

Alternative report  
as a commentary on the report CCPR/C/EST/4 by the Republic of Estonia  
and as a response to the List of issues CCPR/C/EST/QPR/4

(submission for the 125<sup>th</sup> Session of the Human Rights Committee to  
review the fourth periodic report of the Republic of Estonia)



Submitted by: Eurasian Coalition on Male Health (ECOM)

In partnership with: Estonian Network of People Living with HIV (EHPV - Eesti HIV-positiivsete võrgustik)  
and VEK LBGT - LGBT Community of Estonia

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## I Introduction

This report is submitted by the Eurasian Coalition on Male Health (henceforth referred as ECOM) in partnership with Estonian Network of People Living with HIV (EHPV - Eesti HIV-positiivsete võrgustik EHPV) and VEK LBGT - LGBT Community of Estonia as per the invitation of the HRCtee that welcomes "alternative reports" from regional NGOs regarding the observation of the Covenant by a State party, in this case - by Estonia. The given report includes information pertinent to article 12 of the International Covenant on Economic, Social and Cultural Rights and articles 2, 26 of the International Covenant on Civil and Political Rights (hereinafter, the Covenant).

This report will consider the following topics:

- discrimination of men who have sex with men (hereinafter, MSM) on the national level, which leads to systemic homophobia within the healthcare system
- discriminatory attitude in relation to MSM during them receiving medical care
- absence of any effective legislative instruments that would ban discrimination on the basis of sexual orientation and ensure the possibility of protection of human rights for MSM
- governmental disregard of the needs of the MSM community, particularly, within the area of HIV prevention, which forces the community into the shadows, thereby further maintaining the HIV epidemic

The present situation within the Republic of Estonia related to the protection of human rights of the LGBT community, particularly of MSM, does not provide any opportunity for the latter to receive support and help from the government, as per national law, to an equal extent in comparison to heterosexual people, for instance. Although Estonia is not a country that openly propagates homophobia or transphobia, nor does it have any forms of penalties for exercising non-heterosexual sexual conduct, there is evident systemic homophobia still present within the governmental apparatus, especially in the healthcare sector. Since Estonia is a country that has been under the Soviet rule for a considerable period of time, the ex-Soviet homophobic agenda and practices have evidently penetrated the governmental system and have planted the seeds of discrimination and stigmatization of MSM that has yet to be rooted out.

Although Estonia indicates that it is making steps toward protecting the rights of the LGBT and preventing them from being discriminated,<sup>1</sup> the forms and time-consumption of these steps are very discouraging. The MSM are often subjected to diverse forms of verbal or physical abuse within the country because there is no national official agenda that would protect them from being discriminated, given the vulnerable status they are in. When instances of hate speech or violence based on homophobia or transphobia occur, MSM are hesitant or scared to turn for help to the police or hospitals because they are afraid of being further harassed by the employees there. Apart from that, being a population that has high HIV-prevalence rates, MSM require open national support and protection in order to come out of the shadows and turn to healthcare to receive HIV-prevention tools, get timely diagnosis and treatment. Such steps are detrimental for alleviating the HIV burden on MSM who are discriminated into covert sexual practices and being afraid to seek sex education and medical care because of stigmatization. At present, the government allocates next to no attention and funds that would be aimed at providing for the needs of the MSM community, especially in terms of health and HIV-prevention. It also does not consider it to be plausible to accept representatives of the LGBT community as participants during the drafting government programmes that are relevant for the protection of the human rights of the LGBT overall, MSM included.

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<sup>1</sup> Report CCPR/C/EST/4. (2018). HRCtee, para 27-28.

## II Obstruction of Equal Human Rights for MSM in Estonia

### *Right to Health*

In conformity with article 12 of the International Covenant on Economic, Social, and Cultural Rights, to which Estonia is a party, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for [...] (c) the prevention, treatment and control of epidemic diseases; (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness." Article 28 of the Constitution of Estonia states that, "Everyone has a right to healthcare." Despite Estonia taking the aforementioned obligations on, the present situation that has erupted for the MSM community inclines that the country does not consider it necessary to ensure the right to health for every person in the good spirit of equality.

In 2018, ECOM prepared two reviews regarding HIV among MSM in Estonia and found that there is barely any data or attention devoted to the said population and its health needs. Since "sex between men accounted for the largest proportion of [HIV] cases diagnosed in 2016 - 40%,"<sup>2</sup> MSM is a group that is at the highest risk of new infection cases. It means that this population group requires special attention and effort to reduce the prevalence rate and exercise effective HIV-prevention through sexual education, non-discriminatory healthcare and elimination of stigma. The report<sup>3</sup> shows that, although the national Health Board in Estonia has been gathering transmission data since 2009, the number of cases has increased, which means that the data is only gathered and it is not put to use to reduce the cases. Independent and governmental surveys specify that there are up to 9,000 homosexual and bisexual men in Estonia,<sup>4</sup> but the number is definitely much larger since a significant proportion of MSM remain "in the closet," which also strays them from turning for HIV-testing and/ or treatment. It should be noted that "the latest studies among MSM in Estonia show low rates of HIV and STI testing – 42% had tested for HIV and 23% for STIs in the last 12 months, while 25% had never tested for HIV."<sup>5</sup> "HIV prevalence among MSM is estimated to be 2–4% and it has been stable in the last years,"<sup>6</sup> but since there is so little data available (e.g. time of infection), it is hard to conduct any credible research on the matter of HIV-epidemic and HIV-prevalence among MSM. There are no specific governmentally-supported STI services for MSM in Estonia.<sup>7</sup> It should be noted that the government does not invest in credible qualitative and quantitative research of the MSM population. For instance, there is no data about ART coverage, HIV-prevention programmes coverage, active syphilis or viral hepatitis stats at all.<sup>8</sup>

Considering that Estonia is quite a developed economy, even among the EU countries,<sup>9</sup> such estimates indicate that national practices and healthcare distribution does not work for MSM the same way as they do for the rest of the nation. Notably, HIV testing and care for MSM are provided on the same basis as they are for the general population.<sup>10</sup> Considering that MSM is a vulnerable group acknowledged to be at the highest risk of getting infected, it means that it is not "general population" and it requires tailored programmes to reduce the prevalence rate and prevent new cases from occurring.

That being said, Estonia's attention to another HIV-risk group - people who inject drugs, (hereinafter, PWID) - and their right to health is more focused and supportive compared to the virtually absent attention to MSM. It is widely recognized that HIV-prevalence rate among MSM is as high as among PWID.<sup>11</sup> Nonetheless, Estonia's financial devotion to programmes that aim at HIV-prevention among PWID is starkly apparent, which, unfortunately, is not the case for MSM. For example, the Estonian National Health Plan Report 2015-2016 includes HIV testing for risk groups, including PWID (MSM are not officially stated as a risk group there); it also includes needle and syringe exchange and substitution treatment for

<sup>2</sup> Chikhladze, S. and Kasianchuk, M. (2018). *Assessment of strategic information on men who have sex with men and trans people in Estonia*. ECOM. Available at: [https://intra.tai.ee/images/prints/documents/152949735887\\_Assessment\\_SI\\_Estonia\\_2018.pdf](https://intra.tai.ee/images/prints/documents/152949735887_Assessment_SI_Estonia_2018.pdf)

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.; AIDSinfo. (2019). UNAIDS. Available at: <http://aidsinfo.unaids.org>, bookmark "men who have sex with men", filter "Map"

<sup>5</sup> Ibid.

<sup>6</sup> HIV in Estonia: Situation, Prevention, Treatment, and Care. (2016). UNAIDS. Available at: [www.unaids.org/en/file/110927/download?token=hflmcdw](http://www.unaids.org/en/file/110927/download?token=hflmcdw)

<sup>7</sup> Ruutel K, Lõhmus L, Janes J. (2013). Internet-based recruitment system for HIV and STI screening for men who have sex with men in Estonia, 2013: Analysis of preliminary outcomes. *Euro Surveillance*.

<sup>8</sup> AIDSinfo. (2019). UNAIDS. Available at: <http://aidsinfo.unaids.org>, bookmark "men who have sex with men", filter "Map"

<sup>9</sup> OECD Economic Surveys: Estonia. (2017). OECD. Available at: <https://www.oecd.org/economy/surveys/Estonia-2017-OECD-economic-survey-overview.pdf>, p.10

<sup>10</sup> Ibid.

<sup>11</sup> Ruutel K, Lõhmus L, Janes J. (2013). Internet-based recruitment system for HIV and STI screening for men who have sex with men in Estonia, 2013: Analysis of preliminary outcomes. *Euro Surveillance*.

PWID.<sup>12</sup> Estonia's financial reports to the UNAIDS indicate that the government allocates approximately EUR 12 million for HIV-harm-reduction programmes annually. As it was mentioned above, the MSM population is approximately 9,000 people in Estonia<sup>13</sup>; the PWID is governmentally estimated to be around 9,000 people as well.<sup>14</sup> With this in mind, the PWID have an official governmental programme that is **focused on harm reduction and, among others, includes "14 stationary and 23 out-reach NSPs.** NSPs distributed almost 2.1 million free syringes (approximately 230 syringes per PWID per year) and more than 290,000 free condoms in 2015 (NIHD, programmatic data). [...] In addition to needle and syringe exchange, opioid substitution therapy (OST) is provided to PWID (seven organisations in nine locations, mostly in capital city Tallinn and North-Eastern Estonia)."<sup>15</sup> In comparison to the ardent governmental support of HIV harm reduction and prevention for PWID, the attention allocated to MSM is quite scarce, to say the least. There is only STI and blood-borne infections testing for MSM in 6 larger cities of Estonia,<sup>16</sup> which does not mean that the testing sites are tailored to test for HIV. Also, the report mentions that the financial aid for HIV-epidemic statistical research and support was stopped.<sup>17</sup> There are vague comments in the report that say that the National Health Plan supports only HIV rapid-testing and condom distribution in gay-oriented bars and clubs, and that 10% of MSM reported that the last testing they had had was at such venues,<sup>18</sup> and that is it. The National Health Institute for Health in Estonia presents data that inclines that HIV-reduction-programmes (needle/syringe exchange and methadone substitution, for example) for PWID receive more than EUR 2.5 million, while the only programme for MSM is HIV-rapid testing and condoms distribution in gay-oriented bars and clubs receives less than EUR 10,000, and it is **not included as a separate expenditure but is piled up under the "anonymous testing" together with the general population,** which makes it even harder to conduct any kind of research. Finally, the most vulnerable category in terms of HIV among MSM - people who live with HIV (PLHIV) - do not receive any help from the government at all. They suffer from double stigmatization as being gay/bisexual and being HIV+. They are in dire need of social and psychological support on par with receiving treatment and staying on the HIV continuum of care, but none of that is currently possible effectively or supported by the Estonian government.

There is no official mechanism (regulation, protocol, statute, etc.) that would allow the civil society to influence the allocation of funds for HIV programmes and their distribution among the population. No NGOs or other organisations have any opportunity to file applications, pleas, or complaints about how the funds for HIV-programmes are distributed because there is a void in Estonian legislation for such opportunities. The government does not invite any LGBT representatives during the discussion and adoption of new regulations that influence the LGBT community, MSM included. Since HIV is a global epidemic, which is quite prevalent among Eastern European countries for that matter, the government has to include such LGBT representatives while considering new healthcare plans for its nation. As the current Strategy of the Health of Population is being drafted, no LGBT representatives have been invited to take part in the planning.<sup>19</sup> **"LGBTI organisations are not regularly consulted in policymaking, which is especially true in the health sector where the overall strategy makes no reference to LGBTI persons."**<sup>20</sup> The figures and facts stated heretofore infer that the right to health of MSM is also discriminated by the government through the lens of freedom of association because their opinion - as a separate community in the civil society with its special needs - is totally disregarded during policymaking, including healthcare regulations and programmes. Apart from this, the mechanism for assessing the effectiveness and efficiency of the governmental HIV-programmes is unclear. When such a programme is adopted, the regulation does not explicitly state who is responsible for its realisation; there is no monitoring and evaluation system for such programmes. Consequently, the above-mentioned expenditure is most likely irrational and funds could be distributed in a different fashion. LGBT organisations receive information from PWID communities and organisations, which mark that the current programme for PWID is ineffective and the amount of money disproportionally spent on needle/syringe exchange could be redistributed otherwise more effectively.

<sup>12</sup> Estonian National Health Plan Report 2015-2016. Available at: [http://www.sm.ee/sites/default/files/content-editors/Tervishoid/rahvatervis/rahvastiku\\_tervise\\_arengukava\\_aruanne\\_2015-2016\\_tabel.xlsx](http://www.sm.ee/sites/default/files/content-editors/Tervishoid/rahvatervis/rahvastiku_tervise_arengukava_aruanne_2015-2016_tabel.xlsx), sheet IV (valdkond) rows 150-157.

<sup>13</sup> HIV in Estonia: Situation, Prevention, Treatment, and Care. (2016). UNAIDS. Available at: [www.unaids.org/en/file/110927/download?token=hflmcdw](http://www.unaids.org/en/file/110927/download?token=hflmcdw)

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Grosthall, K, Laanpere, L, Meiorg, M. (2018). Compliance Report on the implementation of the Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation and gender identity in Estonia.

<sup>20</sup> Ibid.

That is not to say that Estonia is utterly oblivious to the topic. Statistics<sup>21</sup> show that the number of new HIV cases for the general population has been slowly decreasing in the last years; at the same time, the number of new HIV cases among MSM has been slowly increasing. Considering the aforementioned facts regarding how much effort the government invests in HIV harm-reduction programmes for PWID and how it almost ignores the needs for HIV-programmes of MSM, it becomes apparent that the right to health is not equally supported by the government for everybody. The risk of getting infected is extremely high and similar for both groups - MSM and PWID; nonetheless, the MSM HIV-needs do not receive the same attention, which results in the government violating their right to health and infringing its obligation to ensure the highest attainable standards of health for all people equally and to endeavor to prevent, treat, and control all epidemics and for everyone fairly. Hence, it is peculiar that, although PWID and MSM are equal in population and are in the same high HIV-risk category, the latter receive next to no attention from its country along the HIV-cascade. To reduce HIV-prevalence, HIV-morbidity and support the right to health for MSM in the spirit of equality, it is necessary that the HIV-diagnosed stay on the continuum of care (intake treatment and visit the doctor regularly), those that are healthy receive in-depth education about HIV and other STIs and are not ashamed or scared to turn to receive testing or treatment because of being harassed. At present, only LGBT-oriented NGOs are the ones who care and preoccupy themselves with the issue at hand, but they do not have the adequate funds to maintain such an attitude any longer. HIV-prevention and treatment are multidimensional programmes that require extensive financial support - governmental support - to actually make a difference.

### *Discrimination and Prejudice*

As stipulated by Article 26 of the Covenant, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, **property, birth or other status.**"<sup>22</sup> Consequently, all persons in Estonia who are entitled to first- and second-tier rights should receive equal protection and, in case of violation, equal defense of their human rights. The Constitution of Estonia seems to adopt the same stance in its article 12, in accordance with which "All are equal before the law. Nobody may be subjected to discrimination because of their nationality or race, skin colour, sex, language, origin, religion, political or other beliefs, as well as because of their material or social status or based on other circumstances." Unfortunately, like in the case of selective preference in healthcare, the law is selective in those whom it tends to protect from discrimination and whom it ignores to appease the ardent discriminators.

ECOM closely cooperates with other human rights NGOs in Estonia, as well as with individuals who turn to it for help and guidance, and a number of cases have erupted that support the claim of there overtly being little desire of the government to protect MSM from being harassed by the public. To begin with, due to a number of instances, MSM or organisations that work to protect their rights are reluctant or afraid to register abuse because they are scared of persecution or further harassment on the law-enforcement's part. Like in 2010,<sup>23</sup> **participants were harassed and abused during the Baltic Pride 2017: "there were 13 incidents with elements of incitement of hatred committed towards LGBT+ persons, one of which ended in serious bodily injury. None of the victims registered their incidents with the Police."**<sup>24</sup> The LGBT do not have faith in the police as the primary, core protector of the public order because they have resorted to negligence, lack of action, homophobia and transphobia on multiple accounts either explicitly or implicitly. In 2016, the National Institute for Health Development launched a HIV-preventive campaign that included poster images of couples and slogans that would motivate the use of condoms. One of such posters included a pair of men who were hugging. Citizens of Jõhvi were outraged by the image of two men hugging on the bus-stop posters and a homophobic post on Facebook regarding the matter became viral. **Comments under the post included, "Right, now we're here," "Oh, my god, what will I tell my kids," "Gayrope got to us now," "What is happening to our world," and other homophobic expressions.**<sup>25</sup> The news portal Rus.Postimees asked a senior researcher at the National Institute for Health Development for a commentary; he responded with adequate comments about the fact that all should be educated about STIs and preventive methods.<sup>26</sup> Nonetheless, these posters were quickly removed from the area where the dwellers launched the homophobic Facebook rant. In another case, a man had been diagnosed with

<sup>21</sup> HIV in Estonia: Situation, Prevention, Treatment, and Care. (2016). UNAIDS. Available at: [www.unaids.org/en/file/110927/download?token=hflmvdw](http://www.unaids.org/en/file/110927/download?token=hflmvdw)

<sup>22</sup> International Covenant on Civil and Political Rights. (1966). UN. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>23</sup> The Status of Lesbian, Gay, Bisexual and Transgender Rights in Estonia. (2010). Estonian Human Rights Centre. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/ngo/EstoniaShadowReportLGBT.pdf>

<sup>24</sup> Kala, Ali. (2017). "The Situation of LGBT Persons" in *Human Rights in Estonia 2016-2017*. Estonian Human Rights Centre. Available at: <https://humanrights.ee/en/materials/inimigused-eestis-2016-2017/lgbt-inimeste-olukord/>

<sup>25</sup> Жители Йыхви возмущены развешанными по городу плакатами с изображением геев. (2016). Rus.Postimees. Available at: <https://rus.postimees.ee/3760797/zhiteli-yyhvi-vozmushcheny-razveshannymi-po-gorodu-plakatami-s-izobrazheniem-geev>

<sup>26</sup> Ibid.

HIV and harassed by the medical personnel, which forced him to move to Tallinn where the medical workers and possibilities for treatment are better. Such explicit homophobic actions of the public receive no lawful reaction from the government. On the contrary, the government is geared toward supporting these homophobic populations instead of protecting the rights of MSM, especially, as seen in these instances, their right to health and non-discrimination.

On top of being harassed in the above-mentioned manner, MSM and the LGBT+ overall are frequently denied their right to freedom of association. Particularly, a disrespectful case happened to a respectable organisation EHPV - eesti hiv-positiivsete võrgustik, - which deals with the rights and needs of the HIV+ people. In 2016, EHPV was looking for a new office to rent. As per the procedure, the organisation filed multiple applications for governmental support in finding the rent. After nothing happening for more than 6 months, EHPV was forced to secretly look for a rent for its office in the private sector, which took another 3 months. When the venue was finally found and it was time to fill in the contract, after the landlord had heard the name of the organisation, which includes a reference to HIV+, they immediately denied leasing the office. In addition, the landlord and his representatives resorted to verbal abuse of the organisation's representatives; they went so far as to say, "What: you really thought we would use the same bathroom with the likes of you?" Such actions directly violate the provisions of article 22 of the Covenant, which guarantees the right to freedom of association to everyone. Particularly, to exercise the said right, associations should be equal in having the chance to create plausible conditions for their work as equally independent actors in the rent market, but LGBT+ organisations are denied their equality in such instances because of homophobia. Andrey Antonov, the chief municipal physician of the city of Narva, among others, correctly pinpointed that many of his nurses and doctors, as well as the wider public, are ignorant about HIV issues and should be educated to reduce stigma and discrimination.<sup>27</sup>

Apart from this, Estonia's Northeastern areas, like Ida-Virumaa, which are considered more "Russian-speaking," resemble the 1990s, considering that they have "their own rules" and how the government somehow tends to neglect LGBT+ issues there more than in other territories. For example, in 2016, VEK LGBT (an organisation of Russian-speaking LGBT) had an official meeting with Tarmo Tammiste, the mayor of Narva. Again, the meeting was regarding VEK LGBT trying to rent a venue for its office, particularly, in the Ida-Virumaa district. The mayor responded that his office did not approve of the area choice and that if VEK LGBT were to rent an office there, it would be at their own risk since the district has its "own rules" and that the mayor's office would not be able to guarantee their safety. The above-mentioned outrage about the poster with two hugging men and the slogan to use condom happened in the Ida-Virumaa district. Despite the prospective claims that the public often makes with regard to restricting the right to freedom of association for the LGBT+ because of them being a threat to public morals, it is exactly such conduct - denying peaceful people their lawful human rights - that is deteriorating and degrading for the public moral and order. Additionally to the facts outlined heretofore, the OECD report argues that the Northeastern territories of Estonia are somewhat neglected compared to others. As stipulated in its factsheet, OECD states that youth unemployment remains "well above the OECD average in the Northeast region;" the average GDP per capita in the Northeastern region is 60% lower than in the Northern region of the country.<sup>28</sup> Moreover, the OECD findings show that the Northeastern region experiences significantly lower life satisfaction levels than the Northern one, particularly in the areas of health (the lowest in the country), jobs, safety, civic engagement and others.<sup>29</sup> Subsequently, the general population in that region, which feels neglected by the government and experiences echoes of the Soviet homophobic past, exhibits larger levels of homophobia and intolerance toward LGBT issues. The HIV epidemic and homophobia are the most profound exactly in Northeastern Estonia,<sup>30</sup> but, unfortunately, the government currently turns a blind eye on the discrimination and stigmatization that MSM experience in that area and do not care to tend to their needs, i.e. their right to health, freedom of expression and right to freedom of association, which are equal to those of the general population.

### *Legislative Situation Pertaining to Discrimination and Prejudice*

The Republic of Estonia acceded to the International Covenant on Civil and Political Rights on October 21, 1991, and it entered into force in respect of Estonia on January 21, 1992. Estonia submitted its fourth report in 2018, which included its response to the List of issues that the HRCtee had presented it with in 2016.

<sup>27</sup> Нарва остается главным очагом эпидемии ВИЧ в Эстонии. (2016). Rus.Delfi. Available at:

<http://rus.delfi.ee/daily/virumaa/narva-ostaetsya-glavnym-ochagom-epidemii-vich-v-estonii?id=76294823>

<sup>28</sup> Regions and Cities at a Glance 2018 - Estonia. (2018). OECD. Available at: <https://www.oecd.org/cfe/ESTONIA-Regions-and-Cities-2018.pdf>.

<sup>29</sup> Ibid.

<sup>30</sup> Нарва остается главным очагом эпидемии ВИЧ в Эстонии. (2016). Rus.Delfi. Available at:

<http://rus.delfi.ee/daily/virumaa/narva-ostaetsya-glavnym-ochagom-epidemii-vich-v-estonii?id=76294823>; Chikhkladze, S. and Kasianchuk, M. (2018). *Assessment of strategic information on men who have sex with men and trans people in Estonia*. ECOM. Available at: [https://intra.tai.ee/images/prints/documents/152949735887\\_Assessment\\_SI\\_Estonia\\_2018.pdf](https://intra.tai.ee/images/prints/documents/152949735887_Assessment_SI_Estonia_2018.pdf)

In its List of issues CCPR/C/EST/OPR/4 (hereinafter, the List), the HRCtee presented Estonia with Question 7, which included an inquiry for the Estonian government to "clarify whether the Penal Code has been amended to: (b) recognize hatred on the basis of sexual orientation [and] gender identity [...] as aggravating circumstances for all offences and crimes [...]." The Eurasian Coalition on Male Health considers the Report CCPR/C/EST/4 to be such that is inconsistent with the norms established by the Covenant (article 40 para 1) and the principles that are acknowledged by the HRCtee (Human Rights Council Resolution 27/32). The Report CCPR/C/EST/4 does not present the HRCtee with an ability to actually understand the state of the criminal law in Estonia with regards to upholding non-discrimination on the basis of sexual orientation and gender identity and in relation to its ability to protect people who are entitled to freedom of gender and sexual expression by their very nature as human beings who are born with equal fundamental rights and freedoms, and who have the right to enjoy those fundamental rights and freedoms without distinction of any kind in a fair and equal manner.

Report CCPR/C/EST/4 (hereinafter, Report) includes the aforementioned answer under the section called "Question No. 7: Hate crimes," which explicitly indicates that Estonia has not yet adopted amendments to its Penal Code that would include hatred on the basis of sexual orientation and gender identity as aggravating circumstances for all offences and crimes. Question 8 in the List asked Estonia to "provide information on measures taken to combat [...] discrimination against and the harassment of lesbian, gay, bisexual and transgender individuals, homophobic and transphobic discourse by politicians and impunity for such acts." The Report (para 32) then states that Estonia has created "an IT support for marking incidents characterised by hate and motives of hate upon the registration and processing of offences" and that training for employees who would manage this "IT support" has been planned.

Article 40 paragraph 2 of the Covenant clearly states that "[r]eports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant." ECOM considers that, within the scope of Questions 7 and 8 of the List and with regard to the Covenant (article 40 para 2), Estonia avoids abiding by articles 2 and 26 of the Covenant and has not fully answered the HRCtee's inquiry, which, in turn, leads to its infringement of the standard established by Article 40 paragraph 2 of the Covenant.

It is necessary to focus on the statements that Estonia has provided in the Report, which it considers to be substitutes that may well do instead of "difficulties affecting the implementation." In addition to the above-mentioned alleged "IT support," which, at present, remains questionable since there is no legislation that actually makes the fixation of types of hate applicable to investigating offences or crimes and restoring the rights and freedoms that have been infringed. Paragraph 33 of the Report states that "the Police and Border Guard Board [...] employ web constables, [sic] who work on the identification of hate speech and react to it." Estonia has not provided any information about what are the exact categories of hate speech that these web constables are allegedly supposed to identify. It has also included no forms of reactions that the constables or other civil servants may resort to if a case of hate speech has been committed.

The Report (para 36) states that "[t]he Estonian Academy of Security Sciences has prepared and piloted 'sensitivity training,' which will be offered to police officers among others." "Sensitivity training" is an umbrella term, which can mean whatever category or issue and it acts as an avoidance maneuver for Estonia to avoid explicitly answering the question about which steps exactly it has taken to tackle sexual orientation and gender discrimination and what the difficulties in tackling it are if there are any. The Estonian Academy for Security Sciences is a part of "a national implementation working group to discuss hate crime related police training in Estonia and also to carry out the TACHLE."<sup>31</sup>

The Report (para 37-38) signifies that "the government supported the activities of a campaign against hate speech [...], that] the statistical overview of hate offences is prepared according to the example of Finland [...], and that] it has been possible to categorize hate offences under new types of cases in the police information system," which includes 'sexual orientation/identity' as a type of a hate offence. Interesting that the government of Estonia should provide such claims in its official report to the HRCtee, considering the fact that the Penal Code of Estonia does not contain words like 'hate' or 'hate speech;' "sexual orientation" is not included as an aggravating circumstance in any criminal or administrative offense. The practicality and legal value of the aforementioned claims by Estonia in the Report are, frankly, superfluous. Even if the "IT support" and the alleged database on hate offences/ hate speech within the category "sexual orientation/identity" are maintained, that data would exist in a fruitless legal void: there is no corresponding, legally defined hate speech offence or hate crime that protects the

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<sup>31</sup> Grosthall, K, Laanpere, L, Meior, M. (2018). Compliance Report on the implementation of the Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation and gender identity in Estonia.

equality and non-discrimination of people who suffer from discrimination on the basis of sexual orientation and/or gender identity in Estonia.

The Constitution of the Republic of Estonia (article 12) states that, "All are equal before the law. Nobody may be subjected to discrimination because of their nationality or race, skin colour, sex, language, origin, religion, political or other beliefs, as well as because of their material or social status or based on other circumstances." Article (§1) 151 of the Penal Code of Estonia establishes that, "Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person is punishable by a fine of up to three hundred fine units or by detention." The underscored disposition established a circumstance, which - by criminal law provision-drafting canons - would be listed as an offence of a higher degree and not a first-tier offense. Such a threshold is too high and, in its current state, it would only allow for actions to constitute such a crime only if a person or a group of people would overtly encourage and attempt to create explicit "danger to the life, health or property of a person" because of hate for their sexual orientation. In other words, all other discriminatory actions, like harassment of various types, are not prosecuted under this article, nor under any other article in the Penal Code.

With this in mind, the Report (para 27) argues that "[t]he Equal Treatment Act entered into force on 1 January 2009 and its purpose is to guarantee people's protection from discrimination on the grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation." However, the answer immediately defines the narrow protection scope the LGBT people, MSM included, may receive from that norm. Specifically, paragraph 28 of the Report states, "[D]iscrimination on the grounds of religion or views, age, disability or sexual orientation is only prohibited in issues related to working life and upon the acquisition of professional qualifications" while all the other attributes stated in paragraph 27 of the Report receive protection in the areas of "social welfare, health care and social insurances and allowances, education and the goods and services (incl. housing) offered to the public" in addition to those mentioned in the first part of this sentence. Consequently, the statements regarding the "IT support," "web constables" and hate speech efforts become virtually irrelevant because the attribute of "sexual orientation," as per the Official Estonia's explanation, may receive protection only in relation to work and acquisition of professional qualifications.

In the light of the facts and arguments presented in the prior sub-chapters and considering the statements that the Report provides, it should be noted that some of the claims are controversial and some reveal "positive" changes that have no practical application. It is true that the Gender Equality Act has incorporated "gender identity" as a protected attribute but no crimes or administrative offenses have been incorporated to administer punishment for discriminatory (hate) actions in that regard. It is true that the current legislation protects "sexual orientation" from discrimination only formally and only in the labour sector.<sup>32</sup> Apart from this, it is unclear based on which legislative regulation/ provision can the "web constables" respond and deal with hate speech on social media and online bullying. Grosthall, K, Laanpere, L and Meiorig, M<sup>33</sup> indicate that "web constables" have such authority and that they register "hate crimes" and the grounds on which they are made, like sexual orientation, and that there is a report that reflects registered hate crimes. For example, 4 hate crimes based on sexual orientation or gender identity were registered in 2016,<sup>34</sup> but the Penal Code does not have corresponding "hate crimes" that would protect from online hate or bullying, except for when such or other actions "incite hatred, violence or discrimination [...that would] result in danger to the life, health or property of a person[...]" The Penal Code of Estonia does not include words like "hate speech" or "bullying" at all, not to mention them being combined with being committed on the grounds of hate based on sexual orientation.

<sup>32</sup> Equal Treatment Act. (2009).

<sup>33</sup> Ibid.

<sup>34</sup> Ministry of Justice. (2017). Kuritegevus Eestis 2016 (Kriminaalpoliitika uuringud No. 23). Tallinn. Available at: [https://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus\\_eestis\\_est\\_web\\_0.pdf](https://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus_eestis_est_web_0.pdf).



### III Conclusion

With respect to the above, based on the fact that ECOM, as a regional NGO, is entitled to have an official opinion on the observation of human rights of its target community, particularly, in Estonia, in this report, it agrees that the Republic of Estonia has undertaken some steps to better follow its international legal obligations under the Covenant, but the efforts made are lackluster and impractical. The decision to perform training within the TACHLE framework for training the police on hate crimes is a necessary educational step to enhance its law-enforcement and their ability to deal with vulnerable populations, i.e. the LGBT+. Similarly, the system for registering hate crimes and dividing them by form, medium and discriminated attribute would eventually be needed, so its early establishment is commendable. It is also **admirable that the government incorporated "sexual orientation" into article 151 of the Penal Code and into its labour legislation.** But all of these steps have a very vague value and next-to-zero practicality. The threshold to initiate prosecution based on article 151 is too high for a first-tier offence. That being said, **even if the investigation is issued, the burden of proving that the act has "resulted in danger" to the life, health or property of the person is too heavy for the victim if no explicit harm or damage has been done or if no evidence would point out to the possibility of such immediate danger.** With this in mind, even if the training of the police on hate crime is a good thing in terms of educating them and widening their outlook on the matter of discrimination based on SOGI, there is no practical value in these steps. Similar comments **concern the "registration" of hate crimes based on discrimination because of sexual orientation** for crimes that do not exist in Estonian legislation. The police are a core task force for upholding the civil order and security. They need specific legislation, regulations, and training to effectively exercise their functions. Therefore, the said steps would comply with Estonia adhering to the Covenant and its international obligations had it:

- adopted a diverse and adequate set of hate crimes and minor offences,
- **included "sexual orientation" and "gender identity" as aggravating circumstances** for all crimes and offences that are committed based on those grounds,
- **incorporated "hate speech" and "bullying into the Penal Code in such a fashion that would allow people to protect themselves before the actions result in "danger" for their lives**
- **expressly indicated "sexual orientation" in the Equal Treatment Act that would ban any discriminatory actions on such a ground in all spheres of public and private life.**

The Penal Code is a force to be reckoned with, as well as specialized statutory frameworks that protect people that are in a vulnerable group, like the LGBTI+ community. Had these general but functional legal provisions been in place, MSM would be able to register verbal and physical abuse cases or even hate crimes at the police, initiate action against discriminatory medical workers or law-enforcement officers, or legally demand action from the state to tend to their needs. Unfortunately, at present, there is no effective legislative mechanism for them to use to ensure and/or defend their right to health or other fundamental human rights and freedoms that are violated by public or private persons daily.

## IV Recommendations

With regard to the facts stipulated in this report, based on the needs of the MSM population as people that possess the same equal rights as heterosexual people and considering the indifferent, discriminatory position of the government, the Eurasian Coalition on Male Health believes that in order for Estonia to be able to come closer to realizing its international obligations under the ICCPR and ICESCR, it has to:

- Make the protection of people from being discriminated based on their sexual orientation universal and not only in the scope of labour relations;
- Create an official procedure that would allow the LGBT organisations to legally access and influence the planning and distribution of governmental budget funds allocated for HIV programmes;
- Introduce a mandatory annual assessment mechanism that would evaluate the coverage and effectiveness of the governmentally maintained and/or supported HIV programmes
- Conduct a full-scale due diligence and assessment of the current HIV programmes and redistribute the funds in such a manner that would be adequate for the needs of MSM
- **Outline "men who have sex with men" as a separate key target population group with its own needs and peculiarities that should be covered under the governmental HIV programme separately**
- Create an official annual research framework that would oblige the government to study the LGBT in Estonia for there to be more comprehensive, official qualitative and quantitative data on the community
- Develop an in-depth sensitization training programme for civil servants, the police and medical workers in Northeast Estonia that would train and educate them on the matters of sexual orientation, gender identity and expression, peculiarities of working with the LGBTI+, human rights of the LGBTI+, their health needs and on HIV issues in the LGBTI+ community to lower the stigma and discrimination
- Change the wording of article 151 of the Penal Code in such a manner that simply the act of publicly inciting hatred, violence or discrimination on the basis of sexual orientation would already constitute a crime or a minor offence, and develop this article so that it creates an effective mechanism that would act as a preventive tool to discourage people from resorting to such actions
- **Incorporate "gender identity and expression" as a protected attribute into article 151 of the Penal Code**
- Introduce alterations to the existing Penal Code that would make the violation of human rights on **the basis of the person's sexual orientation and gender identity and expression punishable**
- **Introduce alterations to the existing Penal Code that would include "hate" and variations of "hate" activities, including those that are committed because of a person's sexual orientation and gender identity and expression, as activities that are punishable by law**
- Recognize hatred on the basis of sexual orientation, gender identity and expression as aggravating circumstances for all offences and crimes
- Create an official, user-friendly statistics system that would register and reflect the committed hate crimes based on sexual orientation and gender identity separately; this system should correlate with and correspond to the introduced alterations to the Penal Code with relation to hate crimes based on SOGI