

*Permanent Mission of Estonia
Geneva*

No. 10-6/387

The Permanent Mission of the Republic of Estonia to the United Nations and Other International Organisations in Geneva presents its compliments to the Human Rights Committee, and in response to the letter from 28 July 2010, has the honour to forward the reply of the Government of Estonia concerning the recommendations in paragraphs 5 and 6 of the concluding observations of the Human Rights Committee concerning the considerations of the third periodic report of Estonia on implementing the International Covenant on Civil and Political Rights.

The Permanent Mission of Estonia to the United Nations and Other International Organisations in Geneva avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.

Geneva, 10 August 2011



Enclosure: 7 pages

*Human Rights Committee
GENEVA*

OHCHR REGISTRY

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Estonia's replies regarding recommendations in paragraphs 5 and 6 of the concluding observations of the Human Rights Committee concerning the consideration of the third periodic report of Estonia on implementing the International Covenant on Civil and Political Rights (CCPR/C/EST/CO/3)

5. The State party should either provide the Chancellor of Justice with a broader mandate to more fully promote and protect all human rights or achieve that aim by some other means, in full compliance with the Paris Principles, and take into account in this regard the requirements for the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The institution of the Chancellor of Justice enjoys a broad mandate to protect and promote human rights (in compliance with Paris Principles, section "competence and responsibilities" clause 1). A detailed overview of the functioning of the institution was presented in the replies of the Government of Estonia to the list of issues, CCPR/C/EST/Q/3/ADD.1, 03.05.2010).

The government has taken note of the recommendations by various international and non-governmental bodies to accredit the Chancellor of Justice as the national human rights institutions with the ICCNHRI; both the government representatives and the Office of the Chancellor of Justice have been in contact with the said Committee with a view to specify the exact procedure and requirements for accreditation. Nevertheless, the mandate and activities of the Chancellor of Justice are in compliance with the conditions set forth in the Paris Principles, including with regard to status, independence and budget. In some realms of the Principles, such as publishing reports, the Chancellor works closely with the NGOs that are engaged in the tasks set forth in the Paris Principles.

The mandate of the Chancellor of Justice is set forth in the Constitution and in the Chancellor of Justice Act (Paris Principles, "competence and responsibilities", clause 2). Under the supervision of the Chancellor of Justice fall all institutions and bodies entitled with public power, including the legislature.

The Chancellor of Justice is entitled to submit and publicise opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights (Paris Principles, clause 3 a i-iv). Although the Chancellor does not *directly* ensure the harmonization of national legislation, regulations and practices with the international human rights instruments as it is not legislative or executive body (clause 3 b, direct responsibility lays on Ministries), he/she encourages ratification of the aforementioned instruments, relies on them in his/her supervisory functions (ombudsman's, constitutional review, child protection as well as national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment functions) and spreads knowledge about their content and necessity of implementation on state level (clause 3 b-c).

On the proposal of Ministries, the Chancellor of Justice also contributes to the reports which Estonia is required to submit to international organisations, taking account its

constitutional independence (clause 3 d) and cooperates with other similar bodies in different countries and international organisations, e.g. European Committee for the Prevention of Torture, the UN Subcommittee on Prevention of Torture etc (clause 3 e). There is also no legislative hindrance to developing activities in competences enumerated in Principles' clauses 3 f-g – how active is the Chancellor of Justice in these fields, depends on resources available and areas prioritised in the current year. There have been different projects in the field of prevention of torture as well as in child protection (more detailed information is given in NPM annual report etc).

Principles enumerated under the heading "composition and guarantees of independence and pluralism" have been extensively covered in the replies of the Government of Estonia to the list of issues.

All the methods of operation required in Principles enumerated under the heading "methods of operation" (a-g) are fulfilled. The Chancellor can initiate proceedings on his/her own initiative as well as accept any application or complaint submitted by a person (including legal persons). The Chancellor of Justice has access to all persons (including those who are kept in closed institution), documents, places etc necessary to fulfill his/her mandate (a-b). As it was aforementioned, the Chancellor can publicise opinions and recommendation (taking account secrecy of personal data and state secrets) on his/her webpage and in press and has legislative obligation to submit to the Parliament and publicise his/her annual report (c). The Chancellor has broad autonomy with regard to internal administrative matters (d-e) and maintains consultation with other bodies in the area of human rights and NGOs (f-g).

Regarding coordination and facilitation of cooperation between state institutions and civil society, the cooperation of the Office of the Chancellor of Justice with non-profit associations has been an important priority. Non-profit associations frequently submit applications to the Chancellor of Justice on behalf of persons. The advisers to the Chancellor of Justice have participated in seminars and information events organised by the third sector in order to explain the competences of the Chancellor of Justice and the issues of human and fundamental rights, equal treatment, children's rights etc.

Adviser to the Chancellor of Justice has held regular meetings with the members of the Patients Representative Association of Estonia. At these meetings the issues of access to medical care, psychiatric care and health care administration are considered. Representatives of the Patients Representative Association of Estonia regularly participate in inspection visits to closed institutions. The latter applies as well to cooperation with NGOs in different fields of medicine. Members of NGOs (e.g. Estonian Paediatric Association, Estonian Psychiatric Association etc) are involved in the activities of the Chancellor of Justice (e.g. in inspection visits) as medical experts in order to resolve questions related to health care.

Chancellor of Justice performs regular inspection visits to Illuka reception centre for asylum seekers. By preparing and conducting the visits the adviser to the Chancellor

of Justice cooperated with non-profit association Johannes Mihkelson Centre¹, which provides services to the asylum seekers².

An important course of action of the Chancellor of Justice has been the protection of the rights of the child and cooperation with the organisations fostering the rights of the child. The focus of the cooperation has been guaranteeing the rights of children with special needs. As a rule, children themselves do not use the possibility of recourse to the Chancellor of Justice (e.g. for the protection of their rights, and this makes non-governmental organisations (e.g. Estonian Union for Child Welfare, Estonian Association of Parents, Estonian School Student Councils' Union, etc) invaluable partners for the Chancellor of Justice, pointing out the problems in legislation as well as concrete cases in practice, where the interference of the Chancellor of Justice on his own initiative is necessary. Preparations for forming an advisory council consisting of children are also underway.

In cooperation with the third sector, local government associations, the Ministry of Social Affairs and the Ministry of Education and Research, extensive preparations began in the field of school health care for guaranteeing the health of pupils and for organising a roundtable on school health.

The Chancellor of Justice participates in the following other round tables, enhancing cooperation between state institutions and the civil society:

- How to protect children in the school environment, accompanied by a public awareness campaign (e.g. articles, interviews in the media) and memoranda to relevant institutions;
- Nursery places – one for every child, to draw attention to the lack of capacity in Estonia's nursery school system;
- A round table on preventive health check-ups entitled "Preventive health check-ups: healthy people, sustainable healthcare". The purpose of the round table was to involve policymakers in a discussion on whether preventive health check-ups could provide a guarantee of the sustainability of the Estonian healthcare system and the preservation of the Estonian people.

Regarding the specification of the mandate of the Chancellor, since February 2007 the Chancellor of Justice acts as the preventive state authority provided for in Article 3 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Chancellor of Justice can be considered as completely appropriate and independent mechanism to deal with the possible of violations of the Convention against Torture. There currently exist no plans to create any such additional institutions. The 2009 overview of the Chancellor of Justice's activities for the prevention of torture and other cruel, inhuman or

¹ <http://www.jmk.ee/ee/in-english>

² Grant agreement No 7.1-9-1/94, project of the European Refugee Fund and the Ministry of Internal Affairs "Improving the reception conditions of asylum seekers through the support person service and other supporting services".

degrading treatment or punishment is available in English online³. The 2010 overview, published in June 2010, is currently in the English translation process and will also be sent to UN Subcommittee on Prevention of Torture upon its publication.

Although the Chancellor of Justice has been dealing with children's rights throughout the existence of the institution, in order to provide more visible and enhanced protection to the rights of children, as of March 2011 the Chancellor of Justice Act was amended and the Chancellor of Justice also assumed the functions of Children's Ombudsman in compliance with article 4 of the UN Convention on the Rights of the Child (CRC). On 1 January 2011, a new division in the Office of the Chancellor of Justice was formed to deal specifically with children's rights. The tasks of the department are the following: dealing with complaints concerning children's rights in areas of constitutional review and ombudsman activities; preparation and carrying out of inspection visits; preparation of applications and opinions in constitutional review cases; providing education about children's rights and informing about the UN CRC; conducting research and analyses in questions of promotion and protection of children's rights; co-operation with children and youth organizations, third sector, professional unions, state and scientific authorities.

6. The State party should take appropriate measures to:

(a) Ensure the effective application of the Gender Equality Act and the Equal Treatment Act, especially with regard to the principle of equal pay for equal work between men and women;

(b) Carry out awareness-raising campaigns to eliminate gender stereotypes in the labour market and among the population;

(c) Ensure the effectiveness of the system of complaints filed before the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner by clarifying their respective roles;

(d) Reinforce the effectiveness of the Office of the Gender Equality and Equal Treatment Commissioner by providing it with sufficient human and financial resources, and

(e) Set up the Gender Equality Council, as foreseen by the Gender Equality Act.

a) First, it is noted that the pay gap between men and women in Estonia is not about 40 per cent as marked in the concluding observations under para 5 (CCPR/C/EST/CO/3) but about 30,9 % as per the latest available information according to Eurostat from 2007⁴.

Continuous efforts are made to ensure the effective application of the Gender Equality Act and the Equal Treatment Act, especially with regard to the principle of equal pay

³http://www.oiguskantsler.ee/public/resources/editor/File/INGLISKEELNE_KODULEHT/Ylevaated/Annual_Report_2009.pdf

⁴ General information:

http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Gender_pay_gap_statistics.

for equal work between men and women. Implementation of legal norms on the equal treatment of men and women has been one of the sub-goals of the European Social Fund program “Promoting Gender Equality 2008-2010” (“*Soolise võrdõiguslikkuse edendamise 2008-2010*”). The activities of the program included conducting a gender wage gap study, publishing the Gender Equality Act with commentaries and a booklet on the Gender Equality Act along with information on how to defend one’s rights. The framework programme on promoting gender equality 2011-2013 which will further implement these activities was adopted in December 2010 (for more detailed activities see section b) below).

In order to facilitate the implementation of the Gender Equality Act by stakeholders and its usage by people to protect their rights, Estonia has conducted several awareness-raising activities. Detailed information on the campaigns is referred under clause (b) below.

Further measures taken to address discrimination against women in the labour market, including the wage gap, have been of indirect nature. Studies conducted in 2005 and 2009 on attitudes towards gender equality issues indicate that there has been some improvement in a number of areas.

While the gender pay gap in Estonia remains high, there has been a change in attitudes towards equal pay for men and women. According to the 2005 Gender Equality Monitoring study 63% of women and only 43% of men felt that men and women should receive equal pay. A similar question was asked in 2009 with a somewhat different wording, which limits the comparability of the studies. In 2009, the question included the concept of equal pay for equal work, with 94% of women and 90% of men stating that men and women should receive equal pay for equal work. The change in attitudes might be attributable to the fact that people have become more aware of the issue of equal pay for men and women, and this topic has since become an issue of frequent debate in the Estonian media.

The studies also addressed the issue of segregation on the labour market, and asked whether people believed that so-called male jobs are valued more highly than so-called female jobs. In 2005, 63% of women and 44% of men agreed with the statement that female jobs are valued less, while in 2009, 66% of women and 60% of men agreed with this statement. This shows a change in the attitude of men towards this issue.

b) Estonia has carried out and will continue carrying out awareness-raising campaigns to eliminate gender stereotypes in the labour market and among the population. Recently several awareness-raising activities have been conducted under the program “Promoting Gender Equality”. The Ministry of Social Affairs has organised several awareness raising activities, of which the most notable in 2010 was the campaign on gender stereotypes in the labour market, which included the following activities:

- outdoor campaign;
- television campaign;
- contest of short films on gender equality (carried out in schools);
- seminars and lectures in schools on gender stereotypes.

In addition to the campaign mentioned above, specialists from the Ministry of Social Affairs Gender Equality Department have given lectures and carried out seminars

(including in schools) on gender equality in general and on gender stereotypes more specifically.

The activities to promote gender equality and reduce negative effects of gender stereotypes through awareness-raising will continue with the framework program "Promotion of gender equality 2011-2013". The main activities of the programme include:

Studies:

- a study on gender discrimination and sexual harassment in the workplace (will be carried out 2011-2012);
- an analysis on parents' flexible forms of working and reconciliation of working and family life (will be carried out 2011-2012);
- an analysis concerning flexible forms of working and reconciliation of working and family life amongst non-Estonians (will be carried out 2012-2013);
- gender equality monitoring (will be carried out 2012-2013);

Activities to raise awareness on gender equality:

- a media campaign tackling gender stereotypes (will be carried out 2011-2013) focused on showing negative consequences of gender stereotypes for work and career choices;
- updating information on gender equality on Ministry of Social Affairs' home page, The Gender Equality and Equal Treatment Commissioner home page and on page gender.sm.ee (will be carried out 2011-2013);
- supporting activities for employers network of gender equality (will be carried out 2011-2013);

Conferences, trainings, workshops:

- a conference introducing the results of pay gap study (carried out on 13th of April 2011).
- trainings introducing gender equality legislation to lawyers, judges, university lecturers etc (will be carried out in fall-winter 2011);
- trainings on gender equality in working life (will be carried out 2011-2013);

c) The competencies of the Gender Equality and Equal Treatment Commissioner and the Chancellor of Justice regarding responding to applications and settlement of discrimination complaints are according to the laws sufficiently clearly distinguishable. Therefore, the effectiveness of the legal remedies for violations of the rights of gender equality is not impeded by the current legal regulation and implementation practice of the system of complaints.

The Chancellor of Justice may deal with equality issues within the framework of supervision over the legality and constitutionality of legislation, in Ombudsman proceedings or voluntary reconciliation proceedings.

Regarding discrimination, a person may file a complaint to the Chancellor when an institution or a civil servant performing public law functions has violated equal treatment rights or when discrimination has taken place by a natural or a legal person and reconciliation is sought.

In practice, when a person has submitted an application involving activities of a natural person and has not clearly stated that he/she wishes for reconciliation proceedings, the Chancellor of Justice has explained to the applicant the nature of

reconciliation proceedings and the competencies of the Commissioner, whereby the applicant may choose whether or not to go on with the reconciliation proceedings. If the case cannot be solved in reconciliation proceedings, the practice has been to refer this case to the Commissioner, or the interested party is notified of the possibility of taking the case to the Commissioner.

The Commissioner is an impartial expert who acts independently, monitors compliance with the requirements of the Equal Treatment Act and the Gender Equality Act, and performs other functions imposed by law. These include advising and assisting persons in submitting complaints and claims regarding discrimination, and providing expert opinions regarding possible cases of discrimination, at the request of any person or on his or her own initiative.

If a case involving a public body is brought before the Office of the Commissioner, the practice has been to counsel the person concerning his/her possible legal remedies, e.g. notifying the interested party of the possibility of taking the case to the Chancellor of Justice. It is also possible for the Commissioner to refuse giving an opinion if a petition regarding the same case has been filed with the Chancellor of Justice, or a conciliation procedure is in process with the Chancellor of Justice; thus eliminating the possibility of simultaneous proceedings in the same case.

The complementary functions have not produced a disparate effect regarding the number of complaints submitted to the respective bodies.

In 2010, the Commissioner received 47 complaints on discrimination (in the Commissioner's opinion, discrimination had taken place in 15 of the cases in 2010).

In 2010, altogether 43 applications related to complying with the principle of equal treatment were filed to the Chancellor of Justice. The said applications addressed the compatibility of legal acts with the constitution as well as the activities of public authorities and conducting the conciliation procedure (upon 3 cases, the Chancellor of Justice established a contravention of the general principle of equality laid down in § 12(1) of the Constitution in a legislation of general application).

In 2010, The Chancellor of Justice received two applications for reconciliation proceedings regarding equal treatment.

d) Estonia acknowledges that the budget allocated to the Office of the Gender Equality and Equal Treatment Commissioner from the state budget needs to be increased. Efforts have been made to find additional funding to the Commissioner up to the year 2015. However, the actual allocation of resources depends on 2012 budget negotiations and approval.

e) The Ministry of Social Affairs will initiate the process of setting up the Gender Equality Council in autumn 2011.