



OBSERVATIONS

BY THE LEGAL INFORMATION CENTRE FOR HUMAN RIGHTS

**IN RELATION OF THE TENTH AND ELEVENTH PERIODIC
REPORT OF ESTONIA (CERD/C/EST/10-11)**

**SUBMITTED TO THE COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION**

July 2014

These observations are to highlight several issues related to the implementation by Estonia of the International Convention on the Elimination of All Forms of Racial Discrimination. They are drafted by the Legal Information Centre for Human Rights (Estonian human rights NGO). More information on: www.lichr.ee

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Antidiscrimination law

1. In Estonia in addition to general anti-discrimination provisions in the Constitution (Article 12) and other laws, as well as relevant criminal law provisions, the structure of anti-discrimination substantive law is made up by the Gender Equality Act and the Equal Treatment Act; both have been adopted to transpose the requirements of the EU anti-discrimination law.
2. The Equal Treatment Act was adopted on 11 December 2008 and entered into force on 1 January 2009. It provides for the protection of persons against discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. Protection against ethnic and racial discrimination is applicable in employment related relations including access to vocational training membership of employees' organizations), in social protection, education and access to goods and services which are available to the public (Article 2).
3. According to the Equal Treatment Act, difference in treatment on the basis of ethnic or racial origin may be justified in the case of genuine and determining occupational requirements (Article 10) and in the framework of the positive action measures (Article 6). However, Article 9 (1) of the Equal Treatment Act has also established a general exception:

This act shall be without prejudice to measures laid down by law which are necessary for the maintenance of public order, for public security, for the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others. These measures achieving the aim shall be proportionate to it.

4. While difference in treatment on the basis of ethnic or racial origin in the form of direct discrimination may be justified in the case of genuine and determining occupational requirement or positive action measures, **generally worded justifications with references to public security, prevention of criminal offences, protection of health and the protection of the rights and freedoms of others are hardly compatible with Article 1 of the ICERD.**

Specialized bodies to promote equality and non-discrimination

5. There are two specialized bodies in Estonia for the promotion of equality and non-discrimination: the Chancellor of Justice and the Commissioner for Gender Equality and Equal Treatment (hereinafter the Chancellor and the Commissioner). However, the leading equality body seems to be the Commissioner. Both bodies are capable to act independently both in law and practice. The Chancellor of Justice is appointed by the Parliament, on the proposal of the President of the Republic, for a term of seven years (Article 140 of the Constitution). The Commissioner is an independently acting expert appointed for five-year period by the Minister of Social Affairs (Article 15 of the Equal Treatment Act).
6. The main tasks of two equality bodies are provided in Articles 19 and 35-16 of the Chancellor of Justice Act and Article 16 of the Equal Treatment Act. Both institutions are obliged to promote equal treatment, to inform about relevant principles and to enhance cooperation in the field. Victims of discrimination in the *public domain* are able to address one of these institutions. The Chancellor and the Commissioner may conduct an ombudsman-style procedure and issue a legally non-binding opinion (Commissioner) or recommendation (Chancellor). Furthermore, victims of discrimination in the *private domain* may address the Chancellor with the request to start a conciliation procedure. If succeeded, the procedure will end up with legally binding decision. Victims of discrimination in the private domain may also address the Commissioner for legally non-binding opinion. The Commissioner has also an explicit duty to advice and to provide assistance to people pursuing their complaints about discrimination.
7. The aim of the *conciliation procedure* at the Chancellor of Justice is to reach an agreement between a victim and a person suspected of discrimination. The conciliation procedure can be initiated only on the basis of a victim's application (Article 35-5 of the Chancellor of Justice Act). However, an alleged discriminator is not obliged to participate in it (Article 35-11(1)). As a result in 2004-2013 there were no conciliation procedures where final agreements were made. Quite often, the procedure was terminated due to lack of involvement of alleged "discriminators". **In other words, the system of conciliation procedures at the Chancellor is not properly functioning, also due to statutory constraints.**

8. As for *opinions*, the Commissioner shall provide them to persons who have submitted applications concerning possible cases of discrimination and, if necessary, persons who have a legitimate interest in monitoring compliance with the requirements for equal treatment. The purpose of an opinion is to provide an assessment which, in conjunction with the Equal Treatment Act, international agreements binding on Estonia and other legislation, allows for an assessment of whether the principle of equal treatment has been violated in a particular legal relationship. An opinion shall be provided within two months after filing of an application (Article 17 of the Equal Treatment Act). The opinion is not legally binding and it is not a type of “resolution of disputes concerning discrimination” (Article 23). **Therefore, practical importance of opinions drafted by the Commissioner is modest and they can be easily ignored by courts.**
9. The creation of the position of the Commissioner for Gender Equality and Equal Treatment was provided for in the Equal Treatment Act. In practical terms the authorities decided to rename and to widen the competence of the Commissioner for Gender Equality, a specialized body envisaged in the Gender Equality Act. The Commissioner reported to received in 2013 403 applications. Among them there were 116 applications related to possible cases of discrimination, including 60 applications on gender discrimination and only four on ethnic discrimination (Letter of 21 February 2014). **There are good reasons to believe that new competences of the Commissioner are still not well known or clear to the general public, including the minority population.** It can be indirectly proven by the results of population polls. For instance, in the Eurobarometer study on perceptions of discrimination in the EU in 2012 (EUROBAROMETER 77.4), Estonian respondents (EU citizens) mentioned “age 55+” (55%), “disability” (48%) and “ethnic origin” (37%) more often than “gender” (30%) when answered the question about widespread types of discrimination in their country.
10. For many years the office of the Commissioner was very small (only the Commissioner and one adviser). The modest annual budget made it impossible to organize studies or in-depth analysis, to deal with large-scale awareness raising activities or sometimes even to draft opinions within legally prescribed terms. In 2013 the situation has improved (at least temporary) with the receipt of the EEA and Norway Grant. 700,000 EUR were allocated to capacity building of the office and the Commissioner (for the period up to December 2015). As a result the number of

staff members at the Commissioner's office has increased to eight. However, it is very important to secure that **capacity building of the equality body is sustainable and it is not based on short-term projects only.**

Professional linguistic requirements

11. According to the Language Act (Chapters 5-6) and relevant bylaws, in Estonia holding a number of positions in the private and almost all positions in the public sector require language proficiency certificates which can be of different categories (levels) and are earned through official examinations which take several hours to sit. Certificates are not required from those who received education in the official language. Compliance with the official language requirements is monitored by the Language Inspectorate. Certificates as such cannot guarantee that a person is not checked by this control body.
12. A new system of language certificates was introduced in Estonia from July 2008. It is based on the Council of Europe's "Common European Framework of Reference: Learning, Teaching, Assessment" with its initial division of language proficiency into three broad levels: Basic User: A1 and A2; Independent User: B1 and B2; Proficient User: C1 and C2.
13. According to the relevant governmental decree, which was adopted in June 2011 and regulates employment in both private and public domains, A2 level is required from engine-drivers, cloak-room attendants, door-keepers, ticket-collectors, etc. B1 level shall be proved by persons who serve a customer, public transport drivers (e.g. bus or taxi drivers), etc. B2 level is required from teachers, nurses, insurance agents, etc. C1 level is envisaged for public officials, lawyers, school masters, doctors, veterinaries, teachers of Estonian, notaries, etc. The C2 is not officially required in Estonia (<https://www.riigiteataja.ee/akt/128062014082>).
14. According to sociological studies discrimination on the grounds of insufficient Estonia language proficiency seem to be quite widespread in Estonia. In the course of the 2007 national survey 23% of the respondents of minority origin claimed to have such experience in various areas within last three years (Lagerspetz M. et al. *Isiku tunnuste või sotsiaalse positsiooni tõttu aset leidev ebavõrdne kohtlemine: elanike hoiakud, kogemused ja teadlikkus*, Tallinn, 2007. P. 25). However, there are very few cases in Estonia which deal with the issue of the official language

requirements. In the Estonian context the issue of proportionality of language requirements is highly politicised and the criteria used might overcome similar standards in many other countries. In some circumstances general justifications of quite advanced level of required proficiency may be based on policy considerations, constitutional values (preservation of the Estonian language as demanded in the Preamble of the Constitution) or both.

15. In 2012 the Commissioner for Gender Equality and Equal Treatment found ethnic discrimination related to disproportionate linguistic requirements introduced by a public body in recruitment procedure. In this case a person applied for a position in the Ministry of Foreign Affairs where one of the requirements was a “very good knowledge of the Estonian language”. The applicant graduated from an Estonian-language higher education institution. He indicated Russian as his first language and chose C1 as a level of proficiency in Estonian in his CV. He could not get through the initial round due to alleged insufficiency of his Estonian. The Ministry informed that they expected applicants to speak Estonian at C2 level. The Commissioner presumed that a complainant was treated less favourably as compared with native speakers of Estonian due to existing prejudices regarding ethnic non-Estonians’ proficiency in the official language and that the requirements of the Ministry of Foreign Affairs (Estonian at C2 level) exceeded the officially established requirement for public officials (http://www.svv.ee/failid/16.08.2012_arvamus_anonymiseeritud.pdf).
16. The detailed regulation of use of languages in private sphere is a characteristic of the Estonian language regimes. An interesting practical example is bus and taxi drivers. In many European countries this profession is traditionally popular among immigrants because it does not presuppose good proficiency in the dominant language. Bus and taxi drivers have to possess B1 certificate of proficiency in Estonian which to prove that they passed an exam and proved limited proficiency in both oral and written language. That means that drivers of minority origin shall prove at exams that they “can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc.; can deal with most situations likely to arise whilst travelling in an area where the language is spoken; can produce simple connected text on topics which are familiar or of personal interest; can describe experiences and events, dreams, hopes and ambitions and briefly give reasons and explanations for opinions and plans” (official description of B1 proficiency level).

17. In Estonia the Language Inspectorate issued 2,540 control acts in 2013; 2,261 of the control acts (89%) reflected various violations. In the majority of cases, the Language Inspectorate reported violations by the public and private sector employees (www.keeleinsp.ee).
18. The general legal framework in Estonia hardly promotes flexible and fair approach towards speakers of minority languages on the labour market; **professional linguistic requirements are often disproportionate and therefore may promote discriminatory practices.**

Minority school reform

19. In 2007-2011 state and municipal Russian-language upper secondary schools (classes 10-12) switched to a minimum of 60% instruction in Estonian. It shall be noted that in Estonia almost every third resident speaks Russian as the first language (pub.stat.ee – results of the 2011 census). Publicly funded Russian-language upper secondary schools existed in Estonia uninterruptedly from the 19th century.
20. In Estonia some responsibilities of organization of school education are vested with municipal authorities and some of them criticized the minority school reform as inflexible and indifferent towards the actual situation at the grassroots level. In recent years protests against the reform and related activities were mentioned by the Estonian Security Police (special service) in its annual reviews, mostly in the chapter “Protection of the Constitutional Order” (www.kapo.ee). Thus, in the 2011 annual review some activities of Estonian politicians in support of Russian-language education were criticized by the Security Police not due to identified violations of the law but due to *suspected* influence or involvement of Russian diplomacy in these activities (p.9-11).
21. According to Article 21 (3) of the Basic Schools and Upper Secondary Schools Act of 2010, in municipal upper secondary schools the language of instruction may be a language other than Estonian. However, permission to pursue studies in another language or bilingual studies is granted by the Government of the Republic (central government) on the basis of an application of a rural municipality or city government. The board of trustees of the school is entitled to make such a proposal to the municipality. Municipalities of Narva and Tallinn decided to support requests

by 15 general education schools and applied to the central government, however, with a negative result. The City of Tallinn and the City of Narva appealed the decision by the central government. However, the case was lost in all three court instances. The final decision was taken by the Supreme Court of Estonia on 28 April 2014 (<http://www.nc.ee/?id=11&tekst=222572678>). Furthermore, in 2013 the parliament introduced amendments to the Private Schools Act which were essentially to ban municipalities to found private upper secondary schools working in Russian without the permission of the central government.

22. The basic idea behind the reform was to make minority youth radically improve their proficiency in Estonian. Among other factors, language is believed to be a major obstacle for Russian-speakers in employment. The reform was mainly criticized by pro-minority experts as poorly prepared and for its negative potential to increase the number of discontinuers (especially less educated students) in Russian-language schools. There are good reasons to believe that **the reform may have discriminatory effect while it may undermine educational opportunities of less educated students or those minority students who experience problems with learning of Estonian.**
23. Furthermore, the minority school reform is not supported by the minority population. According to the 2013 nation-wide poll conducted by the sociological firm Saar Poll 80% of ethnic Estonians and only 24% of ethnic minority representatives believed that generally speaking the reform was useful for minority youth. Furthermore, both communities would rather share the opinion that the reform was inadequately prepared (50% ethnic Estonians and 83% ethnic minorities). The survey was commissioned by the Tallinn City Government and carried out in September - October 2013, by a standard representative sample for Estonia by the company Saar Poll. Altogether there were surveyed 1,000 people (aged 15-74), and 31% of them were people of ethnic minority origin. (The results of the study will be published in autumn 2014.)
24. The outcome of the minority school reforms shall be thoroughly controlled **to ensure high level of education and to avoid any discriminatory effect on minority population in their access to secondary and higher education.**

Language issue in prisons

25. According to official information people of minority origin are overrepresented in Estonian prison population (www.vangla.ee).
26. None of Estonian prisons is situated in local governments with special minority language regime. **In practice that put additional limits on opportunities of inmates of minority origin (i.e. most of Estonian inmates) to file oral and written complaints and to take part in administrative procedures.** Regretfully, linguistic rules may be used by prison staff officials as a blanket justification to avoid scrutiny dealing with complaints of inmates of minority origin (while many if not most of officials speak fluent or good Russian – see below). Inmates are also fully dependent on good will of prison staff officials who may decide (or may *not* decide) to accept applications in Russian (see also annex 1).
27. As it was mentioned above, in Estonia a new system of proficiency in Estonian was introduced in July 2008. It is based on the Council of Europe's Common European Framework of Reference: Learning, Teaching, Assessment, with its initial division of language proficiency into three broad levels: Basic User: A1 and A2; Independent User: B1 and B2; Proficient User: C1 and C2. In 2012 the Legal Information Centre for Human Rights started to receive complaints that all inmates were made to carry name badges with letters "A", "B" or "C" depending on the level of proficiency in the official language. All fluent speakers of Estonian as well as native speakers of Estonian received badges with letter "C" (see also annex 2).
28. According to the information provided by the Ministry of Justice, letter "C" is placed on the name badges of 41% inmates (including 39% native speakers of Estonian); 12% of inmates speak Estonian at level B1-B2 and 24% at level A1-A2; additionally 23% of inmates who do not speak Estonian have are also been labelled with "A" (DzD.ee, [25 June 2012](#)). In other words the overwhelming majority of ethnic non-Estonians were labelled with "A" or "B". They are now clearly distinctive from ethnic Estonians while only several percents of inmates of minority origin have received name badges with letter "C". According to the same source 70% of prison staff officials who are native speakers of Estonian can speak at least some Russian; 50% -

English. From other sources it is also known that a considerable percentage of prison staff officials are native speakers of Russian.

29. **Many inmates of Estonian prisons believe that the practice of language proficiency labelling is discriminatory, offensive and derogatory.** This practice is not neutral in terms of ethnic origin as it has been proven by statistics provided above.

Annex 1.

Translation from Estonian (excerpts)

[Viru Prison]

A* J*
Viru Prison

Your 03.07.2012
Our 10.07.2012 no. 6-13/26009-1

Reply to request for explanation

On 3 July 2012 you submitted to Viru Prison a request for explanation and you wanted to receive a copy of a legal act which was a basis for Viru Prison staff officials' refusal to accept statements and applications in Russian starting from 2 July 2012.

We are to clarify that the preamble of the Constitution of the Republic of Estonia (hereinafter CRE) stipulates an obligation of the State to ensure preservation of Estonian ethnic nation, language and culture and this obligation is realised in a norm that is emanated from the principle of a nation-state in Article 6 CRE: Estonian is the State language of Estonia. [...] According to Article 12 (1) of the Language Act, if an application or other document submitted to a state agency or local government authority is in a foreign language, the agency has the right to require the person who submits the document to submit the translation of the document into Estonian and the person who submits the request or other document shall be notified of the requirement for translation immediately. The same principle is stipulated in the Response to Memoranda and Requests for Explanations Act. Article 5 (6)5 of this Act provides that a response may not be given if the memorandum or request for explanation is not presented in Estonian and, pursuant to Article 12 of the Language Act, the addressee has no obligation to respond; according to subsection 11 upon declining to respond, [the addressee] shall immediately request that the person who submitted the memorandum or request for explanation provide a translation of the memorandum or request for explanation into Estonian. According to the principle stipulated in Article 21 (1) of the Administrative Procedure Act, if a participant in proceedings or his or her representative does not know the language of the proceedings, an

interpreter or translator shall be involved in the proceedings at the request of the participant in the proceedings. According to section 2 of the same Article a participant in proceedings who applies for the involvement of an interpreter or translator shall bear the costs of involvement of the interpreter or translator, unless otherwise provided by an Act or regulation or unless an administrative authority resolves otherwise. [...]

(signature)

Enar Pehk

Chief of Department of Minimum Security Prison and Working Inmates

Annex 2.

Translation from Estonian (excerpts)

[Ministry of Justice]

Board of the Riigikogu

Ap.kk@riigikogu.ee

Your 30.04.2012 no. 2-3/12-66

Our 14.05.2012 no. 10-4/4426

Reply to questions of the Member of Riigikogu

Dear Chair of the Riigikogu,

You have forwarded written questions which were submitted by the Member of the Riigikogu Yana Toom and which concerned prisoners.

[...]

1. What was the reason to label prisoners on the grounds of their language proficiency? How does this practice facilitate prison's everyday activities?

From 2011 prisoners' name badges include information about proficiency in the State language. The level of State language is added to the prisoner's name badge after it was controlled by a person who is working in a prison and who is responsible for State language related issues. It may be controlled by other means as well. The level of state language proficiency is marked with letters "A", "B" or "C" according to a level of State language proficiency of a prisoner. No other explanations are added. Ethnic origin or mother tongue of a prisoner is not indicated on name badges. Language proficiency is not sensitive personal data, which shall not be accessible to all prison public officials. This is also not an ability or information which shall not be communicated to other prisoners on the basis of legal acts.

State language proficiency is indicated on a prisoner's name badge regardless his or her ethnic origin, sex, mother tongue, origin, religious beliefs, etc. Upon indication of a language proficiency level prisoners are not treated differently due to their ethnic origin or mother tongue. State language proficiency is indicated on name badges in case of ethnic Estonians or Estonian citizens who are native Estonian-speakers as well as in case of prisoners who do not speak Estonian as a mother tongue. Therefore there is no discrimination of prisoners under the same circumstances which is banned by Article 12 of the Constitution.

Upon assessment of Estonian language proficiency of prisoners we make use of the provisions of the Language Act regarding proficiency in Estonian language, its assessment and control which is based on the Common European Framework of Reference for Languages compiled by the Council of Europe. Annex 1 of the Language Act also provides for description of each level of language proficiency. Therefore indication of a level of prisoner's proficiency in Estonian is not arbitrary but it is based on general rules regarding language levels. To avoid differentiation of some prisoners, the letter "A" is also added to name badges of those prisoners who speak no Estonian. The letter "C" is used for native-speakers of Estonian as well as for other prisoners who are proficient in this language.

We clarify that while Estonian is a State language and a language of administration, Estonian is mostly used by a prison official in his or her communication with a prisoner. Usually prisoners receive orders in Estonian and all public officials speak Estonian. Also the Chancellor of Justice expressed the view that prison officials cannot be always obliged to speak to prisoners the language of prisoners' choice if prisoners do speak the State language well enough. At the same time oral communication with prisoners exclusively in the State language would be impossible if a prisoner has no or limited understanding of the State language. Considering traditions of good administration and the necessity to ensure enforceability of orders or other clarifications, it is needed to speak languages other than the State language.

In a prison it will be related to security risks and it is dangerous from the prison's point of view if a prisoner do not obey public official's orders only due to lack of understanding. It is crucial in order to guarantee prison discipline and more generally prison security that a prisoner understands orders by a public official. A prisoner who does not obey orders may

be enforced to obey by use of additional measures. This is definitely an unpleasant solution from a prisoner's point of view. Disobedience to orders is also punished in disciplinary procedure. Therefore it is important to ensure that a prisoner does understand a public official's order and an order shall be enforceable.

2. Has prisons' initiative regarding name badges been previously approved by the Ministry of Justice?

Yes, the work regime described above has been previously approved by the Ministry of Justice.

3. [Is this practice humiliating?]

[...]

As regards the question about prisoners' humiliation, we are sure that it cannot be regarded as humiliation if prisoners' proficiency in the State language is indicated on their name badges only with the letter "A", "B" or "C".

Human dignity is a term with fixed meaning and its protection does not cover all possible feelings of annoyance that can be experienced by a prisoner...

[...]

4. Are these activities in line with Estonian legislation?

As a response to the forth question we reply that indication of the State language on name badges does not violate legal acts.

[...]

Respectfully,

(electronic signature)

Kristen Michal

Minister