (CCP) stipulates that a fact, which the court deems to be a matter of common knowledge, need not be proved. A fact concerning which reliable information is available from sources outside the proceedings may be declared a matter of common knowledge by the court. Article 232(2) defines the procedure of evaluation of evidence and states that this decision is made according to the conscience of the court.

The shared burden of proof does not apply in administrative or criminal proceedings.

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

Article 13 of the Gender Equality Act on compensation for damage was amended and entered into force on 1 January 2009. If the rights of a person have been violated due to discrimination in the workplace and other areas of life, he or she may demand from the person who has violated the rights that the harmful activity is terminated and that the damage be compensated. Article 24(2) of the Equal Treatment Act stipulates that an injured party may demand that, in addition to 'damage compensation', a reasonable amount of money be paid to the party as compensation for non-patrimonial damage caused by the violation. In determining the amount of compensation, a court or a labour

²⁷¹ Gavriloski, Z. (2019), *Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region*, Opinion-Nr.: NDISCR/TAJ/329/2018, <https://www.osce.org/odihr/434810?download=true>.

²⁷² Labour Inspectorate (2021), *Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlusajad perioodil 01.01.2020-31.12.2020* (Labour disputes based on unequal treatment in 2020), https://www.ti.ee/sites/default/files/dokumendid/Meedia_ja_statistika/Toeovaidlused/tvk_ebavordne_kohtlemine_2020.pdf.

dispute committee must take into account, *inter alia*, the scope, duration and nature of the discrimination. Neither the minimum duration or 'a reasonable amount' is defined. Sanctions against employers are equal to the amount to be paid to the employee(s). There was no compensation paid between 2009–2020.

In the event of the unlawful cancellation of an employment contract by an employer, the employer must pay the employee compensation of three to six months' average wages of the employee. In the event of the unlawful cancellation of an employment contract by an employee, the employer has the right to claim 'reasonable compensation' from the employee. The court or labour dispute committee will, at the request of the employer or the employee, terminate the employment contract as of the time when it would have expired in the case of validity of the cancellation. In these cases, if an employee is pregnant, has the right to pregnancy and maternity leave or has been elected as the employees' representative, the employer must pay the employee compensation in the amount of six months' average wages of the employee. The court or labour dispute committee may change the amount of the compensation, taking into consideration the circumstances of the cancellation of the employment contract and the interests of both parties.

An employee has the right to claim compensation for unlawful termination and/or to continue the employment relationship. If the court or the labour dispute committee finds that the dismissal was unlawful, the employment contract is deemed not to have been terminated.

Reinstatement is possible due to the cancellation of an employment contract without a legal basis being void (for a pregnant employee or employees' representative), but this practice is rare and compensation is preferred.

Victims of violence have the right to a remedy. Payment of state compensation to victims of violence is regulated by the Victim Support Act.²⁷³ The compensation amount depends on the established minimum wage and survivor's pension or work ability allowance.

11.6.2 Effectiveness, proportionality and dissuasiveness

Article 13(2) of the Gender Equality Act and Article 134(6) of the Law of Obligations Act allow compensation for the loss suffered by the employee who has been discriminated against in accordance with Article 18 of Directive 2006/54/EC.

The Labour Dispute Resolution Act came into effect on 1 January 2018. The Individual Labour Dispute Resolution Act was repealed. There is no longer a limit on the amount of any monetary claim by the petitioner.²⁷⁴ Since 1 January 2018, it is stipulated that the labour dispute committee (LDC) may not exceed in its decision the limits of the claim or make a decision on a claim that has not been filed. Due to the removal of the upper monetary limit of accepted applications to the LDC, there was an LDC decision in 2018 about the unlawful cancellation of an employment contract, where the employer was ordered to pay the employee compensation corresponding to the wages that employee would have been entitled to until the expiry of the contract term. The amount to be paid in this case was EUR 118 000.²⁷⁵ Such compensation is effective and dissuasive compared to compensation to the amount of two to three months' average wage.

²⁷³ <https://www.riigiteataja.ee/en/eli/513052020004/consolide>.

²⁷⁴ According to Article 4(1.1) of the Individual Labour Dispute Resolution Act, a labour dispute committee could not resolve disputes over financial claims exceeding EUR 10 000.

²⁷⁵ The employer disagreed with the decision and went to court. The proceedings reached the Supreme Court and the dismissal was found lawful; no compensation was paid to the former employee.

Case law analysis shows that employee claims for compensation for non-patrimonial damage, pain and suffering caused by the discrimination are often rejected by the courts.²⁷⁶

The Commissioner for Human Rights of the Council of Europe visited Estonia in June 2018 and found sanctions against perpetrators inadequate and remedies for victims inaccessible.²⁷⁷ The Commissioner stated that Estonia has a well-developed system of protection and support for women victims of violence, but 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 recommended 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.

11.7 Equality body

Estonia has two independent equality bodies: the Gender Equality and Equal Treatment Commissioner (the Equality Commissioner)²⁷⁸ and the Chancellor of Justice. Awareness about the national gender equality body is average; 64 % of respondents knew about the gender equality body in Estonia.²⁷⁹

The Commissioner covers discrimination on grounds of sex, nationality (ethnic origin), race or skin colour, religion, views, age, disability or sexual orientation. Only the Commissioner has an explicit duty to advise and provide assistance to people who suspect that they have been discriminated against. The Commissioner has a right to request all documents about working conditions and wage policy. According to Article 15(1) of the GEA, the Gender Equality and Equal Treatment Commissioner (EB) is an independent and impartial expert who acts independently, monitors compliance with the requirements of the Gender Equality and the Equal Treatment Act and performs other functions imposed by law. The Equality Commissioner provides advice and assistance for people who suspect that they have experienced discrimination. The Chancellor of Justice has more resources and power regarding legislative development. The Chancellor of Justice analyses proposals concerning the amendment of acts, the passage of new acts and the activities of state agencies, and presents reports and makes legal proposals to the Parliament.²⁸⁰

The competencies of the Equality Commissioner are stipulated in the Gender Equality Act, the Equal Treatment Act and the EB regulations. There are modest resources to fulfil the list of duties. The EB has poor human resources in relation to its mandate. According to the state budget for 2020 (REL2020), EUR 503 000 was provided to the EB.²⁸¹ With these resources, the EB must fulfil several duties in the field of equality and non-discrimination. The independence of the EB is not guaranteed, because the Commissioner is appointed for a five-year period by the Minister of Social Affairs. In 2020, the Gender Equality and Equal Treatment Commissioner was appointed for the second term.

The EB is not able to participate in the state budget negotiation process, but depends on the Ministry of Social Affairs budget spending. This leads to persistent understaffing. The

²⁷⁶ Available in Estonian at:

<https://www.riigikohus.ee/sites/default/files/elfinder/analyyssid/2017/Mittevaralise%20kahju%20huvitamine%20tsiviil-%20ja%20kriminaalasjades%202016.pdf>.

²⁷⁷ <https://rm.coe.int/report-of-the-council-of-europe-commissioner-for-human-rights-dunja-mi/16808d77f4>.

²⁷⁸ The initial name of the impartial body was the Gender Equality and Equal Treatment Commissioner; due to the length, the equality body often presents as the Commissioner for Equal Opportunities, <https://volinik.ee/en/about-us/>.

²⁷⁹ FRA (2021). Fundamental Rights Survey, <https://fra.europa.eu/en/data-and-maps/2021/frs>; number of respondents from Estonia 1 067, data collection from 25 March to 21 May 2019.

²⁸⁰ Article 1(2) of the Chancellor of Justice Act, <https://www.riigiteataja.ee/en/eli/527112018002/consolide>. <https://www.riigiteataja.ee/en/eli/528052020006/consolide>.

²⁸¹ Article 6(3) of the State Budget Act for 2020, <https://www.riigiteataja.ee/akt/123122019021>.

EB is a partner of a couple of EU projects and the total budget was EUR 956 201 in 2019.²⁸² In order to tackle gender stereotypes, the Office of the Equality Commissioner implemented the EU project 'BREAK!' in cooperation with national and international partners in 2017–2019. Video clips are available in English.²⁸³

In 2015, the Gender Equality and Equal Treatment Competence Centre for the use of Cohesion Policy Funding (ESIF Competence Centre) was established at the Office of the Gender Equality and Equal Treatment Commissioner by an agreement with the Ministry of Social Affairs. One of the main tasks of the Centre has been to provide feedback and counselling in the process of preparing conditions for granting support from the ESI Funds and to carry out surveys to analyse the outcomes of gender mainstreaming and equal opportunities activities at project level. The Equality Competence Centre is active in awareness raising and training provision.²⁸⁴

The Chancellor of Justice conducts a conciliation procedure if the complainant states that they have been discriminated against on the grounds of sex, race, nationality (ethnic origin), colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation, or other discrimination grounds specified by law. At no time since 1999, throughout the whole existence of this Office, has the Chancellor of Justice initiated any conciliation proceedings.

The Chancellor of Justice has the power of constitutional review. The Chancellor exercises similar supervision over legislation of general application issued by the Government, ministries and local government authorities. The Chancellor of Justice verifies whether or not agencies under its supervision adhere to the principles of observance of the fundamental rights and freedoms and good administrative practice.

Since 2016, the Chancellor of Justice has performed the functions of a supervisory institution of the Convention on the Rights of Persons with Disabilities and has separate funding for fulfilling this duty. On 13 June 2018, the Chancellor of Justice Act was amended to provide for additional duties.²⁸⁵ Based on Article 33(2) of the Convention on the Rights of Persons with Disabilities, the Chancellor of Justice will perform the functions of promoting the implementation, protection and monitoring of the Convention from 1 January 2019. As of 1 January 2019, the Chancellor of Justice is the national human rights institution (NHRI) in Estonia.²⁸⁶ As yet, there are no examples of how the NHRI has promoted gender equality.

11.8 Social partners

Trade union contributions have been modest regarding the promotion of gender equality. Employee protection is low and employees' willingness to fight for their rights is low. Union density was at around 7 % in Estonia in 2015.²⁸⁷

There are legal requirements for the involvement of interest groups in the law-drafting process:

- Regulation of the Government 'Rules for Good Legislative Practice and Legislative Drafting', entered into force on 1 January 2012;²⁸⁸

²⁸² https://volinik.ee/wp-content/uploads/2020/05/Voliniku-2019_aasta-tegevuste-ulevaade_webmai2020.pdf.

²⁸³ For more information, see: <https://brea-k.eu/en/>.

²⁸⁴ <https://kompetentsikeskus.sm.ee>.

²⁸⁵ Chancellor of Justice Act (*Õiguskantsleri seadus*), RT I, 03.07.2018, 16,

<https://www.riigiteataja.ee/en/eli/527112018002/consolide>. 26.05.2020, 11,

<https://www.riigiteataja.ee/en/eli/528052020006/consolide>.

²⁸⁶ <https://www.oiuguskantsler.ee/annual-report-2019/new-tasks#i1>.

²⁸⁷ Data from Statistics Estonia, no recent data, <http://www.stat.ee>.

²⁸⁸ RT I, 29.12.2011, 228, acronym in Estonian HÕNTE, <https://www.riigiteataja.ee/en/eli/508012015003/consolide>.

- Rules of the Government of the Republic;²⁸⁹
- Good Practice of Involvement.²⁹⁰

11.9 Other relevant bodies

As of 1 January 2019, the Chancellor of Justice is the national human rights institution (NHRI) in Estonia. NHRI has an Advisory Committee. 50 members of the Committee were selected via an open competition and include people from various areas of life from all across Estonia. The Advisory Committee is elected for a period of four years and it gathers at least twice a year.

Article 24 of the GEA provides for an official advisory body within the Ministry of Social Affairs, the Gender Equality Council. This article was implemented in 2013, when the Gender Equality Council was established.²⁹¹ The council has 22 members from different organisations. The Government of the Republic must approve its membership. The Gender Equality Council is invisible to the wider public and is not even mentioned in the national report on Estonia for Beijing+25.²⁹²

Advocacy and lobbying by NGOs regarding gender equality has been more effective due to their greater knowledge and financial capacity. Generational change may have a positive effect due to well-educated, highly trained and tolerant younger people, who do not accept old-fashioned attitudes and gender inequalities. There are some organisations whose activities are supported by the state on micro-project basis. The NGO, Oma Tuba, is a feminist organisation that uses communication tools, cultural practices and grassroots activism methods to address issues related to the social position of women, and sexual and gender minorities.²⁹³

The advocacy work of the Women's Support and Information Centre and the Pärnu Women's Shelter aiming to protect survivors' rights has been visible and effective in recent years.²⁹⁴ The Women's Studies and Resource Centre (ENUT) was established in 1997. ENUT promotes gender equality, provides services for policy makers, researchers and students, media, other NGOs, and the general public in the field of gender equality.²⁹⁵ The Estonian LGBT Association represents Estonian LGBT+ communities and is engaging in awareness-raising activities regarding LGBT+ issues in society through educational and advocacy work.

There are also ad-hoc pressure groups on social networks and internet communities, e.g. Facebook groups 'Virginia Woolf sind ei karda' and 'Feministeerium'.²⁹⁶ Feministeerium.ee is an independent feminist media outlet, which shares weekly online articles and comments on the news, in Estonian, Russian or English.²⁹⁷

Some women's organisations have a poor democratic organisational culture, have demonstrated an autocratic management style and have come to support right wing, national conservative and populist parties. This means that not all members agree with their leaders' public communication. The Estonian Women's Associations Roundtable (EWAR) was established in 2003, and is a member of the European Women's Lobby, which

²⁸⁹ Available in Estonian at (in Estonian): <https://www.riigiteataja.ee/akt/129122011233>.

²⁹⁰ Adopted in 2011. Available at: <https://riigikantselei.ee/et/kaasamise-hea-tava>.

²⁹¹ Members of the Gender Equality Council represent many institutions and organisations. The founding regulations are available at (in Estonian): <https://www.riigiteataja.ee/akt/329102013003>.

²⁹² Government of Estonia (2019), *Twenty-fifth anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action (1995) - Comprehensive national-level review: Estonia*, <https://www.unece.org/fileadmin/DAM/Gender/EstoniannationalBeijing25reviewreport.pdf>.

²⁹³ <https://omatuba.wordpress.com/in-english/>.

²⁹⁴ <https://naistetugi.ee>, <https://naistevarjupaik.ee/esileht/>.

²⁹⁵ <https://enut.ee>.

²⁹⁶ <https://www.facebook.com/groups/WoolfEiKarda/about/> (8 700 members),

<https://www.facebook.com/pg/feministeerium/about/?ref=pageinternal> (about 5 658 followers).

²⁹⁷ <https://feministeerium.ee/en/>.

should coordinate the women's movement in Estonia. Unfortunately, in 2018–2020, this organisation has been used as a tool for conservative statements.²⁹⁸

11.10 Evaluation of implementation

Law enforcement is a challenge. The GEA and the ETA have a small number of articles about implementation and define the duties of the relevant bodies, but no state supervision is provided for. In 2015, the Ministry of Justice expressed the opinion that there is no need for amendments to the GEA and the ETA in this respect because state supervision takes place regarding the implementation of other legal acts (Employment Contracts Act, Civil Service Act, Health Insurance Act etc) in which equality requirements are stipulated. Equality legislation has not been developed, however the Government has promised to pay attention to promote gender equality in 2021–2024.²⁹⁹

In 2020, the budget for the gender equality programme was planned at EUR 1.92 million for 2021.³⁰⁰ The state budget strategy indicates that less is planned to be spent in every coming year, with EUR 1.17 million planned for 2022, EUR 1.08 million for 2023 and EUR 0.91 million for 2024.³⁰¹

The Government notes that there is increased equal rights' knowledge among employees and employers due to awareness-raising training and an increase in the number of referrals to the Gender Equality and Equal Treatment Commissioner.³⁰²

11.11 Remaining issues

Estonia has carried out a performance-based budgeting reform, which will be fully implemented in 2020.³⁰³ The programme defines measures, activities and services, including their objectives, indicators, and financial plan. The programme also sets out a management and accountability structure for managing the resources and achieving the results. The transition to service-based management enables a more customer-centric approach and more efficient resource management.

From 12 March to 17 May 2020, an emergency situation was in force in Estonia, and from 18 May 2020 some restrictions on fundamental rights were maintained under the Communicable Diseases Prevention and Control Act and the State Borders Act.

²⁹⁸ <http://www.enu.ee/enu.php>.

²⁹⁹ Ministry of Finance (2020), State Budget Strategy 2021–2024.

³⁰⁰ <https://www.rahandusministeerium.ee/et/riiqieelarve-ja-majandus/riiqi-eelarvestrateegia>.

³⁰¹ Ministry of Finance (2020), State Budget Strategy 2021–2024.

³⁰² Ministry of Finance (2018), *2019 Draft Budgetary Plan of Estonia*, https://ec.europa.eu/info/sites/info/files/economy-finance/2019_dbp_ee_en.pdf.

³⁰³ <https://www.rahandusministeerium.ee/en/objectivesactivities/state-budget-and-economy/performance-based-budgeting>.

12 Overall assessment

The following transposition problems were mentioned in this report:

1. Lack of adequate protection against victimisation. Victims and witnesses of discrimination cases are afraid to make a complaint. Due to the specificity of a small country and media attention, the names of victims and witnesses are made public and it is hard to escape from victim blaming and complicated to find a new job.
2. No sanctions for harassment by employer. However, there is the first judgment by the Supreme Court of 17 June 2020 that the dismissal of employee because of sexual harassment is rightful.
3. High gender pay gap not effectively tackled and pay transparency measures not implemented. High gender pay gap leads to high gender pension gap.
4. High cost of legal advice and time-consuming proceedings.
5. Poor provision of accessible and affordable social services by local government, inhabitants depend on local government's personnel and financial capacity.
6. Inadequate financial support for sick and disabled people, also inadequate finances for sick and elderly care. Women are overrepresented in health and long-term care, among informal carers the majority are women.

The transposition of the EU gender equality directives into Estonian legislation is satisfactory. In September 2017, the Istanbul Convention was ratified and entered into force on 1 February 2018. The Penal Code was amended in June 2017 and the amendments entered into force on 6 July 2017. Female genital mutilation, forced marriage and stalking have been criminalised. These amendments also included a new article on sexual harassment, which was classified as a misdemeanour.³⁰⁴ In 2020, there were 225 cases of stalking registered; out of those, 77 % were related to domestic violence.³⁰⁵ Prosecutors and judges need additional training for improving their knowledge in human rights, international instruments and gender specificity.

There have been only a few court cases on sex discrimination. There are several reasons for this, such as low awareness, low willingness to bring cases to court, a low political commitment to equality issues, and little experience regarding the protection of rights. Obstacles could be the high cost of legal advice and the time-consuming proceedings. Claims to the Gender Equality and Equal Treatment Commissioner and the labour dispute committees demonstrate that there is discrimination against pregnant employees, employees returning to work after parental leave and those with family obligations. Elderly care is a high burden mostly on women's shoulders. Legal requirement of two generations up and down to be able to provide maintenance and care is unfair, rigid and should be changed. There should be a much more person-centred approach, case management and support by the local government.

From the other perspective, there are those people who do not perceive that they are discriminated against. Acceptance of traditional and rigid gender roles is still widespread in Estonia. According to Eurobarometer (2017) on gender equality, 70 % of Estonians think that the most important role of a woman is to take care of the home and family.³⁰⁶

Gender mainstreaming is not implemented. However, the National Report Beijing +25 points to awareness-raising activities and the establishment of a competence centre at the Office of the Gender Equality and Equal Treatment Commissioner in 2015.³⁰⁷ No positive

³⁰⁴ Penal Code, <https://www.riigiteataja.ee/en/eli/509012018005/consolide>.

³⁰⁵ <https://www.kriminaalpoliitika.ee/kuritegevus2020/perevaqivald-ja-ahistamine>.

³⁰⁶ European Commission (2017), *Special Eurobarometer 465: Gender Equality 2017*. Summary, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/80678>.

³⁰⁷ Estonian Government (2019), Twenty-fifth anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action (1995): Comprehensive national-level review Estonia, (Estonian National Report Beijing +25), https://www.unece.org/fileadmin/DAM/Gender/Estonian_national_Beijing25_review_report.pdf.

action measures are used for ensuring full equality in practice between men and women in working life. Estonia does not have occupational accident insurance system in place, although the issue has been debated since 1994.

Estonia failed to pass proposed amendments to the GEA and the ETA in 2016–2020. Amendments to the GEA and the ETA were drafted, but not adopted by the Parliament. The vast majority of laws and related policies are gender-neutral and family-centric. The right-wing Government has promised to carry out a gender equality program with the main goal for women and men to have equal rights, responsibilities, opportunities and liability in all areas of society. Important activities to achieve the objectives for 2020–2023 are tackling the gender pay gap and reducing stereotypical attitudes and segregation.³⁰⁸

The effects of the economic crisis due to the COVID-19 pandemic could be analysed with a delay. There is an increase of unemployment, the share of recipients of social assistance benefits and people living in absolute poverty has increased. Gender segregation in the labour market hits women due to the selected field of economic activity and low paid jobs (service sector). Women are dominating in education and medicine (including nursing and social work). There are many women in wholesale and retail trade and many companies have redundancies. Due to widespread rigid gender roles and the COVID-19 pandemic, people involved in some economic activities (medicine, long-term care, education) have got an extra burden. More women than men are frontline workers and occupied with home schooling of children, informal care for elderly and for chronically ill family members.

³⁰⁸ Ministry of Finance (2019), State Budget Strategy 2020–2023 and Stability Programme, pp. 65-67.

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