



## International Covenant on Civil and Political Rights

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### Human Rights Committee

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### **Replies of the Government of Estonia to the list of issues (CCPR/C/EST/Q/3) to be taken up in connection with the consideration of the third periodic report of Estonia (CCPR/C/EST/3)\***

#### **Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented, right to effective remedy (art. 2)**

#### **1. Judgments**

1. There have been three judgments of the Supreme Court of Estonia where the provisions of the Covenant have been invoked:

(a) A judgment of 09.11.2009 (No 3-3-1-61-09) – concerning the refusal of the Citizenship and Migration Board to issue Estonian residence permit to a person residing on the territory of Estonia unlawfully (Article 23 of the CCPR).

(b) A judgment of 03.01.2008 (No 3-3-1-101-06) – concerning the refusal of the Citizenship and Migration Board to grant citizenship to a person who had been employed by foreign security services (Article 26 of the CCPR).

(c) A judgment of 17.03.2003 (No 3-1-3-10-02) – Declaring unconstitutional the Law on the Implementation of the Penal Code which does not foresee the reduction of the punishment of a person convicted under the formerly in force Criminal Code down to the maximum limit of punishment foreseen by the special part of the Penal Code currently in force, which constitutes a more lenient punishment (Article 15 (1) of the CCPR).

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

## 2. Independence of the Chancellor of Justice

2. The institution of the Chancellor of Justice in Estonia is not part of the legislative, executive or judicial power, it is not a political or a law enforcement body. The institution of the Chancellor of Justice is established by the Constitution of the Republic of Estonia<sup>1</sup>. The legal status of the Chancellor of Justice and the organisation of his office are provided by the Chancellor of Justice Act<sup>2</sup>.

3. The independence of the Chancellor of Justice is guaranteed by the constitution, by the Chancellor of Justice Act, appointment and release from office procedure, restrictions for his/her activities, requirements for his/her staff and budget.

4. The Constitution of the Republic of Estonia § 139 (1-2) stipulates:

The Chancellor of Justice shall be, in his or her activities, an independent official who shall review the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws.

The Chancellor of Justice shall analyse proposals made to him or her concerning the amendment of laws, the passage of new laws, and the activities of state agencies, and, if necessary, shall present a report to the Riigikogu.

5. Section 144 of the Constitution adds:

The legal status of the Chancellor of Justice and the organisation of his or her office shall be provided by law.

## 3. Appointment of the Chancellor of Justice

6. Section 140 of the Constitution stipulates:

The Chancellor of Justice shall be appointed to office by the Riigikogu, on the proposal of the President of the Republic, for a term of seven years.

The Chancellor of Justice may be removed from office only by a court judgment.

7. According to § 6 of the Chancellor of Justice Act the Chancellor of Justice must be an Estonian citizen who has active legal capacity, is of high moral character, is fully proficient in the official language, must have completed an academic education in law and he or she must be an experienced and recognised lawyer.

8. Section 8 of the Chancellor of Justice Act stipulates that the authority of the Chancellor of Justice is deemed to be terminated:

(a) as of the date of expiry of the seven year term;

(b) as of the date of his or her resignation from office;

(c) as of the date of entry into force of a judgment of the Supreme Court en banc in the case of his or her extended inability to perform his or her functions for more than six consecutive months;

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<sup>1</sup> Available online in English: <http://www.legaltext.ee/text/en/X0000K1.htm>.

<sup>2</sup> Available online in English:  
<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30041K7&keel=en&pg=1&ptyyp=RT&tyyp=X&query=%D5iguskantsleri+seadus>.

- (d) as of the date of entry into force of a conviction by a court against him or her for an intentionally committed criminal offence;
- (e) as of the date of entry into force of a conviction by a court against him or her which prescribes imprisonment for a criminal offence committed due to negligence;
- (f) upon his or her death.

9. Section 10 of the Chancellor of Justice Act stipulates that if the Chancellor of Justice is unable to perform his or her functions for six consecutive months due to illness or for any other reason, the President of the Republic shall file a reasoned petition with the Supreme Court to declare by a decision that the Chancellor of Justice is unable to perform his or her functions. The Supreme Court *en banc* shall review the petition and make a decision promptly and the decision of the Supreme Court *en banc* which has entered into force releases the Chancellor of Justice from office.

10. According to § 11 (1) of the Chancellor of Justice Act (repeats § 145 of the Constitution) criminal charges may be brought against the Chancellor of Justice only on the proposal of the President of the Republic and with the consent of the majority of the membership of the *Riigikogu*.

11. It stems from above that the Chancellor of Justice cannot be removed from the office on the basis of political reasons.

#### 4. Restrictions for his/her activities

12. The independence of Chancellor of Justice is guaranteed by many restrictions on activities. According to § 12 of the Chancellor of Justice Act during his or her term of office, the Chancellor of Justice shall not hold another state or local government office or an office of a legal person in public law; participate in the activities of political parties (consequently he/she cannot be a member and also participating in whatever activities is prohibited); belong to the management board, supervisory board or supervisory body of a commercial undertaking; engage in enterprise, except his or her personal investments and the interest and dividends received therefrom and income received from the disposal of his or her property. The Chancellor of Justice is permitted to engage in research or teaching unless this hinders the performance of his or her functions. All these restrictions apply to Deputy Chancellor of Justice-Advisers and also to advisers to the Chancellor of Justice (§ 39 of the Act).

#### 5. Budget

13. Section 12 of the State Budget Act<sup>3</sup> stipulates that budget negotiations shall be held between representatives of the Ministry of Finance and the constitutional institution (including the Chancellor of Justice) concerning a budget project and the justification for and feasibility of the expenditure included therein. Minutes shall be prepared concerning the negotiations in which the budget project amounts approved by the representatives of the parties or left unapproved are set out, in the case of the latter with the addition of the dissenting opinions.

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<sup>3</sup> Available online in English:  
<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X60037K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=riigieelarve+seadus>.

14. Following negotiations the Ministry of Finance shall, on the basis of the budget projects of the constitutional institutions (including the Chancellor of Justice) and the ministries, compile a draft state budget and submit it together with an explanatory memorandum to the Government of the Republic. When including amounts from the budget project of a constitutional institution in the draft state budget, the Ministry of Finance may make amendments thereto if such amendments have been approved in the course of negotiations set out in section 12.

15. Section 15 of the State Budget Act foresees that when reviewing the draft state budget, the Government of the Republic has the right to amend amounts entered therein or to omit amounts there from, unless otherwise provided by law. However, upon amendment or omission of amounts designated in the draft state budget for a constitutional institution, the Government of the Republic shall present the amendments together with justification therefore in the explanatory memorandum to the draft state budget.

16. State budget is adopted by the parliament.

17. The budget of the Office of the Chancellor of Justice shall be approved by the Chancellor of Justice based on the state budget (§ 42 (1) of the Chancellor of Justice Act). The Chancellor of Justice as constitutional institution shall classify the expenditure presented in the adopted state budget further in his/her own budget in accordance with the budget classification. The constitutional institutions shall submit their budgets to the Ministry of Finance.

18. The Chancellor of Justice determines salaries of his/her staff. The budget of the Office of the Chancellor of Justice shall prescribe funds for payment for consultations, translation, interpretation and expert assessment in the amount of up to 20 per cent of the annual salary fund as well. The procedure for payment of remuneration to consultants, translators, interpreters and specialists shall be established by the Chancellor of Justice (§ 42 (2) of the Act).

19. Section 45 (3) of the State Budget Act also stipulates that an audit of the annual report of constitutional institutions (including the Chancellor of Justice) shall be conducted by the State Audit Office.

20. It stems from above that the budget of the Chancellor of Justice is separate part of the state budget – it is not part of the budget of any other body or institutions and the Chancellor of Justice has absolute management and control over it in the boundaries set by the parliament.

## **6. Resources allocated**

21. The Office of the Chancellor of Justice is located in Tallinn, Kohtu Street 8.<sup>4</sup> In 2009 the budget of the Office of the Chancellor of Justice was 24 829 110 EEK, in 2010 the budget is 25 132 483 EEK. In 2010 there are 39 officials working in the Office of the Chancellor of Justice. The salary rate of the Chancellor of Justice is set by the Higher Officials' Salary Act. The salary equals the salary of a minister.

## **7. Mandate of the Chancellor of Justice**

22. The Estonian model of the institution of Chancellor of Justice is unique. In addition to the functions of the ombudsman (constitutional basis is § 139 (2) of the Constitution), the

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<sup>4</sup> Official web-page in English: <http://www.oiguskantsler.ee/?lang=eng>.

Chancellor also performs the function of supervision over the constitutionality of legislation (constitutional basis is § 139 (1) of the Constitution). This combined functionality allows a more complex approach to petitions by individuals. It is often found during proceedings that an activity of a state agency which a petitioner considered to be a case of maladministration actually arose from the requirements of an unconstitutional law or regulation. In cases of this kind, the Chancellor of Justice can find a solution to the problem by contacting the body that passed the relevant legal act and proposing that the act be brought into conformity with the Constitution.

## 8. Functions of ombudsman

23. The Chancellor of Justice Act regulates only the most important aspects, e.g.
- (a) who can be supervised;
  - (b) how the petition can be submitted<sup>5</sup>;
  - (c) what data should it contain;
  - (d) what are the bases of refusal of reviewing the petition (obligatory and discretionary bases);
  - (e) what are the rights and obligations of the Chancellor of Justice, e.g. unrestricted access to documents, other materials and areas, right to demand information,
  - (f) completion of proceedings.
24. According to § 19 (1) of the Act the agencies under supervision are state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties. The Chancellor controls whether the agency under supervision adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration.
25. Ombudsman proceedings may begin either with a petition submitted by an individual or upon the Chancellor's own initiative. When contacted by an individual, the Chancellor of Justice decides whether to accept the petition for proceedings. It is usually done in one month<sup>6</sup> (however the law does not foresee any formal deadlines for the Chancellor of the Justice) and a letter with the outcome – whether the petition is proceeded or not – is sent to the person in writing.
26. A petition is rejected if the matter it raises falls outside the competence of the Chancellor of Justice, or if a court judgment has entered into effect in the matter, or if court proceedings or compulsory administrative challenge proceedings are pending in the matter. The Chancellor of Justice is not competent to amend or review decisions passed by judicial bodies. The Chancellor may consider rejecting a petition if it is manifestly unfounded or if

<sup>5</sup> The petition can be submitted orally (in practice through telephone or coming to the office – there is one adviser who receives people) and in writing – both are possible (in practice petition can be submitted also electronically through webpage or just sending an e-mail (no digital signature is usually required)).

<sup>6</sup> Internally the Chancellor of Justice tries to follow 3 months rule: after receiving a petition the person will get in one month answer whether the Chancellor will proceed or not. And if yes, a letter to public authorities demanding for information is sent out (usually one month is given to them to answer). After receiving the answer from public authority the Chancellor tries to formulate his/her position in one month. This is an ideal rule that cannot be always followed, e.g. it comes out from the answer of the public authority that additional information is needed or the case happens to be very complicated etc.

it is not clear from the petition what constituted a violation of the petitioner's rights. A petition may also be rejected if it is submitted more than one year after the individual became or should have become aware of a violation of their rights. This requirement arises from the premise that when a long time has passed after a violation it is either extremely complicated, or even impossible, to ascertain what had actually happened and to reach the right decision. The Chancellor of Justice may also reject an application if other more effective legal remedies are available to the petitioner. As a rule, individuals should try to resolve their problem by using the most effective legal remedies: for example, by filing an administrative challenge to a relevant body or filing a complaint with a court. Unlike court decisions, the opinions of the Chancellor of Justice are only advisory in nature.

27. If the Chancellor of Justice rejects a petition, he informs the petitioner about it in writing, where necessary explaining to the individual any further possibilities for protection of their rights. If the Chancellor of Justice proceeds the petition, procedural steps (already taken or will be taken) of the Chancellor of Justice and the name and contacts of the investigator are described in the letter sent to the person. Sometimes additional information is asked from the petitioner. At the same time the Chancellor of Justice asks for information from relevant public authorities in order to find out what really happened and clear all necessary aspects and details.

28. An important part of the activities of the Chancellor of Justice in relation to protecting fundamental rights is based on the Chancellor's own initiative, i.e. either drawing up analyses of certain issues or conducting inspection visits.

29. Topics of own-initiative proceedings and agencies to be inspected are selected on the basis of advance information. As a rule, choices are based on a previously drawn-up work plan but, if necessary, information published in the media may also be used (e.g. information concerning certain activities by public authorities that may endanger fundamental rights, or the sudden emergence of acute topical issues in society). Proceedings conducted by the Chancellor of Justice are characterised by freedom of choice of form, and the principle of expediency. This means that the Chancellor decides in each particular case which of the available procedural measures would be the quickest and most effective, but at the same time the least burdensome for participants in the proceedings. Clearly, the principle of freedom of choice of form is not applied in cases where the law prescribes the form of proceedings. The investigative principle also characterises proceedings conducted by the Chancellor of Justice. This means that the Chancellor will not proceed merely from information and materials submitted by participants in proceedings but where necessary also ascertains other facts and circumstances relevant in the matter, and collects evidence on his own initiative. During proceedings the Chancellor of Justice may freely access all relevant materials and places, may request written information from participants, obtain written statements and explanations, if necessary involving experts in the proceedings. The Chancellor has an access to state secrets classified as top secret. The Chancellor may conduct inspection visits (either with or without advance notification) to agencies under supervision whose activities involve a higher risk of restricting fundamental individual rights (e.g. prisons, police detention centres, care homes, or schools for children with special needs).

30. The law establishes certain procedural guarantees in cases where agencies under supervision hamper the activities of the Chancellor of Justice by hiding information, providing incorrect or insufficient information, or denying free access. According to § 35 (2-3) of the Chancellor of Justice Act the Chancellor may request launching of disciplinary proceedings in respect of individuals hampering his activities; alternatively, he may inform the public about such situations.

31. Section 35<sup>1</sup> of the Chancellor of Justice Act stipulate that following ombudsman proceedings, the Chancellor of Justice expresses an opinion, assessing whether a person

performing public functions had complied with the law and whether communication with that person took place in accordance with the principles of good administration. In his opinion, the Chancellor may express criticism or standpoints, or make specific recommendations for eliminating a violation.

32. The measures laid down by law are not so-called “coercive” in character. The Chancellor’s opinion is advisory. Compliance with the opinion is ensured through the high level of legal professionalism contained in it and through the widely recognised authority of the institution of the Chancellor of Justice.

33. To ensure enforcement of opinions of the Chancellor of Justice, the Chancellor of Justice Act (§ 35<sup>2</sup>) enables the Chancellor to submit follow-up inquiries to supervised institutions in order to check how his opinions have been complied with. In cases of non-compliance with his opinion, the Chancellor may submit a report accordingly to the agency that performs regular supervision over the institution, to the Government, or to the Parliament. At the Chancellor’s discretion, information about a case may also be disclosed to the public. Disclosure of information can also be used as a measure against those who hamper proceedings or who unjustifiably refuse to comply with the Chancellor’s opinion.

34. An opinion of the Chancellor of Justice is final and cannot be appealed in court (§ 35<sup>1</sup> (3)).

## 9. Constitutional review

35. According to § 15 of the Chancellor of Justice Act, everyone has the right of recourse to the Chancellor of Justice to review the conformity of an Act or other legislation of general application with the Constitution or the law.

36. The proceedings may be started also on Chancellor’s own initiative.

37. The Chancellor of Justice Act does not provide clear rules what procedural steps should be taken but in practice the Chancellor asks for information from relevant ministries, agencies etc and on the basis of the information received decides the matter.

38. The Constitution stipulates (§ 142, reaffirmed in §§ 17-18 of the Chancellor of Justice Act): “If the Chancellor of Justice finds that legislation passed by the legislative or executive powers or by a local government is in conflict with the Constitution or a law, he or she shall propose to the body which passed the legislation to bring the legislation into conformity with the Constitution or the law within twenty days. If the legislation is not brought into conformity with the Constitution or the law within twenty days, the Chancellor of Justice shall propose to the Supreme Court to declare the legislation invalid.”

39. It stems from above that there is clear “coercive” outcome of the constitutional review proceedings – the Chancellor may turn to the Supreme Court who can declare the legislation invalid.

40. In addition to these two main functions – ombudsman and constitutional review – there are also other functions. The most important relevant here is the prevention of ill-treatment. Section 1 (7) stipulates that the Chancellor of Justice is the preventive state authority (national preventive mechanism) provided for in Article 3 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT, see below).

41. In addition, § 141 (2) stipulates that the Chancellor of Justice may participate in sessions of the Riigikogu and the Government of the Republic, with the right to speak. Section 2 (2) adds that agendas of sessions of the Riigikogu and the Government of the

Republic together with draft legislation to be debated shall be sent to the Chancellor of Justice.

## **10. Reliability of the Chancellor of Justice**

42. The Chancellor of Justice has always had a very high reputation and reliability in the society and it has constantly increased over the years. On the basis of the survey the reliability of the Chancellor of Justice was 79% in 2007. Due to the appointment of the new Chancellor of Justice in 10 March 2008 the reliability has fallen to 66%. In December 2009 the reliability rose to 68%.

## **11. Ability to investigate<sup>7</sup>**

43. In 2008, the Chancellor of Justice received 2566 petitions, on the basis which 1944 cases were opened. As compared to 2007, the number of petitions rose by 11.3%. During 2008, there were 1944 cases opened, which is 11.7% more than in 2007. As at 1 February 2009, 1794 proceedings had been completed, in 52 cases follow-up proceedings were pending and 98 cases were still being investigated. In 480 cases, substantive proceedings were conducted during the reporting year, and in 1464 cases no proceedings were initiated for various reasons. During the reporting year, 66 proceedings were initiated based on the Chancellor's own initiative. In 2008, the Chancellor of Justice carried out 18 inspection visits to 39 places of detention. 359 cases were opened concerning imprisoned persons.

44. In 2009, the Chancellor of Justice received 2729 petitions, on the basis which 2033 cases were opened. As at 1 February 2010, 1882 proceedings had been completed, in 47 cases follow-up proceedings were pending and 104 cases were still being investigated. In 449 cases, substantive proceedings were conducted during the reporting year, and in 1584 cases no proceedings were initiated for various reasons. During the reporting year, 76 proceedings were initiated based on the Chancellor's own initiative. In 2009, the Chancellor of Justice carried out 26 inspection visits to 39 places of detention. 402 cases were opened concerning imprisoned persons.

## **Discrimination against women and domestic violence (arts. 2(1), 3, 26)**

### **1. Application of the Gender Equality Act by national courts**

45. It is not possible at the moment to receive reliable and comprehensive information about the number of cases in the national courts where the Gender Equality Act has been discussed. But we would like to draw the attention of the Committee to one recent decision of the Supreme Court of Estonia (20.11.2009; No 3-3-1-41-09, available in Estonian at: <http://www.nc.ee/?id=11&tekst=222520507>). The decision was made by the Supreme Court *en banc* and concerned review of constitutionality of a regulation in the Police Service Act according to which the obligatory pension age for female police personnel was lower than that of men. Among other aspects the Supreme Court pointed out that this difference can influence also the sum of pension. The court decided to declare the regulation unconstitutional for the reason of being discriminatory based on sex of a person.

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<sup>7</sup> Annual reports containing statistics is available online in English:  
<http://www.oiguskantsler.ee/?menuID=55>.



Although the Gender Equality Act was referred to in this case, the court did not find it necessary to analyse the compliance of the situation with this act.

## **2. Examples of cases concerning the application of the Gender Equality Act by national courts, in particular regarding matters of equal pay for equal work**

46. Gender Equality and Equal Treatment Commissioner (hereafter the Commissioner) has information on four discrimination cases from 2009 which were originally brought to the attention of the Commissioner and which are now tried before the domestic courts. Two of these cases dispute primarily the legality of termination of employment contract of female employees but address also the issue of equal pay for equal work. The other two cases concern unequal treatment of male employees in comparison to female employees in relation to punishments under disciplinary procedures.

## **3. Information on the relationship between Gender Equality Act and Equal Treatment Act**

47. In the years 2005-2008 the mandate of the Commissioner was to monitor compliance with the Gender Equality Act. In 2009 the mandate was expanded to monitor also compliance with the Equal Treatment Act and the regulation concerning the tasks and powers of the Commissioner were moved from the Gender Equality Act to the Equal Treatment Act.

48. Provisions concerning the settlement of discrimination disputes, legal remedies to the victims of discrimination, shift of burden of proof in the discrimination cases etc, are almost identical in the two acts in question. Considerable difference exists what concerns the field of application of the acts. The Gender Equality Act applies in all fields of life with the exception of family and private life. The Equal Treatment Act, however, limits the field of application depending on the ground of discrimination (see § 2).

49. In the work of the Commissioner monitoring the compliance over both acts has simplified handling of cases concerning discrimination on multiple grounds. For example in 2009 there were several cases where employers were looking for recruiting employees of a particular sex and of certain age.

50. The Gender Equality Act has been enacted to ensure the principle of equal treatment of men and women arising from the Constitution of the Republic of Estonia and to promote gender equality as a fundamental human right and for the public good in all areas of social life. The purpose of the Equal Treatment Act is to ensure the protection of persons against discrimination on the grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation. The two acts have different scope of application. While the scope of application of the Gender Equality Act is all areas of social life, except professing and practising faith or working as a minister of a religion in a registered religious association and relations in family or private life, the scope of the Equal Treatment Act is limited and also different for different grounds. The acts have also some parallel similar regulations due to similarities in the EU directives which are among the bases for these two acts. Also, after the entry into force of the Equal Treatment Act on 1<sup>st</sup> of January 2009 the institution of the Gender Equality Commissioner which was previously regulated in the Gender Equality Act became the Gender Equality and Equal Treatment Commissioner and is now regulated in the Equal Treatment Act. The translation of the Gender Equality Act can be found here:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X80041K1&keel=en&pg=1&ptyyp=RT&=X&query=soolise>

and the translation of the Equal Treatment Act here:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXX006K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=v%F5rdse>.

#### **4. Steps taken by the State party to give effect to the findings of the Gender Equality Commissioner on violations of the principle of equal treatment between men and women**

51. According to the § 17 of the Equal Treatment Act, the Commissioner shall provide an opinion to persons who suspect they have been discriminated. The purpose of the opinion is to provide an assessment whether the principle of equal treatment has been violated or not. The opinion of the Commissioner is not legally binding and should rather give the applicant more certainty whether to pursue legal resolution to the dispute (either in court, through the Labour Dispute Committee, the Chancellor of Justice, or else).

52. In two circumstances the Commissioner's suggestions to change the law in force have resulted in amendments in legal acts. Firstly, in 2009 the stipulation § 35 in the Labour Contract Act prohibiting women to be employed in heavy and hazardous work was repealed). Secondly, also in 2009 the provision was introduced to the Gender Equality Act § 6 (discrimination in professional life) that prohibits employers and agencies mediating work to ask about the employee candidate's marital or family status in the course of recruitment procedure.

53. In 2009 the Commissioner found in one case that the state actor was not in compliance with the principle of equal treatment. The case is pending before the administrative court.

54. In October 2009 an amendment to the Equal Treatment Act entered into force which specifically states that the principle of shared burden of proof is also applied in the cases where a person asks an opinion from the Gender Equality and Equal Treatment Commissioner. The person has to set out the facts on the basis of which it can be presumed that discrimination based on sex has occurred. In the course of proceedings, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, such refusal shall be deemed to be equal to acknowledgement of discrimination by the person. Such regulation should influence the respondents to be active in the process which in turn will enable the Commissioner to prepare more adequate opinions. In addition, in order to rise the efficiency of the Commissioner in equal pay cases, the Equal Treatment Act now provides specifically that the Commissioners' right to obtain information includes also information concerning the remuneration calculated, paid or payable to an employee, the conditions for remuneration and other benefits. Also, in order to give more effect to the opinions of the Commissioner, s/he now has the obligation in the case of an opinion provided on the Commissioner's own initiative or with the consent of the person who submitted an application, to communicate the opinion to the person responsible for compliance with the principle of equal treatment in a situation on which the opinion is based for information or as a recommendation.

## 5. Information on the resources allocated to the Gender Equality Commissioner for its activities

55. According to § 15 (3) of the Equal Treatment Act, the activities of the Commissioner are financed from the state budget.

56. The budget of the Commissioner has been the following since the establishment of the position in October 2005:

	<i>Total</i>		<i>Of this wages</i>		<i>Of this economic costs</i>	
	EEK	EUR	EEK	EUR	EEK	EUR
<b>2005</b>	400 000	<b>25 565</b>	250 000	<b>15 978</b>	150 000	<b>9 587</b>
<b>2006</b>	800 000	<b>51 129</b>	645 000	<b>41 223</b>	155 000	<b>9 906</b>
<b>2007</b>	863 550	<b>55 191</b>	808 200	<b>51 653</b>	55 350	<b>3 538</b>
<b>2008</b>	950 000	<b>60 716</b>	894 650	<b>51 178</b>	55 350	<b>3 538</b>
<b>2009</b>	923 254	<b>59 007</b>	867 904	<b>55 469</b>	55 350	<b>3 538</b>
<b>2010</b>	941 455	<b>60 170</b>	886 105	<b>56 632</b>	55 350	<b>3 538</b>

57. The staff consists of two persons: the Commissioner and one adviser. The adviser is in position since September 2006. In 2009 the adviser was working part time (75%) due to budgetary constraints.

The establishment of the Gender Equality Council has been postponed due to lack of resources.

## 6. Relationship between the Commissioner and the Chancellor of Justice

58. One of the competences of the Commissioner according to the Equal Treatment Act § 16 (8) is to cooperate with other persons and agencies to promote gender equality and equal treatment. Stipulations § 35<sup>16</sup> (4) and (5) in the Chancellor of Justice Act foresee similar responsibility of cooperation in order to promote the principle of equality and equal treatment.

59. On occasions the Commissioner and the Chancellor of Justice have adhered to this duty of cooperation. For example the Chancellor has forwarded a few cases of possible discrimination to the Commissioner. In turn the Commissioner has recommended Chancellor's procedures when possible breach of equal treatment has been attributable to a legal act or to activities of a public authority.

60. The main differences between the proceedings and their effect of the Commissioner and the Chancellor of Justice are following:

61. The conciliation procedures of the Chancellor of Justice concerning discrimination disputes between private persons are voluntary, i.e. both parties have to agree to the proceedings. The Commissioner may issue an opinion to a person suspecting discrimination also without the consent of the other party involved.

62. However if private parties do consent to the conciliation procedures of the Chancellor of Justice the agreement reached will be mandatory to abide by. The opinion of the Commissioner, on the other hand, is not legally binding.

## **Right to life (art. 6)**

### **1. Amendment to the Penal Code**

63. The relevant amendment to the Penal Code entered into force on 1 January 2009. The provision reads as follows:

“§ 22<sup>1</sup> Attempted instigation, agreement to a proposition to commit a criminal offence and agreement to commit a joint criminal offence

(a) Attempted instigation, agreement to a proposition to commit a criminal offence or agreement to commit a joint criminal offence are punishable in case of offences listed in chapters 8, 9, 13, 18 and 22 of the current Code and offences listed in sections 2, 4 and 5 of chapter 15 for which the maximum rate of punishment is at least 12 years or life imprisonment.

(b) A person is held responsible for the acts in this paragraph only in case at least one of the perpetrators of an offence listed in section 1 of this paragraph performs an additional act with the aim to advance the committing of an offence.

(c) A person who commits an attempted instigation is imposed punishment under the same provision of the Penal Code which foresees the liability of a perpetrator unless otherwise provided by § 24 of this Code.”

### **2. Legislation on firearms**

64. According to the laws in force, a law enforcement official has the right to use a firearm in cases listed in the law as a last resort, in case it is not possible to perform the assigned duties without endangering life or health.

65. A new draft of Law Enforcement Act which will establish a new regime of the use of firearms by law enforcement authorities is currently in the proceedings of the parliament. The relevant provision provides:

“§ 80. Use of a firearm

(1) The police or other law enforcement body provided by law may use a firearm to combat serious danger if the combating of danger is not possible by any other means of coercion or is not possible in due time and taking into account that in using a firearm all possible measures will be applied to avoid endangering any other substantial legal right.

(2) The police or other competent law enforcement body may use a firearm against a person only as an extreme measure to prevent him from attacking, resisting or escaping in case it is not possible to achieve this aim by using any other arm against an animal or object or any other immediate measure of coercion and in case it is also necessary to:

1) combat immediate danger to life or bodily integrity;

2) combat the committing of an immediate or already current first degree offence or an offence for which the punishment is life imprisonment;

3) detain a suspect, an accused or a convicted offender or prevent his escape if he may be deprived of liberty under the law of if he has been deprived of liberty in relation to committing of a violent first degree offence or an offence for which the punishment may be life imprisonment.”

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**Prohibition of torture and cruel, inhuman or degrading treatment, liberty and security of the person, and treatment of prisoners (arts. 7, 9, 10)**

**1. Definition of torture**

66. The analysis regarding the definition of torture in the Penal Code will be conducted by the Ministry of Justice in 2011.

**2. Prevention of torture and ill-treatment**

67. Since 18 February 2007, the Chancellor of Justice performs the functions of the national preventive mechanism in Estonia. In several other countries, ombudsman or another authority performing the functions of an ombudsman has also been designated as the preventive mechanism.

68. In Estonia there are almost 150 establishments qualifying as places of detention within the meaning of the Optional Protocol. The majority of them are police detention facilities and social welfare establishments. In 2009, the Chancellor of Justice carried out 26 inspection visits to 39 places of detention. In 2008, the Chancellor of Justice carried out 18 inspection visits to 39 places of detention, among them 12 regular visits and 27 unannounced visits. By comparison, the same number of visits (i.e. 18) were also conducted in 2007.

69. The choice of establishments inspected is based on annual working plan (not public) which is composed on the basis of clear criteria – e.g. the need to inspect places of detention systematically and after regular intervals, probability of ill-treatment, characteristics of detainees (age, culture etc) etc are taken account. In addition, any information received by the Chancellor which showed the need for immediate inspection was also taken into account. A separate mention could be made of the series of inspection visits in 2008-2010 to places of detention where individuals are detained only for a short period of time. The aim of the project was to inspect the conditions in the relevant facilities and, based on the circumstances ascertained, to propose to the Ministry of Internal Affairs to draft legislative provisions regulating short-term detention.

70. The establishments inspected in 2008 and 2009 are:

- (a) police establishments;
- (b) Defence Forces;
- (c) prisons;
- (d) border guard establishments;
- (e) court houses;
- (f) psychiatric care providers;
- (g) providers of treatment of infectious diseases;
- (h) special schools.

71. Experts are also sometimes used in inspection visits, e.g. medical doctors, child psychiatrists and psychologists who assisted in carrying out interviews in special schools and prisons.

72. It should be emphasised that during the inspection visits the Chancellor provides an opportunity for a meeting for all individuals held in the place of detention, as well as their close ones and members of the staff. Random interviews are also conducted. The Chancellor and his staff always talk to people in the place of detention while touring the establishment. Different informational material is always taken to the places of detention

with the aim to help people whose liberty has been restricted better understand their fundamental rights and freedoms and effectively make use of different complaint mechanisms. The main type of information material distributed at places of detention includes a booklet explaining the competences of the Chancellor of Justice together with a complaint form, a leaflet containing information about state legal aid and a brochure on patient rights.

73. As a result of inspection visits, a summary is compiled, containing recommendations and proposals to the inspected establishment and other relevant authorities. E.g. in 2008, the Chancellor of Justice made 40 proposals and 46 recommendations based on inspection visits. Summaries of inspection visits are also published on the Chancellor of Justice website immediately after sending them to the addressees.

74. The media have covered the Chancellor's conclusions reached on the basis of inspection visits in 2008 on more than fifty occasions, including news, articles, opinions, interviews, commentaries and editorials published in paper editions of national and local newspapers; online news and news stories; coverage in news portals; news and articles in specialist newspapers.

75. In addition to inspection visits, other activities for preventing ill-treatment have been carried out with the aim to raise awareness of the essence of ill-treatment and the need to fight it among staff and individuals held in the places of detention as well as among the wider public.

76. The officials from the Office of the Chancellor of Justice organise also training seminars and information days for staff in places of detention as well as other relevant persons. For example, three information days of the rights of children were held in 2008 with the attendance of staff from juvenile committees and special schools. A training seminar on the Istanbul Protocol for persons employed by psychiatric care providers was held and a presentation on the rights of persons in social welfare establishments was delivered. In 2009 also a seminar for police officers about specific cases concerning the police was organised.

77. In order to address more general shortcomings, the Office of the Chancellor of Justice has organised roundtables. During 2008, for example, two roundtables on the issues of health care and catering in places of detention were held. In addition, the Chancellor of Justice has established effective cooperation with the Ministries of Justice and Internal Affairs to investigate cases of death in prisons.

78. For a more detailed analysis of the protection of fundamental rights and freedoms and the prevention of ill-treatment in particular fields, comprehensive articles in specialist publications have been issued.

79. In his activities as the preventive mechanism, the Chancellor of Justice considers it very important to have international cooperation with other preventive bodies and relevant international organisations. Therefore, the Chancellor and his advisers attended several events on these issues and also delivered presentations.

### **3. Annual report**

80. Section 143 of the Constitution provides:

“The Chancellor of Justice shall present an annual report to the parliament on the conformity of the legislation passed by the legislative and executive powers and by local governments with the Constitution and the laws”

81. Section 4 of the Chancellor of Justice Act adds that annual overview (written) to the parliament covers constitutional review, supervision over legality of legislation and over observance of fundamental rights and freedoms (ombudsman's tasks) and overview of his/her activity as the preventive state authority provided for in Article 3 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Chancellor of Justice shall present a (oral) report to the parliament on the basis of the (written) overview during the third working week of the autumn plenary session.

#### **4. Cooperation with NGOs and UN**

82. Cooperation of the Office of the Chancellor of Justice with non-profit associations has been an important priority. Non-profit associations frequently submit applications to the Chancellor of Justice on behalf of persons. The advisers to the Chancellor of Justice have participated in seminars and information events organised by the third sector in order to explain the competence of the Chancellor of Justice and the issues of human and fundamental rights, equal treatment, children's rights etc.

83. Adviser to the Chancellor of Justice held regular meetings with the members of the Patients Representative Association of Estonia. At these meetings the issues of access to medical care, psychiatric care and health care administration were considered.

84. An important course of action of the Chancellor of Justice has been the protection of the rights of the child and cooperation with the organisations fostering the rights of the child. The focus of cooperation was the guarantee of the rights of children with special needs. The Union for Child Welfare makes an invaluable partner for the Chancellor of Justice, pointing out the problems in legislation as well as concrete cases in practice, where the interference of the Chancellor of Justice on his own initiative is necessary. The Chancellor of Justice may receive complaints also directly submitted by children. Consent of a parent or a guardian is not necessary. In practice the Chancellor of Justice has received most of the complaints directly from children while carrying out inspection visits to different child welfare institutions.

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

86. There have also been other roundtables on the following issues:

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

87. OPCAT stipulates that when creating their national preventive mechanisms (NPM), States Parties should, as far as possible, take into account the "Principles relating to the status of national institutions for the promotion and protection of human rights" (the so-called Paris Principles). Both the Optional Protocol and the Paris Principles stress the

independence of the preventive mechanism as one of the most important requirements. The preventive mechanism must be independent both functionally (freedom to manage its budgetary resources, sufficiency of resources, freedom to make decisions concerning its actions, privileges and immunities necessary for the performance of its functions, etc) and personally (appointment procedure, “distance” from the executive authority, etc). Experts used by the preventive mechanism should have necessary competence and professional experience and knowledge. As the Chancellor of Justice performs the functions of the national preventive mechanism in Estonia, hence it should be in full compliance with the Paris Principles.

88. Cooperation with UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)<sup>8</sup> refers also to the compliancy with the Principles. The SPT is in the process of exploring ways to develop a pilot programme for assistance to NPMs, based on a combination of workshops and observation of NPM visits in action, with subsequent feedback and exchange of views. The workshop model arose from a meeting with a representative of the Estonian NPM during the fifth SPT plenary session. The first workshop on “Organising, carrying out and reporting on preventive visits” was organised in Tallinn, Estonia, from 28 September to 1 October 2009. The workshop was conceived as an exchange of experience between the Chancellor of Justice as Estonian National Preventive Mechanism and experts from the European Committee for the Prevention of Torture (CPT)<sup>9</sup>, SPT and the Association for the Prevention of Torture (APT)<sup>10</sup>.

89. The 20th anniversary of the European Committee for the Prevention of Torture (CPT) was marked in Strasbourg on 06 November 2009 with a high-profile conference 'New Partnerships for the Prevention of Torture in Europe'. This large-scale event, which was co-organised by the CPT and APT, gathered for the first time representatives from the CPT, the UN Subcommittee on Prevention of Torture (SPT), European National Preventive Mechanisms (NPMs) and civil society. Ms. Nele Parrest, Deputy Chancellor of Justice of Estonia gave a speech in the conference.

## 5. Additional notice

90. The International Coordinating Committee of National Human Rights Institutions (ICC) is the representative body of national human rights institutions (NHRIs) and has established a Sub Committee on Accreditation from among its members which then accredits NHRIs as being in compliance with the Paris Principles. Bristol University has emphasised in its study "Relationship between Accreditation by the International Coordinating Committee of National Human Rights Institutions and the Optional Protocol to the UN Convention Against Torture"<sup>11</sup> that there should not be a presumption that because an institution is accredited by the ICC that it would make an effective or appropriate NPM under OPCAT (or a national framework under the Disability Convention). This is because of the manner of the accreditation process by the ICC, the very specific way of working by the SPT, the nature of OPCAT and what it requires of NPMs, that particular functions are to be performed by the NPM which a NHRI may not be always able to fulfil. OPCAT does not spell out that it is national human rights institutions specifically that are to be NPMs. The drafters of the Protocol only made a reference to the Paris Principles but made no prescription that NHRIs, where available, must be NPMs. In

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<sup>8</sup> Official web-page: <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

<sup>9</sup> Official we-page: <http://www.cpt.coe.int/en/>.

<sup>10</sup> Official web-page: <http://www.apr.ch/>.

<sup>11</sup> Available online in English: <http://www.bristol.ac.uk/law/research/centres-themes/opcat/docs.html>.



some countries there may be no NHRIs, in some countries these, despite their ICC accreditation status, might not be the most suited for the specific tasks under OPCAT.

## **6. Victim support compensation**

91. Victim support compensation is paid to victims of violent crimes and the victim's dependents and the natural person, who bears the victim's medical expenses or funeral expenses. For the purposes of this Act, a crime of violence is an act committed against the life or health of a person which is punishable pursuant to criminal procedure and as a result of which the injured person:

- 1) dies;
- 2) sustains serious damage to his or her health;
- 3) sustains a health disorder lasting for at least six months.

92. An application for compensation (hereinafter application) shall be submitted to the applicant's regional pension office of the Social Insurance Board within one year as of the commission of the crime or the date of death of the victim.

93. An application submitted later shall be reviewed if the dependant became aware of the death of the victim more than six months after the date of death and the application is submitted within one year as of the date of becoming aware of the death of the victim or the applicant for compensation sustained a health disorder which lasted longer than six months and timely submission of the application was not possible due to his or her state of health and if the corresponding application is submitted within one year as of his or her state of health improving.

94. Thus, if the victim of torture meets the conditions provided in the Victim Support Act, he/she may apply for victim support compensation from the state.

95. No separate statistics is collected regarding allocation of compensation in cases related to specific criminal offences.

## **Elimination of slavery and servitude (arts. 8, 24)**

### **1. General assessment on the success of the "Development Plan for Trafficking in Human Beings 2006-2009"**

96. Extract from the Final Report of the Development Plan (currently sent for approval to national authorities):

"The Development Plan for the years 2006-2009 focused on establishing a cooperation network of experts dealing with human trafficking, increased attention was paid to assistance of victims and training of professionals, which has contributed to awareness-raising of human trafficking. As this development plan was the first of its kind in the field, it is understandable that emphasis was placed on the development of a cooperation network and that significant attention was paid to the training of people who are the first contact with victims and the assistance provided by them. In addition, creating a wider audience on the issue of human trafficking and raising public awareness was deemed important. In this respect, lectures, training sessions, seminars to pupils and to other target groups in contact with the issue were carried out as well as awareness-raising activities in the media via newspaper inserts, information materials, trade shows and radio programs.

During the years of the development plan significant changes have also taken place in the legislation. At the end of 2009 the amendment to the Penal Code was initiated on establishing a separate paragraph on human trafficking; in 2007 the amendments entered into force by which the victim of human trafficking may obtain a temporary residence permit and the possibilities for the victim of human trafficking originating from a foreign country to apply for a temporary Estonian residence permit for the course of the criminal proceedings. All the amendments have also been necessary in order to fulfil the international obligations of Estonia, one of which included the signing of the Council of Europe Convention on Action against Trafficking in Human Beings. Estonia signed the Convention on February 3, 2010.

By the end of the period covered by the development plan there are functioning shelters for victims and a helpline for the prevention of human trafficking operated by NGO Living For Tomorrow. These activities and services provided by actors of the civil society have now been planned to receive financing from the state budget. In order to respond to human trafficking cases and to identify victims more efficiently a manual and guide materials have been compiled which have been submitted to all the relevant authorities who come in contact with victims (the manual and guide materials also include a list of contacts who the victim may turn to for assistance).

Some studies have also been completed in the field of human trafficking analysing the situation in Estonia regarding the reasons for the demand for human trafficking for the purpose of sexual exploitation, the awareness and attitudes of students of upper secondary schools and professional schools regarding human trafficking and the attitudes of the inhabitants of Estonia towards prostitution and women involved in prostitution.

Sexual exploitation is considered one of the forms of human trafficking, including the mediation of prostitution and aiding of prostitution. Human trafficking for the purposes of sexual exploitation and prostitution are directly linked. The characteristics of human trafficking may also be found in mediated prostitution – in case a person has been deceived into prostitution or a person has been deceived regarding the conditions of working as a prostitute; if a person has been compelled to prostitute by force or threatening; if a vulnerable condition of a person i.e. social, economic and/or psychological vulnerability of a person has been taken advantage of with the aim to exploit her/him in prostitution. The cases when a person involved in prostitution has started the activities on her/his own initiative and is acting independently may not be regarded as human trafficking

Studies have shown that public attitudes towards prostitution (2003 vs 2006) are continuously quite tolerant, every other Estonian considers brothels necessary, i.e. more than 60% of men and almost a half of women are of the opinion. In addition they admit that regarding prostitution they are not really aware of the actual situation of prostitutes or their knowledge on the matter is deficient. Knowledge of Estonian people about human trafficking has been quite poor, 4% of polled Estonians felt that they are aware of the characteristics of the problem.

The study on demand for human trafficking revealed that the main reasons for buying sex is searching for something different and entertainment, the buyers do not acknowledge the problems of the women involved in prostitution and the negative consequences of such activities.

The repeated research study among upper secondary school pupils on awareness of human trafficking (2002 vs. 2007) revealed that there exist some signs of improvement but young people are still not able to perceive the possible risks related

to human trafficking (e.g. the possibility to fall victim of drudgery or sexual exploitation when travelling or studying abroad), are not capable of standing up for their rights in the labour market or fearing the grasp of crime, as human trafficking is considered a field which does not directly concern them.

As a conclusion we may consider the development plan successful as by trainings and information providing activities conducted within the development plan the awareness of the public on the issue of human trafficking has been raised, the cooperation network of combating human trafficking is functioning and the cooperation between different organisations has improved, which therefore also ensures a more effective proceeding of human trafficking cases and the assisting of victims by different authorities and organisations.

During the four years of the development plan period almost 7 million Estonian krooni has been spent on the activities the financing of which was foreseen in the development plan instead of the planned 5 million krooni. For several larger initiations, e.g. a hotline of advice and the initiation of operation of shelters and rehabilitation services regarding human trafficking the initial funding has been received through international projects from the European Commission as well as the Nordic countries but by now these financing schemes have been taken over by the state and funding is received from the state budget which is a very significant achievement.”

97. Victims of human trafficking are entitled to medical, psychological, social and legal assistance. They are assisted by the shelters and services created by the Nordic Baltic Pilot project (services are being financed now by the Ministry of Social Affairs) and by the rehabilitation centre Atoll that was created in 2005 in the framework of the EU cooperation project EQUAL, titled “Integration of women involved in prostitution including victims of human trafficking into the legal labour market”. In 2008, 55 female victims of human trafficking were identified and assisted, in 2009, 78. These specialised services are provided by NGOs, but financed by the state and local government. In addition, all persons who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse, i.e. all those to whom suffering or injury have been caused, are entitled to victim support as stated in Victim Support Act. Compensation is also available for victims of crime. The Victim Support Act and the national Victim Support System are available also to victims of human trafficking.

98. In 2009 an analysis regarding the need for a specific provision of “human trafficking” in the Penal Code, was conducted by the Ministry of Justice. As a result, in 2010 amendments to the Penal Code will be submitted to the parliament, according to which a specific provision of human trafficking offences is introduced. The amendments are under preparation in Ministry of Justice.

## **2. Residence permits**

99. A residence permit may be issued to an alien who is victim or witness in a criminal procedure on a matter involving a criminal offence related to trafficking in human beings within the meaning of the Council Framework Decision 2002/629/JHA on combating trafficking in human beings and he or she makes the cooperation with the authorities. According to an Alien Act a Prosecutor’s Office will inform an alien of the possibilities and conditions for granting a residence permit. After that on the decision of the Prosecutor’s Office will be given to an alien who is victim of trafficking a reflection period of 30 to 60 calendar days allowing him or her to recover and escape the influence of the perpetrators of the offences so that he or she can take an informed decision as to whether to cooperate with

the competent authorities. A residence permit may be issued for up to 1 year. This does not preclude victims of trafficking from applying for residence permit on general grounds.

## **Liberty and security of persons (arts. 9, 10)**

### **1. Relevant laws on the rights of persons deprived of liberty**

100. We will hereby refer to provisions of the relevant laws on the rights of persons deprived of liberty:

- (a) Access to an independent doctor and to a lawyer:

“Imprisonment Act § 53. Treatment of prisoners

(1) The availability of emergency care twenty-four hours a day shall be guaranteed to prisoners.

(2) Prisoners who need treatment which cannot be provided in prison shall be referred to treatment at relevant providers of specialised medical care by the medical officer of the prison. Prison service shall ensure the guard of prisoners during the time when prisoners are provided with health care services.

(3) The time during which a prisoner is provided with health care services shall be included in the prisoner's sentence.

(4) In case of a prisoner, who has inflicted intentional self harm, the prison will have right of recourse to claim from the prisoner the sums spent on the prisoner's health care.”

- (b) Ability to inform a relative:

The Constitution of the Republic of Estonia

“§ 21 Everyone who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. A person suspected of a criminal offence shall also be promptly given the opportunity to choose and confer with counsel. The right of a person suspected of a criminal offence to notify those closest to him or her of the deprivation of liberty may be restricted only in the cases and pursuant to procedure provided by law to combat a criminal offence or in the interests of ascertaining the truth in a criminal procedure.

No one shall be held in custody for more than forty-eight hours without the specific authorisation of a court. The decision of the court shall be promptly communicated to the person in custody in a language and manner which he or she understands.”

Code of Criminal Procedure

“§ 217. Detention of suspect

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of the Prosecutor's Office.”

- (c) Information concerning the charges brought against them:

Code of Criminal Procedure

“§ 8. Safeguarding of rights of participants in proceedings

- (1) Investigative bodies, Prosecutors' Offices and courts shall:
  - 1) in the performance of a procedural act in the cases provided by law, explain the objective of the act and the rights and obligations of the participants in the proceeding to the participants;
  - 2) provide the suspect and the accused with a real opportunity to defend themselves;
  - 3) ensure the assistance of a counsel to the suspect and the accused in the cases provided for in subsection 45 (2) of this Code or if such assistance is requested by the suspect or the accused;
  - 4) in cases of urgency, provide an arrested suspect or accused with other legal assistance at his or her request;
  - 5) deposit the unsupervised property of an arrested suspect or accused with the person or local government specified by him or her;
  - 6) ensure that the minor children of an arrested person be supervised and the persons close to him or her who need assistance be cared for.”

(d) Prompt presentation before a judge.

Code of Criminal Procedure

“§269. Participation of accused in court hearing

- (1) A criminal matter shall be heard in the presence of the accused. If the accused fails to appear, the court hearing shall be adjourned.
- (2) As an exception, a criminal matter may be heard in the absence of the accused if:
  - 1) he or she has been removed from the courtroom on the basis and pursuant to the procedure provided for in subsection 267 (1) of this Code;
  - 2) he or she is outside the territory of the Republic of Estonia and absconds court proceedings, and court hearing is possible without the him or her;
  - 3) after his or her interrogation at a court session, the accused has caused himself or herself to be in a state which precludes his or her participation in the court hearing, and court hearing is possible without him or her;
  - 4) it is complicated to take him or her to the court, and he or she has consented to participation in the court hearing in audio-visual form pursuant to clause 69 (2) 1) of this Code.
- (3) If the accused absconds court proceedings or if the hearing of the criminal matter is hindered by a serious illness of the accused due to which he or she is not able to appear in court, the court may make a ruling on the conduct of separate proceedings concerning his or her charges, adjourn the hearing of the severed charges until apprehension or recovery of the accused, and continue the court hearing of the criminal matters concerning the other accused.
- (4) Upon court hearing of a criminal matter involving several accused persons, the hearing of those criminal offences included in the criminal matter which do not involve a specific accused may be conducted without the presence of such accused and his or her criminal defence counsel.”

101. Draft Law on Amendment of Penal Code, Code of Misdemeanour Procedure, Code of Criminal Procedure, Criminal Law, Punishment Register Act and Probation Supervision Act in the Parliament (Draft No **562 SE II-1**):

Extract from the explanatory report:

“One of the aims of the draft is to enable imposing community service as substitutive penalty in case of misdemeanours.

According to the analysis conducted by the Ministry of Justice the replacement of misdemeanour detention with community service for the years 2010-2013 would be possible in case at least 500 persons per year (1350 persons per year according to the estimates of the Police), the median length of the community service period could be 20 hours (10-day detention replaced with 20 hours of community service considering that one day of detention equals two hours of community service). The workload of arrest houses would then be reduced by 31-43% on account of the misdemeanour detentions and by 4-5% with respect of the entire workload. Differences between the estimates of the Ministry of Justice and the Police are mainly the result of the probability that not all persons who are punished with detention will give their consent to do community service which rules out the application of community service in respect of them.”

102. Draft Law on Amendment to the Code of Criminal Procedure and other Acts in the Parliament (draft No **599 SE II-1**):

Extract from the explanatory report:

“The main measures to achieve the goals:

10. Establish a legal remedy which may be applied for during court proceedings, particularly in criminal proceedings in order to comply with the principle of reasonable length of proceedings.

14. Improve the provisions related to the principle of continuity of the criminal court proceedings according to the needs occurred during the implementation period of the amendments of the Code of Criminal Procedure which entered into force 15.07.2008.”

(See answer to question 17– Continuity of the court hearings)

## **2. Living conditions of prisoners**

103. As we have already stated in the paragraph 219 of the report of the State party, the living conditions of prisoners have improved significantly due to the reform of the prison system. Out of five prisons operating in Estonia in 2010 already two are new cell type prisons (Tartu Prison opened in 2002 and Viru Prison opened in 2008). In addition, in 2013 a new building for the Tallinn Prison will be ready, which signifies that all the prisons in Estonia have new buildings. As well, changes in the principles of being released on parole were implemented in 2007 along with the possibility of applying electronic surveillance. After restoration of independence the number of prisoners in Estonian prisons amounted to 4,800. In 2007 the number of prisoners decreased considerably, reaching the lowest level in the last 16 years, i.e. 3,467. In 2010 the number is 3507.

### **3. Practical impact of the Supreme Court decisions mentioned in paragraph 270**

104. The practical impact of the Supreme Court decisions mentioned in paragraph 270 of the report of the State party are the following.

105. Administrative matter 3-3-1-2-06: This case is extensively used as a reference by the administrative courts in their judgments.

106. Administrative matter 3-3-1-103-06: The Imprisonment Act was amended with § 29 (2<sup>1</sup>), which states that the prison shall examine with whom the prisoner is corresponding via letters and telephone calls. In case of telephone calls, the prison has the right to register the given name and surname of the person or the name of the institution that the prisoner is calling, and the time and duration of the call. In case of letters, the prison has the right to register the given name and surname of the person or the name of the institution that the prisoner is writing to, and the address and time of sending of the letter. According to the Constitution of the Republic of Estonia § 43 prison is not allowed to read the contents of the letters of prisoners, nor listen to the contents of the phone-calls unlike in many other European countries.

107. Administrative matter 3-3-1-20-07: The Imprisonment Act was amended with § 31<sup>1</sup> which states that a prisoner shall not be allowed to use the Internet, except via computers configured for this purpose by the prison, allowing access to the official databases of legal acts and the registry of judicial decisions under supervision of the prison. One of such a registry of judicial decisions is HUDOC, the database of the judgments of the European Court of Human Rights and the database of the decisions of the Supreme Court of Estonia. As well the Official Journal for the legal acts of Estonia.

### **4. Measures taken to ensure that detainees have easy access to complaints mechanisms and can obtain compensation for abuses of their rights**

108. Detainees have easy access to complaints mechanisms and they can obtain compensation of their rights. Every legal act or procedure of the prison can be a subject to complaint procedure, either through the challenge procedure (*vaidemenetus*) and/or administrative court procedure (*halduskohtumenetus*). In addition the prisoners can claim moral and non-moral damage under the State Responsibility Act (*riigivastutusmenetus*). In addition, the prisoners can complain as well to the Legal Chancellor, who carries the Ombudsman function. For example in 2008 40% of all the cases of the Tartu Administrative court were brought by prisoners and in Tallinn Administrative court the relevant number was 15%. This illustrates that prisoners have easy access to justice and they are using it. In addition, the prisoners can get advice on where and when to complain. The advice is given by prison workers, who deal with everyday matters of prisoners (*inspector-kontaktisik*).

### **5. Information on the measures taken against officials who have violated the rights of detainees – disciplinary procedures taken against officials**

109. In 2008, 65 disciplinary procedures were commenced against prison officials, out of which 26 ended with a warning, one official was fired and for one person the prison decreased the salary as a punishment.

110. In 2009, 70 disciplinary procedures were commenced against prison officials, out of which 21 ended with a warning, for five officials the service relationship was ended and for four officials the salary was decreased as a punishment. Seven procedures are still ongoing.

## **6. Information on criminal procedures taken against officials**

111. In 2008, there were no criminal procedures.

112. In 2009, there were 5 criminal procedures commenced based on Criminal Law Act § 291. In Tartu Prison one procedure was ended, because of lack of evidence. In the other case the prison official was punished with an imprisonment. One procedure in Tallinn Prison and two procedures in Viru Prison are still ongoing.

## **7. Overcrowding of detention houses**

113. The problem with overcrowding of detention houses, which had impact on detained people living conditions, has been decreasing through construction of new detention houses and creation of additional detention facilities. In 2008 a new detention house in Jõhvi was opened and Kohtla-Järve detention house was closed down. In 2009 a new sobering-up station for alcohol-users was opened in Tallinn, as a result additional spaces in detention houses appeared. For better management of detention houses spaces, procedures to distribute people between detention houses have been simplified (related amendments in Imprisonment Act entered into force in 2008). Living conditions in detention houses vary to some extent. In the detention houses where living conditions are on a lower level and walking in the open air cannot be facilitated, people are held for a shorter time in conducting proceedings. Systematically, within limited budget conditions, old detention houses are renovated and new detention houses are planned. 2007 Põlva detention house renovations were performed. All the Estonian detention houses follow the principle of secure separation of convicted and accused persons and juvenile and adult detainees.

114. Please see also answer to question 7.

## **Freedom of movement (arts. 2, 12, 23)**

### **Marriages and partnerships**

115. Estonia recognizes marriages, not partnerships. According to Family Law Act a marriage is contracted between a man and a woman. A temporary residence permit may be issued to an alien to settle with his or her spouse who resides in Estonia permanently and who is an Estonian citizen or to settle with his or her spouse who is an alien who has resided in Estonia for at least two years on the basis of a permanent residence permit if the spouses share close economic ties and a psychological relationship, if the family is stable and the marriage is not fictitious, and if the application for a residence permit is justified.

116. An alien who wants to apply for a residence permit and he or she is in same-sex relationship and him or her partner already reside in Estonia, can not rely on family migration. An alien who is in same-sex relationship and him or her partner already reside in Estonia, has to apply a residence permit on other grounds e.g. legal income (a residence permit may be issued, on the condition that a person's legal income ensures his or her subsistence).



117. The number of aliens who can settle in Estonia is limited. The annual immigration quota is the quota for all aliens immigrating to Estonia which shall not exceed 0.1 per cent of the permanent population of Estonia annually.

118. The immigration quota does apply to the following:

- aliens who apply residence permit for employment;
- aliens who apply residence permit for business;
- aliens whose permanent legal income ensures his/ her subsistence in Estonia;
- aliens whose application for residence permit is based on an international agreement.

## **Expulsion of aliens (art. 13)**

### **1. Applications for asylum**

119. § 18 of the Act on Granting International Protection to Aliens regulates the review of application for asylum. According to this section 2 of this paragraph each application for asylum shall be reviewed individually and impartially. Also the correctness of provided evidence and information shall be verified and the credibility of the statements made by the applicant shall be assessed. In addition the existence of circumstances which would lead to granting of international protection or rejection of application for asylum shall be assessed. For that purpose procedural acts shall be performed.

120. The authority responsible for review of application for asylum determines a safe country of origin and a safe third country and verifies if the asylum applicant can be sent to the said countries.

121. In the process of reviewing an application for asylum, the applicant is provided with an opportunity to present, orally or in written form, facts and give explanations, in person, concerning circumstances which may have essential importance in the review of his or her application for asylum, including the circumstances which may prevent the applicant's expulsion from the country.

122. Articles 25 and 26 of the Act on Granting International Protection to Aliens regulate the decision to reject an application for asylum and compulsory execution of a precept to leave. When a decision is made to reject the application of asylum, the decision shall be prepared in writing. If the alien does not have a legal basis for staying in Estonia, a precept to leave Estonia shall be issued by the decision to reject the application for asylum. The person has a right to an effective remedy, thus the decision to reject an application for asylum and to expel an alien may be contested with an administrative court.

123. According to the Act on Granting International Protection to Aliens contestation of the decision to reject an application for asylum does not postpone expulsion, unless the court has suspended the execution of the precept to leave. In practice court has always suspended the execution of the precept to leave, if the decision to reject an application for asylum has been contested.

124. There are only three grounds which are subject to immediate execution, i.e. the alien is expelled from Estonia pursuant to procedure proved for in the Obligation to Leave and Prohibition on Entry Act without prior permission of an administrative court.

125. The three bases to refuse the person's entry into Estonia are the following:

- another country can be considered the principal asylum country from the point of view of the applicant, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;
- there is reason to consider the applicant's country of origin a safe country of origin;
- the applicant has arrived in Estonia through a country which can be considered a safe third country.

## **Right to a fair trial (art. 14)**

### **1. Recent changes to the Code of Criminal Procedure**

126. Recent changes to the Code of Criminal Procedure - entered into force 15.07.2008 – concern the measures to prevent delays in criminal proceedings:

“§ 15<sup>1</sup>. The continuity and immediacy of court hearing

The court shall hear the case in its entirety and ensure reaching a decision as fast as possible.”

“§ 163<sup>1</sup>. Summoning to county court in general procedure

(1) In general proceedings of a criminal matter in county court the party to the court proceedings who requests the interrogation of a witness in court has to organise the summoning of the witness.

(2) In general proceedings of a criminal matter in county court the summoning of the victim, the civil defendant, the third person and their representatives is organised by the Prosecutor's Office.”

(3) In general proceedings of a criminal matter in county court the summoning of the accused is organised by the counsel or the Prosecutor's Office pursuant to the agreement reached during preliminary hearing. If an agreement is not reached, the Prosecutor's Office shall organise the summoning.

(4) The court shall issue the summons to the parties of the court proceedings at their request during the preliminary hearing, noting on the summons the data listed in § 163 section 1 of this Code. In the space regarding information about official title and details of the person issuing the summons the court shall write the data of the party of the court proceedings.

(5) The court shall issue to the counsel at his request from the population register the address of the person who is summoned to the court at the request of the counsel.

(6) A witness shall be served the summons by a party to the court proceedings or on his request by a third person.

(7) If the Prosecutor's Office performs the duties prescribed in this section the rights provided in § 213, paragraph 1, subparagraph 5 and 10 of this Code will extend to him. The Prosecutor's Office has the right to independently summon other persons whose participation has been decided in a preliminary hearing.”

“§ 265<sup>1</sup>. Continuing of a preliminary hearing by court hearing

(1) The hearing of a criminal matter sent to court pursuant to the general procedure may take place immediately after the preliminary hearing if it is possible for all persons involved in the case to appear to court for the preliminary hearing if it would

ensure the continuity and immediacy of the court proceedings and if the parties and the court give their consent.

(2) The parties to the court proceedings and the court may agree on the court hearing taking place immediately after the preliminary hearing before the preliminary hearing or at the preliminary hearing.

(3) In the case specified in this section the victim, civil defendant, the third person, their representatives and the accused will be summoned to the court by the Prosecutor's Office pursuant to sections 163-169 of this Code."

"§ 268<sup>1</sup>. Prohibition on hearing multiple criminal matters at the same time

(1) The members of the panel of the county court hearing the criminal matter sent to court pursuant to the general procedure may not take part in the court hearing of an other criminal matter sent to court pursuant to general procedure before a decision has been made in the first matter.

(2) The court may derogate from paragraph 1, in the following cases:

i) the hearing of the criminal matter must be unavoidably postponed for more than one month in the cases listed in paragraph 3 of the current section and the hearing of the other criminal matter will not prevent the continuing of the hearing of the postponed matter pursuant to § 15<sup>1</sup> of the current Code;

ii) in the criminal matter sent to court later a person is accused of committing an offence as a minor;

iii) in the criminal matter sent to court later arrest has been applied as preventive measure in case of the accused in a first degree offence and the court considers it necessary to continue the application of the preventive measure.

iv) with the aim to join the case with the case previously accepted into proceedings:

v) in the criminal matter sent to court later the court hearing will be initiated pursuant to 265<sup>1</sup> of the current Code.

(3) In the case specified in subparagraph 1 of paragraph 2 of the current section the hearing of an other criminal matter may be initiated if the court hearing of the previously initiated criminal matter has been postponed on at least one of the following grounds:

i) in connection with the long-term illness of a summoned person if hearing the matter without his presence is not possible;

ii) the accused has not appeared at the court hearing, his summoning is not possible within a reasonable time and there exist no grounds as provided in § 269 of the current Code to hear the matter without his presence;

iii) international legal assistance must be used in the collecting of evidence in the criminal matter;

iv) expertise has been ordered in the criminal matter."

## **2. Admissibility to illegally obtained evidence in criminal proceedings**

127. The matter is covered by the Code of Criminal Procedure:

"§ 64. General conditions for collection of evidence

- (1) Evidence shall be collected in a manner which is not prejudicial to the honour and dignity of the persons participating in the collection of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be collected by torturing a person or using violence against him or her in any other manner, or by means affecting a person's memory capacity or degrading his or her human dignity.
- (2) If it is necessary to undress a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the same sex as the person.
- (3) If technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them.
- (4) Investigative bodies and Prosecutors' Offices may involve impartial specialists in the collection of evidence and the specialists may be heard as witnesses.
- (5) If necessary, participants in a procedural act shall be warned that pursuant to § 214 of this Code disclosure of information relating to pre-trial proceedings is prohibited.
- (6) The general conditions for the collection of evidence by surveillance activities are listed in §§ 110–112 of this Code.”

“§ 61. Evaluation of evidence

- (1) No evidence has predetermined weight.
- (2) A court shall evaluate all evidence in the aggregate according to the conscience of the judges.”

### **3. Compensation**

128. The Ministry of Finance appoints compensation under the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act. Pursuant to the procedure provided for by the Act, the following persons shall be compensated for damage caused by unjust deprivation of liberty:

- (a) persons who were held in custody with the permission of a court and criminal proceedings in whose matters were terminated at the stage of pre-trial investigation or in a preliminary hearing or persons with regard to whom a judgment of acquittal has entered into force;
- (b) persons who were detained on suspicion of a criminal offence or released when the suspicion ceased to exist;
- (c) persons who were held in prison and whose judgment of conviction has been annulled and criminal proceedings in whose matters were terminated or persons with regard to whom a judgment of acquittal has been made;
- (d) persons whose period of imprisonment has exceeded the term of the punishment which was imposed on the person;
- (e) persons with regard to whom unfounded coercive psychiatric treatment has been ordered by a court in connection with the commission of an unlawful act provided

for in the Penal Code provided that a court ruling made with regard to such person has been annulled;

(f) persons who served detention provided that the judgment ordering detention has been annulled;

(g) persons who were unjustly deprived of liberty by a decision of an official authorised to deprive of liberty or without conducting disciplinary proceedings, misdemeanour proceedings or criminal proceedings if such proceedings were compulsory.

129. Between the years 2003 and 2009 compensation has been paid as follows:

2003 - 106 persons; in the amount of 3 791 094 krooni;

2004 - 77 persons; in the amount of 2 284 775 krooni;

2005 - 70 persons; in the amount of 2 171 482 krooni;

2006 - 57 persons; in the amount of 1 824 564 krooni;

2007 - 71 persons; in the amount of 4 018 582 krooni;

2008 - 63 persons; in the amount of 3 249 926 krooni;

2009 - 81 persons; in the amount of 4 009 240 krooni.

## **Freedom of religion and equal protection (arts. 18, 26)**

### **Alternative service**

130. The Ministry of Defence has initiated the procedure of decreasing the duration of alternative service and the draft amendment has already been sent to the Parliament (Amendment of Defence Forces Service Act § 3), which will require amending the first sentence of section 74 and reads as follows: "The duration of alternative service must not be longer than 12 months and less than 8 months".

## **Right to peaceful assembly (art. 21)**

### **1. Events of April 2007**

131. In relation to 26-28.04.2007 events, North Police prefecture started 8 criminal proceedings regarding allegations of ill-treatment of demonstrators by law enforcement officials. All of these criminal proceedings are dismissed on the bases §200<sup>1</sup> (termination of criminal proceedings due to failure to identify person who committed criminal offence).

### **2. Organization of a meeting, parade or any other event**

132. The organisation of a meeting, parade or any other event is regulated by the Public Gatherings Act. According to this act the restrictions on any public gathering may be imposed only on grounds of national security, public order, morality, traffic safety and granting the security of the participants in the meeting and to prevent the spread of contagious disease. Law enforcement authorities have never refused to provide consultations to Tallinn Pride management how to fulfil those obligations. Limitations to the organisation of meetings are allowed if there is basis to believe that meeting may

endanger law and order, traffic safety and participants. In 2006 and 2007 Tallinn Pride management board was provided with written recommendations. After consultations with the organisers and slight modification of the route of the parade in 2007 the permission for the event was granted in due time. Specifying obligations, rights and competencies of organizing public meetings, project of new public order act has been elaborated, which is under legislative proceedings in The Parliament of the Estonia.

## **Freedom of association and right to take part in the conduct of public affairs (arts. 22, 25, 27)**

### **1. State officials**

133. While the prohibition on strike for State officials will remain in force, the new Public Service Act (draft) will considerably restrict the circle of officials providing that a state official is only a person who executes public authority at his post, i.e. performs the following functions:

- (a) Administration of a state agency;
- (b) Exercising state, administrative and official supervisory control, and conducting internal audit;
- (c) Substantive guaranteeing of national security;
- (d) Substantive preparation of the administration of justice;
- (e) The application of coercive measures;
- (f) The representation of state prosecution and its substantive preparation;
- (g) Extrajudicial misdemeanour proceedings;
- (h) Diplomatic representation of the state;
- (i) Preparation of policy-shaping decisions in the area of government of a ministry or Government of the Republic as an organ.

134. Persons who are employed by the state or local government but do not perform the above functions such functions are not considered as state officials, and the prohibition on strike does not apply to them. At the same time § 21 section 1 of the Collective Labour Dispute Resolution Act still applies according to which strikes are prohibited in government and other state agencies and local governments.

### **2. Non-citizens**

135. In order to guarantee national security persons with undetermined citizenship who are long-term residents or third country nationals are not granted the right to belong to political parties or the right to work in public service. The granting of such rights to European Union citizens is based on the principle of free movement of EU citizens.

136. Right to participate in political parties: only Estonian citizens and European citizens resident in Estonia have the right to become members of political parties (Estonian Political Parties Act).

137. Right to take part in public life:

- Non-citizens residing in Estonia on the basis of a long-term residence permit or with the right of permanent residence have the right to vote at local elections (Local Government Council Election Act).
- Non-citizens are not allowed to vote on national referenda (i.e. amendments to the general provisions of the Constitution of Estonia or other national issues) (Referendum Act).
- There are no other restrictions concerning the rights of non-citizens residing in Estonia to take part in public life.

138. Right to attain senior positions in public services:

- According to § 30 of the Estonian Constitution: offices in state agencies and local governments shall be filled by Estonian citizens, on the basis of and pursuant to procedure established by law. These offices may, as an exception, be filled by citizens of foreign states or stateless persons, in accordance with law.
- According to the requirements set in the Estonian Public Service Act, only Estonians citizens as well as other EU-citizens to a limited scale (excluding positions related to the exercise of public authority and the protection of public interest) are given access to positions in public services.

### **Non-discrimination, equality before the law and rights of the child (arts. 2(1), 24, 26, 27)**

#### **1. Section 152 of the Penal Code**

139. During the years 2005-2009 section 152 of the Penal Code (violation of equality) has not been applied by national courts.

#### **2. Citizenship for minors**

140. Although according to the provision of the Citizenship Act to a minor under 15 years old can apply Estonian citizenship by a simplified procedure, not all the parents are aware of their rights and options. Therefore, in 2007 an active explanatory campaign was initiated aimed at reducing the number of children with undetermined citizenship. The target group is minors with undetermined citizenship as of their birth. At present finding more efficient ways of information division as well as finding possibilities for creating a system for people of undetermined citizenship to receive personal counselling is being planned. The personal approach includes also e.g. conversations of officials of the Citizenship and Migration Office with the parents of children with undetermined citizenship. Also a personal letter signed by the Minister of the Interior will be submitted to the parents of children with undetermined citizenship, in which all the possibilities to apply for citizenship are explained. This approach has received very positive feedback and also raised the pace of naturalisation of under 15- year-old children.

141. In 2009 the project “Development of data-sharing between the Citizenship and Migration Board and the Population Register” was launched, which was aimed at obtaining data on all children born in Estonia and their parents and on the basis of this information the parents of newborn children are informed of the need to legalise the residence of their children in Estonia. Under the project it is planned to explain to parents that they have the opportunity to apply for Estonian citizenship for their child during the child's first year without the necessity to first apply for residence permit or the right of residence for the child.

142. In addition briefings have been taking place in Russian-language schools as of October 2008. During the briefings bulletins introducing the advantages of Estonian citizenship are distributed and the possibilities to obtain Estonian citizenship are explained to different age groups. The distribution of information is planned to take place in 61 schools.

143. Children under 15 years make up 40% of all applicants of citizenship and there are relatively no refusals to grant citizenship in such cases. Thus, mostly all children under the age of 15 receive Estonian citizenship whose parents have decided to apply for it for them. There have only been a few cases in which the proceedings of the application have had to be terminated because the child was not released from his current citizenship.

144. Due to the above reasons the number of children with undetermined citizenship aged under 15 has been steadily decreasing. In 2005 there were 6451 such children, whereas according to data of 30<sup>th</sup> of July of 2009 the number had by that time already decreased to 2305.

145. As concerns the persons who have obtained citizenship other than Estonian, pursuant to the Citizenship Act an Estonian citizen may not at the same time have the citizenship of another state, i.e. citizens of other countries may obtain Estonian citizenship only in case they are released from their current citizenship. No special measures have been taken to encourage the citizens of other countries to choose Estonian citizenship in place of their current citizenship.

### **3. Languages Act**

146. Language Inspectorate shall exercise supervision over the implementation of the Language Act and in their work they rely on the law, good management practice and strategic documents such as the Ministry of Education and Research development plan "Wise and active nation" 2008-2011 and Estonian Language Development Strategy 2004-2010.

147. There are currently 22 officials working in the Language Inspectorate, 11 of them work as inspectors. Every year the Language Inspectorate publishes an annual activity report which reflects the number of control visits carried out and the warnings and precepts issued during the year.

148. In 2007 in all 3115 inspection reports were composed during the monitoring of the implementation of the Language Act, of them in 3029 cases a violation of the requirements of the Language Act was found. During primary inspections 1482 reports were composed, in 1292 of them a violation of the Language Act was established. During the follow-up inspections 1633 reports were composed (1552 on the inspection of language skills and 81 on inspection on the compliance with the requirements of Estonian language use).

149. In 2008 in all 2562 inspection reports were composed during the monitoring of the implementation of the Language Act, of them in 2402 cases a violation of the requirements of the Language Act was found. During primary inspections 1120 reports were composed, in 955 of them a violation of the Language Act was established. During the follow-up inspections 1442 reports were composed (1104 on the inspection of language skills and 338 on inspection on the compliance with the requirements of Estonian language use)<sup>12</sup>.

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<sup>12</sup> Further information about the activities of Language Inspectorate is available in website - <http://www.keeleinsp.ee/?menu=30&news=513>



150. All the inspection visits are approved in advance by the Ministry of Education and Research, the institutions to be visited are informed in due time and inspection of documents is carried out before the visit to affirm the number of workers in the institution to whom the requirement of language proficiency applies and how many of them lack the relevant language certificate. In this context, the Government would like to clarify that the high number of violations found by the Language Inspectorate is the result of the fact that mainly the institutions concerning which information has been received on possible non-compliance with Estonian language proficiency requirements.

151. Supervision over the Language Inspectorate is exercised by the minister of education and science. When exercising supervision a minister may annul the legislative and legal acts of the executive authorities. Heads of state executive authorities exercise supervision over regional offices of an institution or inspectorate and their officials pursuant to the rules and to the extent set by the minister.

152. In addition the legal acts of the Language Inspectorate may be contested in the administrative court; issues concerning fundamental rights may be addressed to the Chancellor of Justice and issues related to discrimination may be addressed to the Gender Equality Commissioner.

#### **4. Integration programme reports and monitoring of integration**

153. Estonian integration programme 2008-2013 also includes summary of the implementation of the previous national programme "Integration in the Estonian society in 2000-2007". The target groups of the present integration policy have primarily been ethnic groups or some specific groups - in particular, persons with undetermined citizenship and social risk groups, also children and young people. Given the complexity of the whole integration process and the differences that have arisen during the recent years among the national groups of different mother tongue in their social status and degree of integration, it is appropriate to differentiate the whole integration programme and to define more accurately the target groups of the measures taken in different fields. However the needs of the different age groups, nationalities, level of education, residence, social and professional positions must be therefore taken into account and their roles in the integration process. In the report published in 2006 the implementation of the integration programme 2000-2007 was assessed regarding two aspects.

154. The purposed implementation of the planned activities and positive feedback of the beneficiaries received the highest evaluation. A more critical evaluation was given to the implementation of the strategy and its efficiency as a whole regarding the achieving of the most important aims – the language proficiency level of adult non-Estonians, the increasing of the common ground of the Estonian and Russian information field and the existence of a sufficient amount of competent teachers at all levels. There were fields mentioned in the report in which achievements were made but at the same time significant aspects were raised which require more attention. Of the four subprogrammes only the implementation of the measures planned to develop the culture and language of the ethnic minorities received the rating "good". The rest of the subprogrammes – "Education", "Adult language training" and "Society competence" - as well as the programme as a whole received the rating "fair". As an achievement the language immersion programme was highlighted, as well as the elaboration and implementation of extracurricular language training programmes (joint projects of language learning).

155. Recommendations for the elaboration of a new development plan included the preparation of competent language teachers, improved arrangement of activities, the need to include more people whose mother tongue is not Estonian into civil society activities and into establishing a common information field.

156. It was recommended to extend successful initiations by setting priorities and making the necessary decisions on the strategic level. Though in the process of the implementation of the programme the target groups were specified, a subsequent analysis is still needed, in particular to elaborate appropriate techniques and principles to reach those target groups. An important target group, local governments, were not sufficiently included in the development plan. Several recommendations were also made regarding how the management level should be improved and made more efficient.

157. Practical results of the programmes may be assessed on the basis of the study on **monitoring of integration**, which was last conducted in 2008. We hereby briefly introduce the results of the study.

*(a) General trends*

158. Compared to the previously carried out monitoring (2000, 2002, 2005) the indicators of the structural integration of the Estonian society have been improving step-by-step – this applies to the Estonian language proficiency, the share of Estonian citizens in the population as well as several other socio-economic indicators. At the same time several indicators reflecting the attitudes of people have deteriorated – e.g. the trust of Russian-speaking population in the Estonian state and institutions has decreased, the share of respondents of the Russian-speaking population who consider themselves as part of the Estonian population has decreased etc. At the same time the Estonians continue to be resistant to including Russian-speaking population in the public sphere.

159. The trend analysis indicates that as until the year 2005 the attitudes concerning integration had become more positive, a significant drop has taken place since then. This may be explained by the politicisation of the national relations in the recent years, which has intensified the controversial attitudes towards integration – both sides regard integration not in the framework of development of the society as a whole but primarily in the framework of requirements and expectations towards the other side. The monitoring confirms that for the Estonians the priorities are language requirements and the issue of citizenship as the Russian-speaking population places significant importance on social aims and mutual dialogue. This gives rise to several different concepts of equal treatment, mutual tolerance, the motives of the other side and the assessment of aims etc. Such polarisation of national groups indicates that the opportunities for the state to influence the substantive integration of the society are decreasing.

*(b) Estonian- and Russian speaking population's material status and life satisfaction*

160. Differences in incomes of the Estonian- and Russian-speaking population have somewhat decreased in the course of time. The existing differences in incomes are mainly the result of the significantly lower representation of Russians with higher education in the group of largest incomes, which indicates their hindered access to the highly paid positions. The assessments of the Estonian citizens regarding their personal material possibilities are relatively similar regardless of their ethnicity, differing significantly from the assessments of non-citizens. Assessments on possibilities of Estonians and the Russian-speaking population differ by nationality which refers to ethnic solidarity within the ethnic group.

*(c) Education*

161. The transition to Estonian-language higher education has on a large scale changed the Russian-language education into an educational impasse as the opportunities of a Russian-speaking high school or gymnasium graduate are limited. This applies mainly to these Russian-speaking young people whose language proficiency is not sufficient to continue the studies in Estonian-language higher education institutions. The Russian-

speaking population feels that next to the advantages of the transition to partial Estonian-speaking language instruction in schools there are also a number of significant risks (assimilation, the deterioration of the examination results of pupils in Russian schools, and as a result also the inequality regarding further educational opportunities compared to pupils of Estonian schools, Russian young people emigrating). At the same time it is considered that the partial transition to Estonian language instruction should take place significantly sooner than it is at the moment (preferably already in pre-school institutions or in primary schools at the latest). Such pre-school institutions in which all children are taught together but where there are assistant teachers speaking the language of children with different mother tongues are strongly supported. Therefore there are no negative attitudes of the Russian-speaking population towards teaching of Estonian. Their fears have mainly been induced by the poorly prepared transition to the partial Estonian language instruction in schools.

*(d) Language skills*

162. The Estonian language skills of the Russian-speaking population have gradually improved over the last 20 years and has become functionally diverse – the self-expression-, writing and reading skills have improved. However two trends should be distinguished – first, the intergative significance of the Estonian language, which peaked in 2005, has strongly dropped by this time, i.e. learning the Estonian language is not considered sufficient to achieve mutual trust and an equal position compared to the Estonians (respectively only 38% and 23% of the respondents agree that it will increase trust and enables to obtain equal position). On the other hand the utility significance of the Estonian language learning has preserved and strengthened – people feel that the Estonian language is needed to preserve-obtain a (good) job.

Therefore the integration policy should mainly stress the instrumental values of Estonian language learning (better education and professional opportunities) and in the integration process an emphasis should mainly be placed on political and socio-economical integration.

*(e) Inter-ethnic communication and attitudes*

163. Contacts of the Estonians and Russian-speaking population have been relatively restricted – among Estonians about a third of them have random casual contacts with the Russian-speaking population, among the Russian-speaking population about a half has an everyday experience in communicating with Estonians. The inter-ethnic communication mainly takes place in the professional sphere, the extraprofessional communication networks are mostly nationality-centered.

164. Among attitudes towards different national groups, measured by the willingness to share personal space with them, the significantly resistant attitudes of Estonians emerge. Both among the Russian-speaking as well as the Estonian-speaking population the resistant attitudes are more common in the younger age group, also among inhabitants of Tallinn. There is a connection between the frequency of personal contact and attitudes: the attitudes are more positive in case of persons who have closer contacts with the other national group, that is in particular the case in case of Estonians.

165. Different national groups perceive national relations differently – only 1/3 of the Estonians find that the Russians living in Estonia are loyal to the Estonian state and support its development, whereas most of the Russian-speaking respondents (80%) find its national group is loyal to the Estonian state. As most of the Russian-speaking inhabitants consistently believe that the integration in the Estonian society also needs the willingness and efforts of the Estonians, at the same time the proportion of Estonians of that opinion has decreased nearly 20% during the last 8 years (from 80% to 61%). In the opinion of the Estonians the differences in the lifestyles of the Estonians and the Russians have decreased

(in 2000 61% thought there were differences, whereas already 49% was of the opinion in 2008), in the opinion of the Russians the differences have increased (from 42% to 57%).

166. Analysis concerning the attitudes related to ethnic relations confirms that the most important target groups of the integration policy should be young Russian-speaking people, people with undetermined citizenship and the residents of Tallinn. The Estonians should become more aware of the need and opportunities to actively participate in the integration process.

*(f) Information and media use*

167. Poor orientation in the situation in the neighbourhood, in Estonia or in the world is expressed, in particular, by the Russian-speaking respondents who are less educated and of lower status, among who many do not follow the Estonian media and in the promotion of informing of who printed media is of little use. However, plenty can be done by a Russian television channel. A Russian-language television channel would be essential in the context of improved access to everyday practical information. A great need for such a channel has been expressed by over 70% of Russian-speaking population, the majority of the Estonians are also on the understanding position.

*(g) Citizenship*

168. There have been significant changes in the preferences of citizenship during the years 2000–2008. When as of 2000 the preference of Estonian citizenship shows a significant growing trend, which peaked in 2005 (74%), in the year 2008 only half (51%) of non-citizens wished to have Estonian citizenship. When in 2000 16% of non-citizens wished for no citizenship of any country and by 2005 their share had dropped to 7%, in 2008 their share has raised again to the initial level of 16%. When in 2000 5% wanted Russian citizenship and 11% in 2005, then in 2008 already 18% of respondents with undetermined citizenship wished for Russian citizenship.

169. The attitudes of Estonians towards the expansion of the circle of citizens by a simplified procedure have also changed over time. When in 2000 18% of Estonians were not willing to give any target group citizenship by simplified procedure, then in 2008 the share of such respondents had dropped to 8%. 46% of Estonians approve granting of citizenship to people born in Estonia by simplified procedure.

170. The analysis indicates that the division of the Russian-speaking population to Estonian citizens, persons with undetermined citizenship and citizens of Russia (and other states) reflects in particular their different degree of adaptability and different survival strategies in the Estonian society. Estonian citizenship is acquired by those who are active and adaptive by their personal characteristics. Thus, the Estonian Citizenship Act has in a way acquired the role of intensifying 'natural selection' providing more opportunities for the more capable and diminishing the opportunities of those who are less competitive in nature.

171. The educated Russian-speaking people with Estonian citizenship have a strengthening position in the labour market and their high self-esteem increases their justified expectations to have more say in the Estonian society. When this expectation is not met, it will strengthen the distrust and protest identity spreading among the Russian-speaking population. Therefore the more efficient inclusion of the naturalised citizens is an essential aim of the integration policy.

*(h) “Us-feeling” and State identity*

172. Most potential for creating a population-connecting “us-feeling” exists in building it on local identity. Better prospect for creating state identity exists also when initiated on regional level. The state identity of Russian-speaking population is strongly affected by

their ethnic identity and historical ties with Russia or other former Soviet areas. The analysis confirms that the modelling of a strong state identity of minorities does not presume the suppression of their ethnic identity but their inclusion in the creation of a common strong state identity.

## **Dissemination of information relating to the Covenant (art. 2)**

### **1. Training and courses**

173. Addressing the issue of human rights e.g. in trainings and courses as indicated in paragraphs 25 to 39 of the report, the international core documents concerning human rights are always introduced, although, it must be mentioned, that the Council of Europe Convention on Human Rights and Fundamental Freedoms is more widely known in Estonia compared to CCPR.

174. The teaching of the subject of human rights at schools is relatively new in Estonia, which only emerged with the restoring of independence of the Republic of Estonia and is currently part of the subject programme of social studies on the secondary and upper secondary school levels. In addition the subject of human rights is part of the curriculum as a separate elective subject. The course of human rights includes information on the nature of human rights, the documentation concerning human rights, the impact of human rights in everyday life and the situation of human rights in the contemporary world. The Estonian Union for Child Welfare and the Estonian Institute of Human Rights have compiled a study material of human rights (96 pages) in 2009. The subject of human rights is also an elective subject in the curricula of institutions of higher education.

175. The following sets forth the teaching of human rights in general education:

*School level II, grade 6*

Main topic: Democracy

Study topic: Key Human Rights

Main topic: School democracy, children's rights and opportunities to participate in politics

Study topic: Principles of the United Nations Convention on the Rights of the Child. Rights of the child. Balance between the rights and responsibilities.

*School level III, grades 7-9*

Main topic: the rights of society

Study topic: Human rights in our daily lives, the role of the state and the individual by guaranteeing them. Fundamental socio-economic, political and cultural rights. Children's rights, duties and responsibilities. International problems of child protection. Human trafficking, drudgery, sexual exploitation. UNICEF's activities.

*Upper secondary school level, grades 10-12*

Main topic: Democratic governance and civic society

176. Study topics are Human rights; Equality; Social rights and social protection; International and national human rights protection mechanisms; Violation of human rights; Human trafficking; Child labour.

177. On human rights teaching in higher education: content of the curricula in higher education is up to the higher education institutions and there is no centralized collecting of statistics. It is possible to get information about the courses from the teachers' register of

the Estonian Education Information System (EHIS). However, since entering the data into the database is voluntary, the following list below may not be complete:

### **Courses addressing the topic of human rights in 2009/2010**

<i>Course name</i>	<i>Educational institution</i>
Constitutional Law and Human Rights	Estonian Public Service Academy
Human Rights	Estonian Public Service Academy
Special Course on International Human Rights	University Nord
Special Course on Democracy and Human Rights	University Nord
Human Rights	University Nord
Human Rights	Tallinn University of Technology
The International and European Human Rights Protection Systems	Tallinn University of Technology
International Law and Human Rights Theory in Russia	University Tartu
The Transitional Rights/Justice in Eastern and Central Europe: The Problems of International Law and Human Rights Problems	University Tartu
International Protection of Human Rights	University Tartu
Protection of Human Rights	Institute of Humanities and Social Sciences
Protection of Human Rights	Institute of Humanities and Social Sciences

Source: EHIS

178. Reports on the implementation of the Covenant and the opinion and recommendations of the Committee are available on the webpage of the Estonian Ministry of Foreign Affairs.

179. When preparing the report, the Ministry of Foreign Affairs first collected data from the relevant national authorities. The draft report compiled based on the received information and data was submitted for approval to the Chancellor of Justice, the Legal Information Centre for Human Rights, the Estonian Institute for Human Rights and to the Human Rights Centre of Tallinn Technical University. Information in the report was adjusted and supplemented according to the remarks and comments of these organisations and the relevant remarks have also been referred to in the report.