

# **ECRI REPORT ON ESTONIA**

**(fifth monitoring cycle)**

Adopted on 16 June 2015

Published on 13 October 2015

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

ECRI Secretariat  
Directorate General II - Democracy  
Council of Europe  
F-67075 STRASBOURG Cedex  
Tel.: + 33 (0) 3 90 21 46 62  
Fax: + 33 (0) 3 88 41 39 87  
E-mail: [ecri@coe.int](mailto:ecri@coe.int)

[www.coe.int/ecri](http://www.coe.int/ecri)

# **ECRI REPORT ON ESTONIA**

## **(fifth monitoring cycle)**

Adopted on 16 June 2015

Published on 13 October 2015



# TABLE OF CONTENTS

<b>FOREWORD</b> .....	<b>7</b>
<b>SUMMARY</b> .....	<b>9</b>
<b>FINDINGS AND RECOMMENDATIONS</b> .....	<b>11</b>
<b>I. COMMON TOPICS</b> .....	<b>11</b>
1. LEGISLATION TO COMBAT RACISM AND RACIAL DISCRIMINATION .....	11
- PROTOCOL NO. 12 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS.....	11
- CRIMINAL LAW .....	11
- CIVIL AND ADMINISTRATIVE LAW .....	13
- SPECIALISED NATIONAL BODIES .....	14
2. HATE SPEECH .....	16
- TREATMENT OF HOMO/TRANSPHOBIC SPEECH IN THE CRIMINAL CODE .....	16
- DATA .....	16
- POLITICAL DISCOURSE .....	16
- THE INTERNET .....	17
- ANTISEMITIC HATE SPEECH .....	17
- HOMO/TRANSPHOBIC HATE SPEECH.....	17
- THE AUTHORITIES' RESPONSE .....	17
3. RACIST AND HOMO/TRANSPHOBIC VIOLENCE .....	19
- TREATMENT OF HOMO/TRANSPHOBIC VIOLENCE IN THE CRIMINAL CODE .....	19
- DATA AND SCALE OF THE PROBLEM .....	19
- THE AUTHORITIES' RESPONSE .....	19
4. INTEGRATION POLICIES .....	20
- INTEGRATION POLICIES UP TO 2013.....	20
- THE RESULTS OF THESE POLICIES .....	21
- THE NEW INTEGRATION POLICY ADOPTED IN DECEMBER 2014.....	26
<b>II. QUESTIONS RELATING SPECIFICALLY TO ESTONIA</b> .....	<b>27</b>
1. INTERIM FOLLOW-UP RECOMMENDATIONS OF THE 4 <sup>TH</sup> CYCLE .....	27
- WITH REGARD TO THE QUALITY OF EDUCATION FOR RUSSIAN-SPEAKERS .....	27
- WITH REGARD TO REDUCING THE NUMBER OF STATELESS PERSONS .....	27
- WITH REGARD TO THE PLACEMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS .....	27
2. POLICIES TO COMBAT DISCRIMINATION AND INTOLERANCE VIS-A-VIS LGBT PERSONS .....	28
- DATA .....	28
- LEGISLATION.....	28
- DISCRIMINATION IN VARIOUS FIELDS .....	29
3. EFFECTIVENESS OF THE SPECIALISED NATIONAL BODIES.....	30
<b>INTERIM FOLLOW-UP RECOMMENDATIONS</b> .....	<b>33</b>
<b>LIST OF RECOMMENDATIONS</b> .....	<b>35</b>
<b>BIBLIOGRAPHY</b> .....	<b>39</b>



## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002 and those of the third round at the end of 2007, and those of the fourth round will be completed at the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 19 March 2015. Developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on Estonia on 15 December 2009, progress has been made in a number of areas addressed in the report.**

With regard to legislation, a recent amendment to the Citizenship Act relaxes the language requirements for persons over 65 years of age applying for Estonian nationality and will, as from 2016, make it possible to automatically grant Estonian citizenship to all children born to parents of undetermined citizenship. The Cohabitation Act was also passed, which will grant same-sex couples equal protection to that afforded to heterosexual couples.

The Ministry of Justice has also proposed an amendment to the Criminal Code that would remove or ease the condition restricting the scope of the articles making incitement to racial hatred and violence and racial discrimination a criminal offence to cases where the victim's health, life or property are at stake; add citizenship and gender identity to the characteristics of victims of racist conduct classified as criminal offences and make racist motivation an aggravating circumstance in all ordinary offences.

Estonia also conducted an integration programme over the period 2008-2013. The programme covered the needs of all vulnerable groups with emphasis on the integration of Russian-speaking citizens and people of undetermined citizenship. The results of the census carried out in 2011 bear witness to the impact of this programme, in particular a decrease in the number of persons of undetermined citizenship.

The programme was not only officially assessed but independent research and studies were also carried out. As a result, adjustments were made to the way it was implemented over the years and many major problems still needing to be solved have been identified. On this basis Estonia has adopted a further integration programme covering the years up to 2020.

**ECRI welcomes these positive developments in Estonia. However, despite the progress achieved, some issues continue to give rise to concern.**

Estonia does not suffer from a specific problem of hate speech but the following issues continue to give rise to concern: the prevalence of racist remarks on Internet news portals and the failure to take action in response to homo/transphobic speech by politicians. The under-reporting of cases of racial or homo/transphobic hatred or violence urgently raises the question of the lack of training activities for the police and members of the judiciary. There are insufficient coordinated measures to draw the attention of society as a whole to the problems of racism and racial discrimination.

With regard to integration, Russian-speaking citizens and people of undetermined citizenship have not been sufficiently consulted on the implementation of the Language Act, in particular concerning the acquisition of citizenship. This legislation could result in indirect discrimination with regard to access to employment for persons whose mother tongue is not Estonian. The move to a system where upper secondary schools are obliged to teach 60% of subjects in Estonian reveals further shortcomings. The performance of students in Russian-language schools is poorer than in Estonian-language schools. However, this gap has decreased over recent years. Regions where the majority of the population speak Russian continue to be less economically developed and still have high rates of unemployment. There is neither a system for collecting data on equality nor any specific plans for addressing the problems of each vulnerable group.

With regard to specialised bodies, there are two national institutions with specific responsibility for combating racism, xenophobia, antisemitism and intolerance, and

racial discrimination. However, only the Chancellor of Justice can be considered to be an independent institution.

**In this report, ECRI calls on the Estonian authorities to take further measures in certain areas; it makes a number of recommendations, including the following.**

The Estonian authorities should review the Criminal Code with a view to criminalising racist offences such as: public insults or defamation; public expression of an ideology which claims the superiority of a grouping of persons; the public denial, justification or condoning of crimes of genocide, crimes against humanity or war crimes; the public dissemination or distribution, or the production or storage of material with a racist content; creation, leadership, participation in or support for a group which promotes racism; and racial discrimination in the exercise of one's public office or occupation. Other changes to the code should extend the protection of some of the provisions of criminal law to groups of persons and make racist motivation an aggravating circumstance in all ordinary offence.

The authorities should also amend the Criminal Code with a view to removing the condition restricting the scope of the articles making incitement to racial hatred and violence and racial discrimination a criminal offence only in cases where the victim's health, life or property are at stake, and put in place a system for the collection of data and production of statistics relating to such acts. \*

The Equal Treatment Act should also be reviewed with regard to the following points: the award of public procurement contracts; the removal of any discriminatory provisions appearing, inter alia, in employment contracts or in internal regulations of enterprises; the suppression of public financing of racist organisations; and the definition of other types of discrimination. This legislation should, where appropriate, be amended to ensure the independence of the Gender Equality and Equal Treatment Commissioner.

Language, citizenship and gender identity should be included as prohibited grounds in all relevant legislative provisions. Training in matters concerning racism and racial discrimination should be organised for police officers and members of the judiciary and efforts should be made to raise the general public's awareness of such issues.

Steps should also be taken to solve problems relating to the application of the Language Act where Russian-speakers are concerned, in order to ensure that this legislation does not contain any provisions that might give rise to indirect discrimination in access to employment for persons whose mother tongue is not Estonian, to reduce unemployment in regions where the majority of the population speak Russian and to establish a system for the collection of data on equality.

Lastly, under the new integration programme 2020, the authorities should launch an information campaign for the attention of Russian-speakers and persons of undetermined citizenship to encourage them to take part in this programme.

---

\* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation to combat racism and racial discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. The Estonian authorities have informed ECRI that they require more time to assess the impact of ratification of Protocol No. 12. ECRI notes that the Protocol, which lays down a general prohibition of discrimination, was adopted on 4 November 2000. ECRI believes that this instrument is an essential component of the fight against racism and racial discrimination.

2. ECRI again recommends that the authorities ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

##### - Criminal law

3. ECRI has on several occasions examined the provisions of the Criminal Code in the light of its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The analysis that follows focuses on the ongoing shortcomings.

4. ECRI notes that Articles 151 and 152 of the Criminal Code refer in particular to nationality, race, colour, sex, language, origin, religion and sexual orientation as the characteristics of the victims of racist conduct which they classify as criminal offences (hereafter “prohibited grounds”). The Estonian terms corresponding to nationality and origin are often used in a synonymous way and cover both national and ethnic origin.<sup>2</sup> This list of prohibited grounds does not include citizenship and gender identity. At this stage of its analysis, ECRI would like to mention an initiative taken by the Ministry of Justice in 2011 to amend various Articles of the Criminal Code in which issues of racism and racial discrimination are concerned. According to the information it has received so far, this would involve including citizenship and gender identity among the prohibited grounds for racially-motivated offences,<sup>3</sup> including racist motivation as an aggravating circumstance in all ordinary offences, and removing (or easing) the condition limiting the scope of Article 151 (see § 5).

5. With regard to paragraph 18 a) of GPR No. 7, ECRI notes that Article 151.1 of the Criminal Code criminalises incitement to hatred, violence and racial discrimination on the prohibited grounds. However, ECRI notes that this Article does not specify whether a grouping of persons can be considered as victims, as is also advocated by paragraph 18 a) of GPR No. 7.<sup>4</sup> Furthermore, as already noted by ECRI in its 4<sup>th</sup> report,<sup>5</sup> this provision in the Criminal Code contains a

---

<sup>1</sup> In accordance with ECRI’s General Policy Recommendation (GPR) No. 7, “racism” is understood to mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons. “Racial discrimination” is understood to mean any differential treatment based on these grounds, which has no objective and reasonable justification.

<sup>2</sup> In civil law, this use is confirmed by the explanatory memorandum to the Equal Treatment Act ([http://www.rigikogu.ee/index.php?page=en\\_vaade&op=ems&enr=384SE&koosseis=11](http://www.rigikogu.ee/index.php?page=en_vaade&op=ems&enr=384SE&koosseis=11)).

<sup>3</sup> With regard in particular to the inclusion of gender identity in the list of prohibited grounds, this initiative is of special relevance in the context of Part II.2 of this report on measures to combat intolerance and discrimination against Lesbian, Gay, Bisexual and Transgender Persons (LGBT) insofar as discrimination against LGBT persons is primarily based on grounds of both “sexual orientation” and “gender identity”.

<sup>4</sup> EU 2014a: § 3.1.1.

<sup>5</sup> § 35 of the 4<sup>th</sup> report on Estonia.

condition limiting its application to cases in which it can be established that the act in question poses a danger to the life, health or property of the victim.

6. Despite the recommendation made by ECRI in its 4<sup>th</sup> report,<sup>6</sup> the Criminal Code still contains no provision criminalising public insults or defamation on the prohibited grounds, as advocated in paragraph 18 b) of GPR No. 7. Lastly, Article 120 of the Criminal Code makes threats a criminal offence, but still with no explicit reference to the prohibited grounds, as called for by paragraph 18 c) of GPR No. 7.
7. ECRI notes that the Criminal Code contains no provision criminalising: the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates a grouping of persons, as recommended by paragraph 18 d) of GPR No. 7; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes,<sup>7</sup> as advocated by point e) of that paragraph; the public dissemination or publication, production or storage for the purposes of public dissemination or distribution, of written, pictorial or other materials containing manifestations covered by paragraph 18 a), b), c), d) and e) of GPR No. 7, as stipulated in paragraph 18 f).
8. ECRI notes that, despite its recommendation in the 4<sup>th</sup> cycle report,<sup>8</sup> the Criminal Code contains no specific provision<sup>9</sup> making it a criminal offence to create or lead a group which promotes racism, support for such a group or participation in its activities with the intention of contributing to the offences enumerated in paragraph 18 a), b), c), d), e) and f) of GPR No. 7, as called for by paragraph 18 g) of that General Policy Recommendation. ECRI also notes that the Criminal Code does not specifically criminalise racial discrimination in the exercise of one's public office or occupation, as advocated by paragraph 18 h) of GPR No. 7.
9. Nor does the Criminal Code contain any provision stipulating that for any offence not referred to in paragraphs 18 and 19 of GPR No. 7, a racist motivation shall be considered an aggravating circumstance. Here too, ECRI points out that the Ministry of Justice has proposed an amendment in this connection (see § 4), and, like the CERD,<sup>10</sup> calls on the authorities to amend, as quickly as possible, the Criminal Code to that effect.
10. ECRI recommends (1) that citizenship be added to the prohibited grounds in Articles 120, 151, and 152 of the Criminal Code; (2) that these articles extend the protection afforded to groupings of persons; (3) that provisions be inserted into the Criminal Code making the following criminal offences: (i) public insults and defamation on the prohibited grounds thus supplemented; (ii) the public expression of an ideology which claims the superiority of, or which depreciates or denigrates a grouping of persons; (iii) the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes; (iv) the public dissemination or distribution, or the production or storage aimed at public dissemination or distribution of written, pictorial or other material containing manifestations covered by paragraphs 18 a), b), c), d) and e) of GPR No. 7; (v) the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities; (vi) racial discrimination in the

---

<sup>6</sup> § 41 of the 4<sup>th</sup> report on Estonia.

<sup>7</sup> EU 2014a: § 3.1.3 and § 3.1.4.

<sup>8</sup> § 44 of the 4<sup>th</sup> report on Estonia.

<sup>9</sup> ECRI refers to the terms of paragraph 3 of the explanatory memorandum to GPR No. 7, underlining the fact that criminal law has a symbolic effect which can raise the awareness in society of the seriousness of racism and racial discrimination and that it can have a strong dissuasive effect.

<sup>10</sup> CERD 2014: § 8.

exercise of one's public office or occupation; (4) that a provision be added to the Criminal Code explicitly specifying that a racist motive constitutes an aggravating circumstance in any ordinary offence; (5) that the condition limiting the scope of Article 151 to cases posing a threat to the health, life or property of the victim be removed.

- **Civil and administrative law**

11. In its 4<sup>th</sup> report, ECRI noted the entry into force on 1 January 2009 of the Equal Treatment Act, concluding that it was broadly in keeping with GPR No. 7. However, ECRI observed that the prohibition of discrimination based on religion or other beliefs did not extend to social protection, education or to access to and supply of public goods and services, and that the Equal Treatment Act did not prohibit discrimination based on citizenship or language, and recommended that the authorities take action to address these shortcomings.<sup>11</sup>
12. In this connection, the Chancellor of Justice concluded that the existence, pursuant to the Equal Treatment Act, of different levels of protection, depending on the prohibited ground concerned, could be contrary to the state's obligation to guarantee protection against all unequal treatment, in pursuance of paragraphs 12 (1), 13 and 14 of the constitution. In 2011, the Chancellor of Justice sent a letter to the Minister of Social Affairs on this subject. The latter announced in 2013 that an analysis of the scope of the Equal Treatment Act would be included in the Ministry of Social Affairs' 2014 work plan. ECRI understands that the Ministry of Social Affairs has recently started the process of amending the law in order to widen the scope of protection equally to all grounds of discrimination.
13. ECRI recommends that citizenship and language be included among the prohibited grounds in all areas where protection against discrimination is guaranteed by the Equal Treatment Act.
14. With regard to the different forms of discrimination, Article 3 of the Equal Treatment Act defines harassment as another form of discrimination, as recommended in paragraph 15 of GPR No. 7. However, this Act does not include segregation, discrimination by association, the announced intention to discriminate, inciting another to discriminate and aiding another to discriminate as forms of discrimination.
15. ECRI recommends that segregation, discrimination by association, the announced intention to discriminate, and inciting or aiding another to discriminate be added to the forms of discrimination listed in the Equal Treatment Act.
16. The Public Procurement Act contains a reference to the principle of equal treatment. However, this reference merely obliges the contracting authorities not to discriminate among candidates during the call for tenders process, and not, as advocated by paragraph 9 of GPR No. 7, to ensure that parties to whom contracts, loans, grants or other benefits are awarded respect and promote a policy of non-discrimination.
17. ECRI recommends that the Public Procurement Act be revised so as to introduce an obligation to respect a policy of non-discrimination by those parties to which the public authorities award contracts, loans, grants or other benefits, to extend this obligation to respect and promotion of such a policy and to specify that any violation of this condition may result in the termination of the contract, grant or other benefits.

---

<sup>11</sup> §§ 51 and 52 of the 4<sup>th</sup> report on Estonia.

18. ECRI also notes that contrary to what is advocated in paragraph 14 of GPR No. 7, Estonian legislation does not provide that discriminatory provisions included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations and rules governing the independent professions and workers' and employers' organisations should be amended or declared null and void.
19. ECRI recommends that the legislation be amended to stipulate that discriminatory provisions included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations and rules governing the independent professions and workers' and employers' organisations should be amended or declared null and void.
20. Neither the Political Parties Act nor the Non-profit-making Associations Act provides for an obligation to suppress public financing of organisations or political parties or to dissolve organisations that promote racism, as called for in paragraphs 16 and 17 of GPR No. 7.
21. ECRI recommends that the possibility of suppressing public financing of any organisation or political party that promotes racism be introduced into the Associations Act and/or the Political Parties Act.

- **Specialised national bodies** <sup>12</sup>

22. Estonia has two specialised national bodies: the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner. This is the result of developments described by ECRI in its 3<sup>rd</sup> and 4<sup>th</sup> reports.
23. With regard to principle 3.d of GPR No. 2, ECRI notes that the Chancellor of Justice Act does not stipulate that this institution shall provide aid and assistance to victims of discrimination so they can assert their rights before the courts. In contrast, Article 16.3 of the Equal Treatment Act assigns this function to the Gender Equality and Equal Treatment Commissioner, in application of the recommendation made by ECRI.<sup>13</sup> Nor is the Chancellor of Justice given the authority to have recourse to the courts in cases of discrimination, as advocated by principle 3.e of GPR No. 2. ECRI understands that under the terms of Article 16.2 of the aforementioned Act, the Gender Equality and Equal Treatment Commissioner can assist complainants in filing complaints in cases of discrimination, but it is ECRI's understanding that this does not equate to the authority to bring cases before the courts.
24. Complaints of cases of discrimination can be submitted to both institutions, as advocated by principle 3.f of GPR No. 2. The Chancellor of Justice Act provides for the possibility of conciliation proceedings in cases of discrimination in the private sphere, but initiating such proceedings requires the consent of the parties concerned (see § 108). In conciliation proceedings, the decisions taken by the Chancellor of Justice are legally binding in cases where both the petitioner and the respondent consent to his/her proposals. Other decisions or opinions of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner are not binding in nature.
25. ECRI understands that neither of these two institutions is explicitly tasked by the law with contributing to the training of certain key groups, as called for in

---

<sup>12</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

<sup>13</sup> § 67 of the 4<sup>th</sup> report on Estonia.

principle 3.j of GPR No. 2. However, the Commissioner informed ECRI that she has been engaged since the establishment of her office in 2005 in training sessions on equality legislation and issues under her mandate targeting employers, human resources departments, civil servants, lawyers, the Labour Inspectorate's jurists and inspectors, as well as members of NGOs. With regard to promoting the general public's awareness of discrimination issues (principle 3.k of GPR No. 2), Article 16.9 of the Equal Treatment Act provides that the Gender Equality and Equal Treatment Commissioner may take steps in this connection, as does Article 35-16 of the Chancellor of Justice Act.

26. In addition, ECRI notes that Article 18 of the Equal Treatment Act and Article 25 of the Chancellor of Justice Act prevent a complainant from referring the same case to both institutions. ECRI understands that there is excellent collaboration between both institutions, especially with regard to advising complainants as to which institution would best be suited to deal with their complaints. However, ECRI observes that this system is based on an informal procedure which cannot offer complainants a sufficient guarantee that their requests will be dealt with in the best possible way.
27. ECRI recommends that the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner devise and publish a joint formal procedure enabling complainants to make informed decisions as to the institution to which it would be better for them to submit their requests.
28. With regard to their independence, ECRI notes a significant disparity between the situation of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner. The Chancellor of Justice complies with the recommendations set out in principle 5 of GPR No. 2. The Equal Treatment Act provides that the Gender Equality and Equal Treatment Commissioner is an expert acting in full independence, appointed by the Minister for Social Affairs and that his or her budget is allocated by that Ministry. In addition, ECRI is of the opinion that the various provisions<sup>14</sup> regarding the appointment of staff members of the institution do not establish transparent and detailed rules on the appointment of the Commissioner as recommended in principles 5.2 and 5.4 of GPR No. 2. Lastly, ECRI notes that, despite its recommendation in the 4<sup>th</sup> cycle,<sup>15</sup> this institution comprises only two people, namely the Commissioner herself and an advisor, as well as a part-time assistant. Consequently, only the Chancellor of Justice can be considered at present to be a fully independent authority.
29. ECRI recommends that the authorities take decisions to enhance the independence of, and increase the resources available to, the institution of the Gender Equality and Equal Treatment Commissioner, in order for it to function properly.
30. Should this be the case, ECRI recommends that the authorities amend the Equal Treatment Act so as to confer on the Gender Equality and Equal Treatment Commissioner the authority to bring cases before the courts and to contribute to the training of certain key groups.

---

<sup>14</sup> Articles 15.4 and 15.5 of the Equal Treatment Act, and 11.4 and 63.4 of the Civil Service Act.

<sup>15</sup> § 66 of the 4<sup>th</sup> report on Estonia.

## 2. Hate speech<sup>16</sup>

### - Treatment of homo/transphobic speech in the Criminal Code

31. Article 151.1 of the current Criminal Code outlaws incitement to hatred, violence and racial discrimination. Article 152.1 prohibits the unlawful restriction of a person's rights and the unlawful granting of preferences to an individual. Both these provisions specifically mention sex and sexual orientation<sup>17</sup> among the prohibited grounds. There is no mention of gender identity.<sup>18</sup> As stated above (see § 4), ECRI notes that the Ministry of Justice has put forward proposed amendments to the Criminal Code to include gender identity in the list of prohibited grounds. Furthermore, as indicated above (see § 9), the Criminal Code also does not contain any provisions stipulating that sexual orientation or gender identity constitutes an aggravating circumstance. ECRI understands that the addition of such an aggravating circumstance may have been discussed in the Ministry of Justice's proposed amendment, but that there is no assurance that it will ultimately be included. ECRI believes that this addition is essential to ensure an appropriate level of protection for LGBT persons.

32. ECRI recommends that gender identity be specifically added to the prohibited grounds in Articles 151 and 152 of the Criminal Code and that a provision be added to that Code explicitly stipulating that sexual orientation and gender identity constitute an aggravating circumstance in any ordinary offence.

### - Data

33. ECRI takes note of the information forwarded to it by the Estonian authorities. According to this information, since 2010 five offences of incitement to hatred have been investigated by the judicial authorities. ECRI has received no information as to the outcome of these proceedings. As ECRI stated in its 4<sup>th</sup> report, it is difficult in the absence of any statistics to assess the scale of violations of the articles criminalising hate speech. This shows that there is a general problem of under-reporting,<sup>19</sup> the existence of which has been especially highlighted in Estonia.<sup>20</sup> The cases cited below will help give some insight into the scale of the phenomenon.

### - Political discourse

34. ECRI has not noted a particular problem of racist hate speech in political discourse. It has observed occasional instances such as the statements made in May 2013 by Martin Helme, a member of the Conservative People's Party in a television programme during which he said that he would like Estonia to be a white country and that immigration would lead to the pillaging and raping of Estonian towns, and the insulting comments made in October 2014 by the

---

<sup>16</sup> This section deals with racist and homo/transphobic speech. For a definition of "hate speech", please refer to Recommendation R (97) 20 of the Committee of Ministers to member states on hate speech, adopted on 30 October 1997.

<sup>17</sup> "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

<sup>18</sup> "Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms." Ibid.

<sup>19</sup> On this subject, see also the research carried out by the European Union's Fundamental Rights Agency (FRA) in all EU countries, showing that often the victims of hate crime do not file a report. See FRA 2013b.

<sup>20</sup> FRA 2009: p.176.



Minister of Finance about the Education Minister on account of his ethnic origin. Homo/transphobic speech, apparently more frequent, will be analysed below (see § 37).

- **The Internet**

35. There is a major problem concerning the Internet news portals in Estonia where readers can post comments online. The case of Delfi illustrates this problem. In January 2006, Delfi, one of the largest news portals in Estonia, published an article on a shipping company. Comments containing offensive remarks about the nationality of the company's shareholder were posted following this article. In April 2006, this person brought a civil suit against Delfi. In a 2009 judgment, the Estonian Supreme Court ruled that Delfi should be held responsible for the comments posted by readers. Having exhausted all domestic remedies, Delfi applied to the European Court of Human Rights (ECtHR). The case is currently before the Grand Chamber of the ECtHR.<sup>21</sup>

- **Antisemitic hate speech**

36. Very little information has been received about the existence of antisemitic hate speech. ECRI's assessment in its 4<sup>th</sup> cycle report that there was no antisemitism from the state and that the latter reacted to antisemitic acts remains valid and has been confirmed by other sources. For example, the Bureau of Democracy, Human Rights and Labor of the US State Department states that it had received no reports of antisemitic acts.<sup>22</sup> The FRA takes the same view.<sup>23</sup> However, it should be pointed out that in the summer of 2011, the Museum of Estonian History mounted a temporary exhibition on former renowned residents of Tallinn. The museum exhibited a book written by the politician and Nazi ideologist Alfred Rosenberg as well as his curriculum vitae, with explanations that he had committed war crimes. Both items were later removed.

- **Homo/transphobic hate speech**

37. ECRI notes that the political classes are not exempt from hostile attitudes towards LGBT persons. For example, at a government weekly press conference in 2010, a former Minister of Education and Research said that homosexuality would not be promoted in Estonian schools, in response to news that the Netherlands had introduced the topic of same-sex marriage into its school education. In March 2013, Erki Nool, the former athlete and then member of parliament, made a number of homophobic statements, calling on gays to turn to psychotherapy and religion and avoid the company of "practising homosexuals". ECRI also notes that in November 2012, the Foundation for the Protection of the Family and Traditions launched a campaign in Estonia in reaction to the plans to draw up a code on cohabitation (see § 93). This campaign was centred on a petition which, it was claimed, contained several homophobic statements.

- **The authorities' response**

38. ECRI notes three levels of response from the authorities. In terms of the criminal-law response, ECRI observes that few cases have been dealt with by the courts (on this question see also §§ 46 et seq.). ECRI believes that this situation is a result of the substance of the provisions criminalising incitement to hatred (see § 5) and that this could be improved by the initiative of the Ministry of Justice to amend the provisions of the Criminal Code addressing the issues of racism,

---

<sup>21</sup> The Delfi v. Estonia case, application No. 64569/09.

<sup>22</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labour (2013).

<sup>23</sup> FRA 2014a: p. 3.

intolerance and racial discrimination (see § 4). Furthermore, ECRI notes that despite its recommendation to introduce a system to collect data and produce statistics on criminal offences,<sup>24</sup> no tangible improvement has taken place since the 4<sup>th</sup> cycle and the situation described at that time still prevails.

39. ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts. (see § 51).

40. With regard to awareness-raising, the Ministry of Social Affairs has helped draw up a guide to promote broad public familiarity with the Equal Treatment Act, published by the Tallinn University of Technology, as part of the “Diversity enriches” campaign. It contains references to the provisions stipulating that incitement to racist hatred is a criminal offence.

41. Lastly, ECRI notes that racist statements by politicians are regularly criticised at various levels in the Estonian institutions. For example, the statements by Martin Helme in May 2013 provoked reactions from the head of the Social Democrat Party and by Mari-Liis Sepper, Gender Equality and Equal Treatment Commissioner. In October 2014, the controversy between Jevgeni Ossinovski, Minister of Education, and Juergen Ligi, Minister of Finance, and the latter’s comments about the former, led President Toomas Hendrik Ilves to condemn such insults on the grounds of sex, nationality or ethnic origin, following which the Minister of Finance tendered his resignation.

42. With regard to antisemitism, ECRI also notes that in the matter of the exhibition at the Museum of Estonian History in 2011, following complaints submitted by the local Jewish community, the Ministry of Culture instructed the museum to remove the part of the exhibition focusing on Alfred Rosenberg. In addition, at a meeting with representatives of American Jewish organisations in 2011, the Prime Minister once again confirmed the Estonian authorities’ opposition to all expressions of racism and antisemitism, and stated that there was categorically no antisemitism on the part of the Estonian state.

43. Concerning homo/transphobic speech, ECRI notes that the statements of the former Minister of Education and Research in 2010 do not appear to have been retracted nor did they give rise to any reactions from other members of the government. The statements made by Erki Nool in 2013 were discussed in the media, but it does not appear that there was any clear condemnation of them by other politicians, with the exception of a single member of his own political party, the “Pro Patria and Res Publica” Union. ECRI notes, moreover, that according to representatives of civil society, neither of these instances of homo/transphobic speech received sufficient condemnation from the authorities.<sup>25</sup>

44. ECRI recommends that the authorities organise an extensive campaign to inform and raise awareness among all sections of Estonian society about racist and homo/transphobic hate speech, the legal provisions and rights existing in this field, and procedures for reporting or filing complaints against instances of such speech.

---

<sup>24</sup> § 101 of the 4<sup>th</sup> report on Estonia.

<sup>25</sup> Grossthal and Meiorg 2012: p.32 sqq.

### **3. Racist and homo/transphobic violence**

#### **– Treatment of homo/transphobic violence in the Criminal Code**

45. As the criminal-law provisions concerning violence are contained in the same articles as those dealing with incitement to hatred, §§ 5 and 31 above apply to homo/transphobic violence.

#### **– Data and scale of the problem**

46. The information forwarded to ECRI by the Estonian authorities (see § 33) refer solely to incidents of incitement to hatred (or racial discrimination); accordingly, it is necessary to turn to information gathered by civil society organisations which undertake monitoring activities in order to have some insight into the scale of the problem of racist and homo/transphobic violence. In the light of this information, as will be seen below, ECRI believes that contrary to what might be suggested by the data provided by the authorities, Estonia is not exempt from this problem.

47. The Legal Information Centre for Human Rights (LICHR)<sup>26</sup> refers to the case of an Afro-American student apparently the victim of verbal and physical attacks on account of his origin and skin colour. Another case of racist physical violence concerned an old lady in the stairwell of her apartment building. The press gave broad coverage to the case of several racist attacks in April-June 2011 in Tartu on a student from Cameroon. The OSCE report, cited above, also refers to information from the ILGA concerning physical attacks on LGBT persons in Tallinn in September and November 2013.

48. This situation reveals several problems. The first relates to under-reporting, already noted above (see §33). For example, ECRI understands that the incident of physical violence in the stairwell was not reported to the police. In view of corroborating statements from representatives of civil society in this connection, ECRI believes that the low number of cases is the result of a significant level of under-reporting by victims of hate crimes.

49. A second problem concerns the way in which complaints are dealt with. For example, the attacks on an Afro-American student and a Cameroonian student in Tartu and on LGBT persons in Tallinn, which were reported, were not investigated by the police.

#### **– The authorities' response**

50. As noted above (see § 38), ECRI observes that there has been no improvement since the 4<sup>th</sup> cycle with regard to setting up a system for collecting data and producing statistics on criminal offences. In this connection, ECRI is moreover concerned that Estonia has for several years no longer provided data to the ODIHR for its report "Hate Crime in the OSCE Region: Incidents and Responses".

51. ECRI recommends that the Estonian authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech brought to the attention of the police and/or being pursued through the courts. ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence (see § 39).

52. ECRI considers that the problem of under-reporting referred to above (see § 33) also applies to instances of violence. In addition, ECRI has not been informed of

---

<sup>26</sup> Kovalenko 2011: p.6.

any training and awareness-raising activities on anti-racism legislation other than those described in its 4<sup>th</sup> report and therefore takes the view, in the light of the examples quoted above, that any initiatives taken in this regard have not been followed up. Accordingly, ECRI believes that the recommendation in its 4<sup>th</sup> report<sup>27</sup> has not been implemented.

53. ECRI strongly recommends that the authorities implement its 4<sup>th</sup> cycle recommendations regarding awareness-raising measures for the general public on the criminal-law provisions concerning racist crimes and that they extend this awareness-raising to cover homo/transphobic crime.

54. ECRI also notes, despite its recommendation in the 4<sup>th</sup> cycle, that no training or awareness-raising measures have been taken for the law-enforcement agencies and legal professionals concerning recognition of the racist motivation of ordinary offences on account of the imminent amendment to the Criminal Code, referred to on several occasions in this report (see § 4).

55. ECRI strongly recommends that the authorities implement its 4<sup>th</sup> cycle recommendations with regard to raising the awareness of representatives of the law-enforcement agencies, prosecutors and judges, the training of these officials in the recognition of the racist motivation of an ordinary offence, and the ability of the police to thoroughly investigate racist crimes and encourage victims and witnesses of racist incidents to report them.

56. ECRI further recommends that the authorities take steps to encourage victims and witnesses of homo/transphobic incidents to report such occurrences, provide training and awareness-raising for representatives of the law-enforcement agencies in the recognition of the homo/transphobic motivation of an ordinary crime and ensure that the police thoroughly investigate homo/transphobic offences.

#### **4. Integration policies**

##### **– Integration policies up to 2013**

57. Various national integration policies were pursued in Estonia in the periods 2000-2007 and 2008-2013. According to the Estonian authorities, these integration policies are based on the principle of equal treatment and focus on all the target groups of interest to ECRI. As described in ECRI's previous reports, these policies – in the educational and cultural, social and economic, and legal and political fields – sought primarily to improve proficiency in Estonian for those for whom it is not the mother tongue, reduce the percentage of persons with undetermined citizenship, and narrow the gap in terms of employment and income between employees from various ethnic groups. With regard to the resources deployed, ECRI notes that in total, Estonia set aside a little over €45 million for its 2008-2013 integration strategy.

58. The most recent census, carried out in 2011, provides valuable information on the characteristics of the population targeted by these integration policies. According to this census,<sup>28</sup> as at 31 December 2011, the population of Estonia stood at 1 294 455 persons,<sup>29</sup> 24% of whom were of foreign origin (12% first generation, 8% second generation and 4% third generation). Concerning the use of Estonian, only 30% of the first generation foreign population, the average age of whom is over 60, are proficient in Estonian, compared with roughly 60% for the

---

<sup>27</sup> § 42 of the 4<sup>th</sup> report on Estonia.

<sup>28</sup> <http://www.stat.ee/phc2011>.

<sup>29</sup> This number stood at 1 312 300 as at 1 January 2015.

second and third generations. With regard to citizenship, the 2011 census shows that the rate of people with undetermined citizenship stood at less than 7% of the total population (i.e. 84 494 persons), whereas this same rate stood at 12% in 2000. Those holding Russian citizenship accounted for 7% of the overall population (89 913 persons).

– **The results of these policies**

59. ECRI is of the opinion that the implementation of the Integration Strategy 2008-2013 has produced noteworthy effects. It bases this assessment on a variety of studies. In 2011, at the request of the Ministry of Culture, the Political Studies Centre PRAXIS, the University of Tartu and EMOR (a company specialising in social research) carried out a study which indicated that progress had been made in all the objectives of the 2008-2013 policy. The only exception would appear to be the differences, which had slightly increased, between the employment remuneration rates of the various ethnic groups. These conclusions were confirmed by an evaluation, carried out by the Estonian authorities in 2014, of the implementation of the integration policy, which showed that achieving the objectives of the socio-economic dimension had suffered from the crisis which began in 2009. Lastly, ECRI notes that the data from the 2011 census (see § 58) clearly showed that the number of people with undetermined citizenship had fallen and that the number of people able to express themselves in Estonian had increased. Progress in both these areas were key objectives of the 2008-2013 integration strategy.
60. However, a more detailed analysis is necessary, as the issues surrounding integration, in ECRI's view, go far beyond the substance of successive Estonian integration strategies. Such an analysis could draw on the detailed recommendations which ECRI made in the 4<sup>th</sup> cycle, in particular with regard to: language policies; consultation of organisations representing vulnerable groups, and especially the Russian-speaking minority, over implementation of the integration policy appropriate to their situation; support for teachers and schools in the transition to having 60% of subjects taught in Estonian for the higher secondary education cycle; conditions for being granted citizenship; equal treatment and reduction of inequalities in the employment field; the situation of the Roma; and the lack of data on equality.
61. With regard to language policies, ECRI's attention has been drawn to several cases which show that little progress has been made vis-à-vis several of its 4<sup>th</sup> cycle recommendations. According to the information it has received, the language tests used to assess the level of Estonian of those applying for citizenship are often, at a comparable level of requirement, considered more difficult to pass than in other countries for other languages.<sup>30</sup> It has been notified of cases where Russian-speakers have been required to resit language tests following a reclassification of language requirements associated with their job description and have had severe difficulty in passing the tests, in particular because of their getting older (gradual reduction of cognitive abilities, more substantial occupational responsibilities, more demanding family life requirements, etc.). Notwithstanding the efforts of the Estonian authorities to make language classes free of charge for certain disadvantaged categories, or improve reimbursement for others,<sup>31</sup> it has been frequently stated that the complexity of the training syllabus laid down by the state to reach the language levels stipulated in law, has been significantly underestimated, with the result that those not qualifying for free tuition have been faced with difficult economic

---

<sup>30</sup> This was confirmed by the results of the 2011 MIPEx migrant integration study.

<sup>31</sup> ACFC 2014: p.11.

choices, particularly as those most in need of language courses are also those living in the least developed economic regions.

62. ECRI recommends that the authorities identify and implement solutions (or improve and enhance existing solutions) to address the practical problems of access to language tuition for all the categories of persons concerned. These courses should be accessible free of charge for disadvantaged persons. The amounts reimbursed should cover all the sessions required to reach the requisite language level, and should be paid not once that level had been achieved, but throughout the learning process in order to take account of the financial and budgetary constraints of the less well-off.
63. ECRI also recommends that there be a relaxation of the procedures applicable to employees required to sit an Estonian language examination following the reclassification of the level of language proficiency required for their post. Such a relaxation should take into account the possibilities and occupational and family constraints with which they have to deal on a day-to-day basis.
64. ECRI notes a positive development regarding the Language Inspectorate: following an amendment to the Language Act which entered into force in January 2015,<sup>32</sup> the Inspectorate no longer has the power to issue fines to employees who are not sufficiently proficient in the official state language. The Estonian authorities have also indicated that discussions are currently ongoing to develop the Inspectorate's advice role. The authorities have stated that these measures had already led, in 2014, to a significant reduction in the penalties imposed by the Inspectorate.
65. Lastly, ECRI notes a worrying aspect of the Language Act. This Act provides that those who have had their education in Estonian are exempt from the language tests, which nonetheless remain compulsory for those who have had their education in other languages.<sup>33</sup> The same exemption is made for those who have completed their vocational education in Estonian and work in the occupational area stipulated on their leaving certificate.<sup>34</sup> The Language Act describes the language competency levels by reference to the Council of Europe's Common European Framework of Reference for languages (CEFR).<sup>35</sup> The fact is that the various linguistic levels set out by the CEFR, and particularly the higher levels (B2, C1 and C2), lay down requirements going far beyond purely language skills. For example, the ability to give a presentation, debate or argue a case convincingly does not require merely language skills, but also involves conceptual, logical and cognitive abilities which are independent of the language in which the speaker expresses himself or herself. Yet the Language Act very clearly indicates that the requirements for proficiency in and use of Estonian are defined in relation to the level required for fulfilling the tasks inherent in the job in question. ECRI considers that this approach could reveal a case of indirect discrimination<sup>36</sup> in terms of access to employment vis-à-vis those whose language of education was not Estonian.<sup>37</sup>

---

<sup>32</sup> Language Act, Article 37.

<sup>33</sup> Citizenship Act, Article 8.5 and Language Act, Articles 26.3 and 26.4.

<sup>34</sup> Language Act, Article 26.5.

<sup>35</sup> Language Act, Article 23.3.

<sup>36</sup> CERD 2014: § 10.a.

<sup>37</sup> A major study showed that Russian-speakers believe that the Language Act represents a form of indirect discrimination against them, on the ground that this Act lays down language requirements which certain occupational groups could not satisfy. According to this study, the Russian-speakers feel that the Estonian language policy places undue emphasis on strictly language skills, to the detriment of vocational skills. See Kallas et al., Equal treatment in Estonia: awareness and promotion, research report, 2013, p.42.

66. ECRI recommends that the authorities carry out a linguistic and legal expert analysis to verify that the Language Act does not entail indirect discrimination in access to employment against those for whom Estonian was not the language of education.
67. With regard to consultation with representatives of the Russian-speaking minority, ECRI notes that the latter have expressed regret at the lack of any mechanisms for this purpose and the failure of the authorities to take into account the needs and constraints of their situation. ECRI considers that this explains the findings notified above (see § 61). ECRI reiterates the importance, for several reasons, of close co-operation with all vulnerable groups in order to address their problems and identify ways of solving them: first of all, because the Estonian authorities frame their integration policy from the point of view of equal treatment and have not adopted specific plans for the various vulnerable groups; and secondly because the successive integration policies have placed strong emphasis on integration through proficiency in Estonian.
68. Concerning the transition to having 60% of subjects taught in Estonian for the higher secondary education cycle, ECRI notes that civil society representatives have expressed regret that despite the seminars and training courses organised by the Ministry of Education to this end,<sup>38</sup> the authorities have not provided support for this transition by offering schools appropriate assistance. They criticise the fact that certain teachers do not have an adequate level of proficiency in Estonian, that course material is unsuitable and that there is a general problem of the quality of teaching in the schools concerned.<sup>39</sup> ECRI notes, however, that PISA tests carried out by the OECD in 2006, 2009 and 2012 show that the performance of students in Russian-language schools is poorer than that of students in Estonian-language schools. However, according to the latest PISA tests this gap has decreased.<sup>40</sup> Furthermore, a major study<sup>41</sup> has shown that the gap between the performance in PISA tests of those taught in Estonian and those taught in Russian could not be explained by the quality of the teaching, nor by the social and family context of the children, but rather by a different approach to teaching methods and by the socio-economic context of the schools.
69. In 2014, the Estonian authorities tasked a multidisciplinary group with analysing the efficiency of studies in Russian-medium schools affected by the transition to 60% of subjects to be taught in Estonian,<sup>42</sup> in particular by means of a critical appraisal of the various studies already carried out on this subject and by collecting information and data in the field. This study showed that the transition had taken place successfully if one looked at the formal indicators designated when this reform was adopted (a rate of 93% was recorded). However, this indicator may not adequately reflect the actual situation. The study also showed that this transition had not improved language skills in general as it had been excessively focused on acquisition of knowledge relating to the subjects taught in Estonian and not on the ability to integrate into society. Contrary to the data from the PISA study referred to above (see § 68), the study also showed that general quality of teaching in the subjects concerned had suffered as a result of the reform. It also indicated that teachers and headteachers had a more positive vision than the pupils, a large number of whom said that they viewed this reform as discrimination and the way it had been implemented as a humiliation. ECRI

---

<sup>38</sup> ACFC 2014: p. 34.

<sup>39</sup> ENAR 2013: 21 et seq.

<sup>40</sup> Ministry of Education and Research 2013.

<sup>41</sup> Lindeman 2011.

<sup>42</sup> Report about the efficiency of studies in Russian-medium upper secondary schools upon transition to upper secondary schools studies in Estonian (at least 60% of compulsory courses) 2015.

understands that the Ministry of Education and Research has already worked out an extensive intervention plan for raising the quality of teaching and learning in these schools.

70. ECRI recommends that the authorities step up their efforts to bring rapidly up to the required standard the linguistic level in Estonian of the teachers employed in the schools affected by the transition to 60% of subjects to be taught in Estonian.
71. With regard to access to citizenship, ECRI notes that the authorities have recently amended the Citizenship Act. Henceforth, all children under 15 years of age born in Estonia of parents who do not hold Estonian citizenship will automatically be granted Estonian citizenship (the law provides that parents may refuse this granting of citizenship). According to the authorities, this measure will immediately concern some 835 children. Lastly, people aged over 65 wishing to acquire Estonian citizenship will in future be exempt from the written part of the language tests. ECRI welcomes these measures which are a response to its 4<sup>th</sup> cycle recommendations<sup>43</sup> and to the concerns expressed by the Council of Europe's Commissioner for Human Rights<sup>44</sup> and the CERD.<sup>45</sup>
72. ECRI notes that various initiatives have been carried in connection with equal treatment. These are a "Campaign to raise awareness of equal treatment and promote tolerance", launched in 2009 which was evaluated in 2011, the "Improving awareness of equal treatment" project run in 2010 and 2011, the "Equal treatment in the workplace" project run in 2012, and the regular "Diversity enriches" campaigns run by the Tallinn University of Technology.<sup>46</sup> However, according to a detailed analysis carried out by the Institute of Baltic Studies and the Institute of International and Social Studies in the University of Tallinn, a number of worrying points remain: there is a significant discrepancy between the general public's perception of equal treatment and its legal definition; public sector officials have poor awareness of the role they should be playing in promoting equal treatment and they tend to evaluate equal treatment cases based on their own intuitive understanding of the problem;<sup>47</sup> Russian speakers were more apt to feel discriminated against;<sup>48</sup> and lastly, the legal obligation placed on employers to promote the principle of equal treatment was generally not widely known, nor the fact that it also applied to the private sector.<sup>49</sup> ECRI notes that the consequence of this situation is that a significant number of Russian speakers feel excluded from Estonian society and have developed a reaction ranging from a growing feeling of social uselessness and resignation, through an attitude of passive resistance resulting in the unwillingness to learn Estonian or apply for citizenship, to the wish to leave Estonia.<sup>50</sup>
73. With regard to employment, representatives of the Estonian authorities and the local and regional authorities, confirmed to ECRI that despite the many projects to prevent unemployment,<sup>51</sup> no regional plan had been drawn up to address the specific needs of the region of Ida-Viru or the town of Narva. They said that the economic structure inherited from the Soviet era had gradually been adapted to a

---

<sup>43</sup> §§ 109, 110 and 118 of the 4<sup>th</sup> report on Estonia.

<sup>44</sup> See Estonia should eliminate child statelessness, 20 June 2013 and Estonia: All children should be citizens, 27 March 2013

<sup>45</sup> CERD 2014: §11.b and c.

<sup>46</sup> <http://www.erinevusrikastab.ee/en/>.

<sup>47</sup> Kallas et al. 2013: p. 40.

<sup>48</sup> Kallas et al. 2013: p. 42.

<sup>49</sup> Kallas et al. 2013: p. 40.

<sup>50</sup> Kallas et al. 2013: p. 45.

<sup>51</sup> ACFC 2014: p.38.



competitive environment, which explained the drop in unemployment in the town and region and its more rapid decrease in the region of Ida-Viru than at national level. This analysis is confirmed by official unemployment figures showing that in the period 2010-2013, unemployment fell by 49% at national level (from 16.7% in 2010 to 8.6% in 2013) and by 41% in the region of Ida-Viru (from 25.6% in 2010 to 15% in 2013).<sup>52</sup> However, the overall unemployment rate in this region is 74% higher than the national rate. According to the latest official data, the unemployment rate in 2014 was 7,4% at national level and 13,7% in the Ida-Viru region. ECRI understands that the Estonian authorities have recently taken action in this respect: an Ida-Viru Action Plan 2015-2020 coordinated by the Ministry of Interior, and an Ida-Virumaa County Development Plan 2014-2020 coordinated by the Ida-Viru County Government have recently been adopted. Both plans include the themes of economic development and employment. The Ida-Viru Action Plan 2015-2020 contains several initiatives to promote employment opportunities (such as developing industrial and logistics parks, job creation in the public sector and developing tourism). ECRI considers these action plans as best practices that should be extended to cover all economically disadvantaged regions.

74. ECRI recommends that the authorities also draw up specific action plans for the population of all economically disadvantaged regions in order to reduce unemployment there and enhance the language and occupational skills of the people living in those regions.
75. Concerning discrimination affecting the Roma, ECRI has learned of a major project entitled “We, the Roma”, an exhibition jointly created by the National Museum of Estonia, the Ministry of Culture and Roma civil society. The exhibition shed light on the uniqueness of this ethnic group and sought to dispel myths and stereotypes about the Roma. The exhibition opened in October 2013 at the Valga County Museum and travelled to diverse locations all over Estonia. ECRI welcomes this initiative which takes on board its recommendations on combating the prejudice of which this group is the target.
76. Lastly, ECRI notes the lack of data on equality in most of the relevant fields (education, housing, employment, healthcare etc.), for all the vulnerable groups concerned.<sup>53</sup> This lack is occasionally acknowledged by the Estonian authorities themselves. ECRI considers that in the absence of a system for collecting data on equality, and notwithstanding the many research studies on integration, Estonia still does not have a structural tool enabling it to evaluate the situation of the different vulnerable groups in terms of discrimination. ECRI therefore considers that its 4<sup>th</sup> cycle recommendation on establishing a system for collecting data on equality has not been implemented and that the authorities should take action quickly in this regard.
77. ECRI once again recommends that the authorities consider ways of establishing a coherent, comprehensive system for collecting data on equality so as to monitor the situation of vulnerable groups in the various areas of life, by means of statistics broken down, for example, by ethnic origin, language, religion and nationality. These data should be collected with full regard for the principles of confidentiality, informed consent and voluntary self-identification of people as belonging to a particular group. The system should also take account of the possible existence of double or multiple discrimination.

---

<sup>52</sup> Voir [www.stat.ee/?lang=en](http://www.stat.ee/?lang=en).

<sup>53</sup> The Institute of Baltic Studies criticises the lack of research, studies or equality indicators in the majority of areas in which discrimination can occur, whether education, employment, housing or healthcare; see IBS 2012.

– **The new integration policy adopted in December 2014**

78. Estonia has regularly carried out interim evaluations of its successive strategies (in 2000, 2002, 2005 and 2008). In 2014, the authorities carried out a comprehensive evaluation of the 2008-2013 integration policy. They acknowledged the difficulties inherent in the transition to 60% of subjects to be taught in Estonian in upper secondary schools, the wage gaps between Estonians and other ethnic groups, the slowing down of the process for acquiring Estonian nationality and the need to take into account the specific features of the different target groups.
79. Accordingly, in December 2014, Estonia adopted a new integration policy following intense consultations at national level, involving about 1 300 persons. The results of the consultation process were presented at a discussion day held in May 2013. A special website<sup>54</sup> in Estonian, Russian and English was created to gather working materials and inputs, and to provide information to the public. Summaries of the discussions are publically available on the Internet.<sup>55</sup> Covering the period up to 2020, the new integration policy addresses the main shortcomings referred to above. The integration process will no longer be seen as a bilateral process, but as a multilateral effort involving all components of society. For example, language courses will place a greater emphasis on exchanges, in particular to increase contacts between the various components of Estonian society. Cultural diversity will be recognised and promoted, for example by introducing multilingualism in the cultural institutions open to the public. The services providing assistance in finding employment will be reorganised so as to take greater account of individual needs in order to help people from different cultural and language backgrounds find a job. The new policy will also cover newly arrived immigrants as a separate target group with specific measures.
80. ECRI recommends that the authorities take advantage of the launch of the 2020 integration strategy to run an information campaign for all vulnerable groups, and in particular the Russian-speaking minority and/or persons of undetermined citizenship, placing the emphasis on the fact that the state believes that each of these groups should integrate fully into Estonian society and that they are welcome there.
81. ECRI also hopes that the new approach will afford the authorities the opportunity to correct a major policy problem. According to the Estonian authorities, integration policies should offer a package of measures which would apply to all the persons concerned, rather than framing policies specific to particular vulnerable groups. ECRI can understand the Estonian state's wish to devise an overall strategy and thereby ensure equal treatment for all citizens and residents, but bearing in mind that each vulnerable group has its own individual needs, ECRI believes that this approach is incompatible with the development of specific action plans. ECRI refers in this connection to the terms of its GPR No. 7, paragraph 5 of which stipulates that the law should provide that special measures may be taken, without these being considered as discrimination, so as to facilitate full participation in all areas of life. ECRI considers, *mutatis mutandis*, that such provisions should be taken with regard to the implementation of integration strategies.
82. ECRI recommends that the authorities divide the 2020 integration strategy into specific action plans for each vulnerable group concerned, ensuring that they consult the representatives of these groups in identifying the problems

---

<sup>54</sup> [www.integratsioon.ee](http://www.integratsioon.ee)

<sup>55</sup> [www.etnoweb.ee/arutelud](http://www.etnoweb.ee/arutelud) and [www.integratsioon.ee](http://www.integratsioon.ee).

encountered, defining the specific objectives to be achieved and in the monitoring of the implementation of these specific action plans.

## **II. Questions relating specifically to Estonia**

### **1. Interim follow-up recommendations of the 4<sup>th</sup> cycle**

#### **- With regard to the quality of education for Russian-speakers**

83. In its 4<sup>th</sup> report, ECRI recommended that the Estonian authorities take all possible measures to ensure the quality of education while strengthening Estonian language instruction to Russian-speaking children and respecting their identity. ECRI added that this should include monitoring the achievement levels of children and strengthening the training of Russian-language school teachers to teach in Estonian in accordance with the reforms set out in the Basic Schools and Upper Secondary Schools Act, by, amongst other things, investing the necessary human and financial resources to that end.

84. These points have been analysed in the section on integration policies (see §§68 and 69) and ECRI refers to the recommendations made in that section (see §70).

#### **- With regard to reducing the number of stateless persons**

85. In its 4<sup>th</sup> report, ECRI recommended that the Estonian authorities continue the measures taken thus far to reduce the number of stateless persons, in full consultation with representatives of the persons concerned.

86. As seen above, the number of people with undetermined citizenship has continually fallen over the past five years, as a result of the 2008-2013 integration policy. ECRI notes that while, as acknowledged by representatives of stateless persons, the authorities engaged in broad consultation with the latter when drawing up the new 2020 strategy, this was not sufficiently the case in the implementation of the 2008-2013 strategy as evidenced by the fact that various practical problems persist, for example with regard to the language tests for acquisition of nationality, and the review of language requirements in connection with a particular job (see § 61). ECRI refers in this connection to its recommendations in the section on integration policies (see §§ 62, 63 and 66).

#### **- With regard to the placement of Roma children in special schools**

87. In its 4<sup>th</sup> report, ECRI urged the Estonian authorities to remove Roma children who were not disabled from special schools and reintegrate them into mainstream schools; in addition, all necessary steps should be taken to avoid such unjustified placements in the future.

88. In its conclusions on the implementation of the recommendations in respect of Estonia subject to interim follow-up, ECRI noted that no new cases had been reported, but that it had not received any information on the five cases specified during the 4<sup>th</sup> cycle. According to the Estonian authorities, only one Roma child was today in a special school, further to a medical diagnosis. In addition, the authorities have indicated that the Ministry of Education and Research initiated in autumn 2014 a two-year project of educational counselling for teachers aiming to keep Roma children who have a medical diagnosis of “mild intelligence challenge” in mainstream schools.

89. ECRI once again recommends that the authorities take measures to ensure that Roma children who are not disabled are no longer placed in special schools.

## 2. Policies to combat discrimination and intolerance vis-à-vis LGBT persons

### - Data

90. ECRI reiterates that Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity states that it is possible to collect personal data on the sexual orientation or gender identity of an individual if this is necessary for specific, lawful and legitimate purposes. It is clear that without this information it is impossible to lay the foundations for framing and implementing policies to combat intolerance and discrimination vis-à-vis LGBT persons. However, ECRI notes that there are no official data on the LGBT population in Estonia.

91. ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in Estonia and on the discrimination and intolerance of which they are the victims.

92. ECRI also notes that there have been few studies or research on the nature and causes of hostile and negative attitudes towards LGBT persons. Nonetheless, reference can be made here to the Eurobarometer surveys, a survey carried out in 2012 by the Tallinn University of Technology,<sup>56</sup> and the 2012 FRA survey on Lesbian, Gay, Bisexual and Transgender persons in the European Union. Lastly, the Law Faculty of the Tallinn University of Technology carried out a survey of LGBT persons in June 2014 as part of its “Diversity enriches” project. According to the results<sup>57</sup> of this survey, 34% of the respondents find homosexuality acceptable while 59% do not, acceptance of same-sex cohabitation has fallen by 6% as compared to 2012 (from 46% to 40 %), and 64 % of respondents believe that gays and lesbians should be legally protected against discrimination also outside the labour sphere.

### - Legislation

93. With regard to criminal law, ECRI refers to the analysis and recommendations made in §§ 4, 31 and 32. In the field of civil and administrative law, Estonia passed an Equal Treatment Act which refers to sexual orientation as one of the grounds of discrimination, but only in respect of protection in the employment field. There is no reference to gender identity. In addition, in October 2014, the Cohabitation Act was passed. This Act, which will enter into force in January 2016, grants same-sex families equal protection to that afforded to heterosexual families. It also introduces the possibility for heterosexual and homosexual couples to conclude registered partnerships, and regulates the adoption of the child of a partner and issues relating to property and succession. ECRI understands that the passing of this new Act requires a review of several other Acts, in particular in order to amend all aspects in which there are differences in treatment between married couples and those living in other forms of stable union.

94. ECRI recommends that the Estonian authorities make as quickly as possible the amendments which will enable the new Cohabitation Act to have its full effect as soon as it enters into force.

95. Lastly, ECRI notes that Estonian domestic legislation does not explicitly recognise persecution on the basis of sexual orientation as a valid ground for asylum requests. However, two applications for international protection on grounds of sexual orientation were submitted in 2014. In both cases protection

<sup>56</sup> [www.erinevusrikastab.ee/files/LGBT-avalik-arvamus/broshyyr\\_inglise.pdf](http://www.erinevusrikastab.ee/files/LGBT-avalik-arvamus/broshyyr_inglise.pdf).

<sup>57</sup> See [www.erinevusrikastab.ee/wp-content/uploads/2014/09/2014-06-LGBT-aruanne1.pdf](http://www.erinevusrikastab.ee/wp-content/uploads/2014/09/2014-06-LGBT-aruanne1.pdf).

was granted on the basis of belonging to a social group that was persecuted in their country of origin.

96. ECRI recommends that the Estonian authorities amend their legislation so as to grant refugee status to anyone claiming to be a victim of persecution in his or her country of origin on account of his or her sexual orientation.

- **Discrimination in various fields**

97. In the education field, LGBT issues are not part of the curriculum and teachers are not really trained to deal with this matter. Teachers do not address these subjects unless they are regarded as important by the school authorities that employ them or if they have the opportunity to attend training courses run by organisations defending LGBT rights. There is no systematic approach ensuring that the necessary information is provided to LGBT pupils and students and that the latter are protected and supported during their life at school or in situations requiring action to be taken. One example is in situations of bullying.<sup>58</sup> The Danish Institute for Human Rights, in a study on the social situation concerning homophobia and discrimination on grounds of sexual orientation in Estonia<sup>59</sup> relates cases of teachers avoiding discussing LGBT issues with their students, adding that some were afraid of raising the subject, fearing the consequences that could result.

98. ECRI recommends that the Estonian authorities adapt the school curricula to include LGBT issues from the angle of the intolerance and discrimination that LGBT persons can suffer, train teachers on how to address this topic and produce official teaching material appropriate to this question.

99. In the health field, the situation of transgender persons is complicated by the lack of legislation. Issues related to gender reassignment are governed by a “regulation on common requirements of medical acts of gender reassignment” adopted by the Ministry of Social Affairs. This regulation relates only to the medical requirements and the activities of the committee of medical experts which decides on the admissibility of gender reassignment requests. However, according to certain LGBT NGOs,<sup>60</sup> there are cases where individuals who have requested gender reassignment surgery have been refused on the ground that their application was motivated by aesthetic considerations. Lastly, according to the procedures in force, the change of name takes place only at the very end of the gender transition period, raising numerous administrative and social problems for the persons concerned.

100. ECRI recommends that the Estonian authorities review the legislation or regulations in force so as to clarify the administrative situation of persons undergoing gender reassignment.

101. In the employment field, the Estonian authorities have reported that there is a problem of unequal treatment on the ground of sexual orientation.<sup>61</sup> In addition, in 2009, the Eurobarometer survey showed that 14% of respondents believed that the sexual orientation of a candidate could influence his or her chances of being taken on by a firm.

---

<sup>58</sup> Meiorig and Grossthal 2012: p. 29.

<sup>59</sup> Danish Institute for Human Rights 2009.

<sup>60</sup> Estonian Centre for Human Rights et al. 2010.

<sup>61</sup> See Implementation of the International Covenant on Economic, Social and Cultural Rights Third periodic report submitted by States parties under Articles 16 and 17 of the Covenant, 2010, § 299.

102. ECRI recommends that the Estonian authorities carry out a detailed study of the situation of LGBT persons in the employment field, and in particular the discrimination they suffer in this area, and identify and implement remedial measures.

### **3. Effectiveness of the specialised national bodies**

103. As shown above (see the section on the analysis of legislation), only the Chancellor of Justice can be considered an independent authority within the meaning of GPRs Nos. 2 and 7. This is not the case of the Gender Equality and Equal Treatment Commissioner, because of the conditions governing the appointment of the latter (principles 5.2 and 5.4 of GPR No. 2) and, as we shall see below, the Commissioner's inadequate budget (principle 5.1 of GPR No. 2). It has also been shown that the law does not stipulate a role for the Chancellor of Justice in respect of providing aid and assistance to victims (principle 3.d of GPR No. 2 and paragraph 24 of GPR No. 7), and of the authority to bring matters to the courts (principle 3.e of GPR No. 2 and paragraph 24 of GPR No. 7).

104. Moreover, the budget allocated to the Commissioner is not sufficient to enable this authority to fulfil its role in accordance with the terms laid down in law. Article 17.5 of the Equal Treatment Act provides for a two-month deadline for submitting opinions drafted by the Commissioner. However, her representatives confirmed to ECRI that it was not rare for this deadline to be missed through lack of resources.

105. The Estonian authorities say that the resources allocated to the Commissioner have been increased over the years<sup>62</sup> and that under a project negotiated with the Norwegian authorities, a grant of €700 000 has been added to the budget for the period 2009-2014. ECRI is unable to concur with this view. According to the annual reports produced by the Commissioner, the budget was €51 884 in 2010, €60 136 in 2011, €60 786 in 2012 and €70 738 in 2013. However, while the budget of this institution has increased by 40% in 4 years, this has not resulted in increased operational capacity, since the staff appointed in this institution in respect of its ordinary budget remained limited to two people over the same period (the Commissioner and an adviser) as well as an assistant working part-time (25%). Furthermore, the staff recruited for projects funded through extra-budgetary resources cannot be assigned to tasks other than those provided for under the relevant contracts, such as the contract with the Norwegian authorities, which is exclusively reserved for promoting gender equality, or, more recently, a contract with the European Union in connection with an initiative for cohesion policy funded through the EU structural funds. ECRI has been informed that additional means have recently been added to the ordinary budget of this institution (€80 000 euros and one full-time post), but that these resources are earmarked for a project related to prepare this institution for its future role as the independent monitoring body under the UN Convention on the Rights of Persons with Disabilities. ECRI therefore concludes that its 4<sup>th</sup> cycle recommendations<sup>63</sup> have not been implemented.

106. ECRI once again recommends that the Estonian authorities allocate sufficient financial and human resources to the Gender Equality and Equal Treatment Commissioner to enable the latter to fulfil her role in full compliance with the terms laid down in law.

---

<sup>62</sup> ACFC 2014: p. 6.

<sup>63</sup> § 66 of the 4<sup>th</sup> report on Estonia.

107. Awareness-raising efforts in the field of discrimination lie primarily with the Commissioner, which makes the question of the latter's budget all the more urgent (see § 25).
108. This question of the absence of awareness-raising activities in the field of discrimination had already been addressed by ECRI in the 4<sup>th</sup> cycle,<sup>64</sup> noting that this absence could go some way to explain the low number of complaints of discrimination.<sup>65</sup> ECRI notes that despite its 4<sup>th</sup> cycle recommendation,<sup>66</sup> there has been no change to the situation in this respect. For example, the Commissioner received two complaints concerning possible discrimination based on race, national or ethnic origin in 2010, six in 2011, five in 2012 and four in 2013.<sup>67</sup> The Chancellor received ten complaints in 2010, ten in 2011, seven in 2012 and five in 2013.
109. With regard to the accessibility of the two institutions, Article 38.6 of the Chancellor of Justice Act provides for the appointment of regional advisers, but ECRI notes that, despite its 4<sup>th</sup> cycle recommendation,<sup>68</sup> this institution has no offices outside Tallinn. The Equal Treatment Act contains no similar provision concerning the Gender Equality and Equal Treatment Commissioner. ECRI has been informed that the Chancellor and the Commissioner make occasional arrangements for advisers to be present in the various regions, but draw the authorities' attention to the fact that such arrangements must ensure a sufficient level of confidentiality so as not to deter those who might fear being recognised.
110. ECRI once again recommends that the authorities take steps to raise the awareness of the general public about the role of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner as anti-discrimination institutions under the Equal Treatment Act. ECRI recommends that to this end they carry out a major information campaign while ensuring the involvement of local and regional authorities.
111. Lastly, ECRI suggests that the authorities evaluate the effectiveness of the conciliation proceedings between individuals provided for in the Chancellor of Justice Act to settle discrimination disputes. As ECRI had already observed in the 4<sup>th</sup> cycle,<sup>69</sup> these proceedings are purely voluntary. ECRI notes that, as evidenced by the successive annual reports drawn up by the Chancellor of Justice,<sup>70</sup> no conciliation process has ever resulted in an agreement since the entry into force of the Equal Treatment Act.

---

<sup>64</sup> §§ 60 and 61 of the 4<sup>th</sup> report on Estonia.

<sup>65</sup> CERD 2014: § 15.a.

<sup>66</sup> § 64 of the 4<sup>th</sup> report on Estonia.

<sup>67</sup> ACFC 2014: p. 6.

<sup>68</sup> § 65 of the 4<sup>th</sup> report on Estonia.

<sup>69</sup> § 60 of the 4<sup>th</sup> report on Estonia.

<sup>70</sup> Chancellor of Justice 2014: p. 68.





## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of Estonia are the following:

- ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts.
- ECRI recommends that the authorities take advantage of the launch of the 2020 integration strategy to run an information campaign for all vulnerable groups, and in particular the Russian-speaking minority and/or persons of undetermined citizenship, placing the emphasis on the fact that the state believes that each of these groups should integrate fully into Estonian society and that they are welcome there.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI again recommends that the authorities ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§ 10) ECRI recommends (1) that citizenship be added to the prohibited grounds in Articles 120, 151, and 152 of the Criminal Code; (2) that these articles extend the protection afforded to groupings of persons; (3) that provisions be inserted into the Criminal Code making the following criminal offences: (i) public insults and defamation on the prohibited grounds thus supplemented; (ii) the public expression of an ideology which claims the superiority of, or which depreciates or denigrates a grouping of persons; (iii) the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes; (iv) the public dissemination or distribution, or the production or storage aimed at public dissemination or distribution of written, pictorial or other material containing manifestations covered by paragraphs 18 a), b), c), d) and e) of GPR No. 7; (v) the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities; (vi) racial discrimination in the exercise of one's public office or occupation; (4) that a provision be added to the Criminal Code explicitly specifying that a racist motive constitutes an aggravating circumstance in any ordinary offence; (5) that the condition limiting the scope of Article 151 to cases posing a threat to the health, life or property of the victim be removed.
3. (§ 13) ECRI recommends that citizenship and language be included among the prohibited grounds in all areas where protection against discrimination is guaranteed by the Equal Treatment Act.
4. (§ 15) ECRI recommends that segregation, discrimination by association, the announced intention to discriminate, and inciting or aiding another to discriminate be added to the forms of discrimination listed in the Equal Treatment Act.
5. (§ 17) ECRI recommends that the Public Procurement Act be revised so as to introduce an obligation to respect a policy of non-discrimination by those parties to which the public authorities award contracts, loans, grants or other benefits, to extend this obligation to respect and promotion of such a policy and to specify that any violation of this condition may result in the termination of the contract, grant or other benefits.
6. (§ 19) ECRI recommends that the legislation be amended to stipulate that discriminatory provisions included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations and rules governing the independent professions and workers' and employers' organisations should be amended or declared null and void.
7. (§ 21) ECRI recommends that the possibility of suppressing public financing of any organisation or political party that promotes racism be introduced into the Associations Act and/or the Political Parties Act.
8. (§ 27) ECRI recommends that the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner devise and publish a joint formal procedure enabling complainants to make informed decisions as to the institution to which it would be better for them to submit their requests.

9. (§ 29) ECRI recommends that the authorities take decisions to enhance the independence of, and increase the resources available to, the institution of the Gender Equality and Equal Treatment Commissioner, in order for it to function properly.
10. (§ 30) Should this be the case, ECRI recommends that the authorities amend the Equal Treatment Act so as to confer on the Gender Equality and Equal Treatment Commissioner the authority to bring cases before the courts and to contribute to the training of certain key groups.
11. (§ 32) ECRI recommends that gender identity be specifically added to the prohibited grounds in Articles 151 and 152 of the Criminal Code and that a provision be added to that Code explicitly stipulating that sexual orientation and gender identity constitute an aggravating circumstance in any ordinary offence.
12. (§ 39) ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts. (see § 51).
13. (§ 44) ECRI recommends that the authorities organise an extensive campaign to inform and raise awareness among all sections of Estonian society about racist and homo/transphobic hate speech, the legal provisions and rights existing in this field, and procedures for reporting or filing complaints against instances of such speech.
14. (§ 51) ECRI recommends that the Estonian authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech brought to the attention of the police and/or being pursued through the courts. ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence (see § 39).
15. (§ 53) ECRI strongly recommends that the authorities implement its 4<sup>th</sup> cycle recommendations regarding awareness-raising measures for the general public on the criminal-law provisions concerning racist crimes and that they extend this awareness-raising to cover homo/transphobic crime.
16. (§ 55) ECRI strongly recommends that the authorities implement its 4<sup>th</sup> cycle recommendations with regard to raising the awareness of representatives of the law-enforcement agencies, prosecutors and judges, the training of these officials in the recognition of the racist motivation of an ordinary offence, and the ability of the police to thoroughly investigate racist crimes and encourage victims and witnesses of racist incidents to report them.
17. (§ 56) ECRI further recommends that the authorities take steps to encourage victims and witnesses of homo/transphobic incidents to report such occurrences, provide training and awareness-raising for representatives of the law-enforcement agencies in the recognition of the homo/transphobic motivation of an ordinary crime and ensure that the police thoroughly investigate homo/transphobic offences.
18. (§ 62) ECRI recommends that the authorities identify and implement solutions (or improve and enhance existing solutions) to address the practical problems

of access to language tuition for all the categories of persons concerned. These courses should be accessible free of charge for disadvantaged persons. The amounts reimbursed should cover all the sessions required to reach the requisite language level, and should be paid not once that level had been achieved, but throughout the learning process in order to take account of the financial and budgetary constraints of the less well-off.

19. (§ 63) ECRI also recommends that there be a relaxation of the procedures applicable to employees required to sit an Estonian language examination following the reclassification of the level of language proficiency required for their post. Such a relaxation should take into account the possibilities and occupational and family constraints with which they have to deal on a day-to-day basis.
20. (§ 66) ECRI recommends that the authorities carry out a linguistic and legal expert analysis to verify that the Language Act does not entail indirect discrimination in access to employment against those for whom Estonian was not the language of education.
21. (§ 70) ECRI recommends that the authorities step up their efforts to bring rapidly up to the required standard the linguistic level in Estonian of the teachers employed in the schools affected by the transition to 60% of subjects to be taught in Estonian.
22. (§ 74) ECRI recommends that the authorities also draw up specific action plans for the population of all economically disadvantaged regions in order to reduce unemployment there and enhance the language and occupational skills of the people living in those regions.
23. (§ 77) ECRI once again recommends that the authorities consider ways of establishing a coherent, comprehensive system for collecting data on equality so as to monitor the situation of vulnerable groups in the various areas of life, by means of statistics broken down, for example, by ethnic origin, language, religion and nationality. These data should be collected with full regard for the principles of confidentiality, informed consent and voluntary self-identification of people as belonging to a particular group. The system should also take account of the possible existence of double or multiple discrimination.
24. (§ 80) ECRI recommends that the authorities take advantage of the launch of the 2020 integration strategy to run an information campaign for all vulnerable groups, and in particular the Russian-speaking minority and/or persons of undetermined citizenship, placing the emphasis on the fact that the state believes that each of these groups should integrate fully into Estonian society and that they are welcome there.
25. (§ 82) ECRI recommends that the authorities divide the 2020 integration strategy into specific action plans for each vulnerable group concerned, ensuring that they consult the representatives of these groups in identifying the problems encountered, defining the specific objectives to be achieved and in the monitoring of the implementation of these specific action plans.
26. (§ 89) ECRI once again recommends that the authorities take measures to ensure that Roma children who are not disabled are no longer placed in special schools.
27. (§ 91) ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in Estonia and on the discrimination and intolerance of which they are the victims.

28. (§ 94) ECRI recommends that the Estonian authorities make as quickly as possible the amendments which will enable the new Cohabitation Act to have its full effect as soon as it enters into force.
29. (§ 96) ECRI recommends that the Estonian authorities amend their legislation so as to grant refugee status to anyone claiming to be a victim of persecution in his or her country of origin on account of his or her sexual orientation.
30. (§ 98) ECRI recommends that the Estonian authorities adapt the school curricula to include LGBT issues from the angle of the intolerance and discrimination that LGBT persons can suffer, train teachers on how to address this topic and produce official teaching material appropriate to this question.
31. (§ 100) ECRI recommends that the Estonian authorities review the legislation or regulations in force so as to clarify the administrative situation of persons undergoing gender reassignment.
32. (§ 102) ECRI recommends that the Estonian authorities carry out a detailed study of the situation of LGBT persons in the employment field, and in particular the discrimination they suffer in this area, and identify and implement remedial measures.
33. (§ 106) ECRI once again recommends that the Estonian authorities allocate sufficient financial and human resources to the Gender Equality and Equal Treatment Commissioner to enable the latter to fulfil her role in full compliance with the terms laid down in law.
34. (§ 110) ECRI once again recommends that the authorities take steps to raise the awareness of the general public about the role of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner as anti-discrimination institutions under the Equal Treatment Act. ECRI recommends that to this end they carry out a major information campaign while ensuring the involvement of local and regional authorities.

## **BIBLIOGRAPHY**

This bibliography lists the main published sources used during the examination of the situation in Estonia. It should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

### **European Commission against Racism and Intolerance (ECRI)**

1. ECRI (2013), Conclusions on the implementation of the recommendations in respect of Estonia subject to interim follow-up, CRI(2013)5.
2. ECRI (2010), Fourth report on Estonia, CRI(2010)3.
3. ECRI (2006), Third report on Estonia, CRI(2006)1.
4. ECRI (2000a), Second report on Estonia, CRI(2002)1.
5. ECRI (1999), Report on Estonia, CRI(99)2.
6. ECRI (1996), General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance, CRI(96)43.
7. ECRI (1997), General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, CRI(97)36.
8. ECRI (1998a), General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, CRI(98)29.
9. ECRI (1998b), General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, CRI(98)30.
10. ECRI (2000b), General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims, CRI(2000)21.
11. ECRI (2001), General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, CRI(2001)1.
12. ECRI (2003), General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, CRI(2003)8.
13. ECRI (2004a), General Policy Recommendation No. 8: Combating racism while fighting terrorism, CRI(2004)26.
14. ECRI (2004b), General Policy Recommendation No. 9: The fight against antisemitism, CRI(2004)37.
15. ECRI (2007a), General Policy Recommendation No. 10: Combating racism and racial discrimination in and through school education, CRI(2007)6.
16. ECRI (2007b), General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, CRI(2007)39.
17. ECRI (2009), General Policy Recommendation No. 12: Combating racism and racial discrimination in the field of sport, CRI(2009)5.
18. ECRI (2011), General Policy Recommendation No. 13: Combating anti-Gypsyism and discrimination against Roma, CRI(2011)37.
19. ECRI (2012), General Policy Recommendation No. 14: Combating racism and racial discrimination in employment, 2012, CRI(2012)48.

### **Other sources**

20. Chancellor of Justice (2014), 2013 Overview of the Chancellor of Justice Activities.
21. Ministry of Education and Research (2013), Summary of PISA 2012 results for Estonia.
22. Statistics Estonia (2013), Results of the 2011 Population and Housing Census (PHC 2011).
23. Council of Europe, Commissioner for Human Rights (2011), Discrimination on grounds of sexual orientation and gender identity in Europe, 2nd edition.
24. European Court of Human Rights (2013a), Delfi AS v. Estonia (Application No. 64569/09), Judgment.
25. European Court of Human Rights (2013b), Factsheet - Gender identity issues, October 2013.

26. Council of Europe, Committee of Ministers (1997), Recommendation No. R (97) 20 to the member States on "hate speech", adopted on 30 October 1997.
27. Parliamentary Assembly of the Council of Europe, Committee on Equality and Non-Discrimination (2013), Tackling discrimination on the grounds of sexual orientation and gender identity, Report, Doc. 13223.
28. Council of Europe, Commissioner for Human Rights (2013), Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Estonia from 25 to 27 March 2013, CommDH(2013)12.
29. Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) (2011a), Third Opinion on Estonia, adopted on 1 April 2011, ACFC/OP/III(2011)004.
30. Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) (2011b), Comments of the Government of Estonia on the Third Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Estonia, GVT/COM/III(2011)005.
31. Council of Europe, ACFC (2014), Fourth report submitted by Estonia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/IV(2014)008.
32. United Nations (UN), Committee for the elimination of racial discrimination (CERD) (2014), Concluding observations on the combined tenth and eleventh periodic reports of Estonia, CERD/C/EST/CO/10-11.
33. CERD (2013), Reports submitted by States parties under article 9 of the Convention, Tenth and eleventh periodic reports of States parties due in 2012 - Estonia.
34. European Union (EU), European Commission (2013), National protection beyond the two EU Anti-discrimination Directives: The grounds of religion and belief, disability, age and sexual orientation beyond employment.
35. EU, European Commission (2012), Special Eurobarometer 393, Discrimination in the EU in 2012, Report.
36. EU, European Commission (2014a), Report to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (COM(2014)27final).
37. EU, European Commission (2014b), Report on discrimination of Roma children in education.
38. EU Agency for Fundamental Rights (FRA) (2009), EU-MIDIS, European Union Minorities and Discrimination Survey - Main Results Report.
39. European Union Agency for Fundamental Rights (FRA) (2013a), Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism.
40. FRA (2013b), Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime.
41. FRA (2013c), Making hate crime visible in the European Union: acknowledging victims' rights.
42. FRA (2013d), EU LGBT survey – European Union lesbian, gay, bisexual and transgender survey - Results at a glance.
43. FRA (2014a), Antisemitism - Summary overview of data available in the European Union 2003-2013.
44. FRA (2014b), Roma survey - Data in focus: Poverty and employment: the situation of Roma in 11 EU Member States.
45. FRA (2014c), Roma survey - Data in focus: Discrimination against and living conditions of Roma women in 11 EU Member States.
46. FRA (2014d), Roma survey - Data in focus - Education: the situation of Roma in 11 EU Member States.
47. Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR) (2013), Hate Crimes in the OSCE Region: Incidents and Responses: Annual Report for 2012.



48. OSCE/ODIHR (2014), 2013 Hate crime reporting.
49. Organisation for Economic Co-operation and Development (OECD) (2014), Main results of the PISA (Programme for international student assessment) survey 2012.
50. International Commission of Jurists (2007), Yogyakarta Principles Principles on the application of international human rights law in relation to sexual orientation and gender identity.
51. Danish Institute for Human Rights (2009), The social situation concerning homophobia and discrimination on grounds of sexual orientation in Estonia.
52. Estonian Human Rights Centre et al. (2010), The status of lesbian, gay, bisexual and transgender rights in Estonia - a shadow report.
53. European Network against Racism (ENAR) - Estonia (2013), Shadow report, Racism and related discriminatory practices in Estonia 2011 - 2012.
54. Institute of Baltic Studies, Social Thematic Study, The situation of Roma 2012 - Estonia.
55. Grossthal, K. and Meior, M. (2012), Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (Rec(2010)5), Report on Estonia, Estonian Human Rights Centre.
56. Haruoja, M., Meior, M. and Käsper, K. (2010), Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity.
57. International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)-Europe and Transgender Europe (2013), The Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5) - A survey of progress towards implementation in 16 member states at January 2013.
58. International Legal Research Group on Online Hatespeech (2014), Final Report, Council of Europe and European Law Students' Association (ELSA).
59. Kaldur, K., Sutrop, I. and Kallas, K. (2011), Political participation of third country nationals on national and local level - Country report of Estonia.
60. Kallas et al. (2013), Equal treatment in Estonia: awareness and promotion, research report, Tartu : Institute of Baltic Studies, Tartu.
61. Kovalenko, J. (2011), Racist Violence in Estonia, ENAR.
62. Legal Information Centre for Human Rights (2014), Observations in relation of the tenth and eleventh periodic report of Estonia (CERD/C/EST/10-11) submitted to the UN CERD.
63. Lindeman, K. (2011), School performance in linguistically divided educational systems. A study of the Russian-speaking minority in Estonia and Latvia, 2011.
64. Livingstone, S., Haddon, L., Görzig, A., and Ólafsson, K. (2011). Risks and safety on the internet: The perspective of European children. Full Findings. LSE, London: EU Kids Online.
65. Matrix (2014), Roma Health Report, Health status of the Roma population Data collection in the Member States of the European Union, European Commission, State of affairs up to 1st January 2013, European network of legal experts in the non-discrimination field.
66. Migration Policy Group and Barcelona Centre for International Affairs (2014), Migrant Integration Policy Index - Estonia.
67. Poleschuk, V. (2013), Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2012 on Estonia, State of affairs up to 1<sup>st</sup> January 2013, European network of legal experts in the non-discrimination field.
68. Russian School of Estonia (2014), Alternative Report for the UN CERD.
69. U.S. Department of State, Bureau of Democracy, Human Rights and Labour (2013), Estonia 2012 Human Rights Report.



