



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

The social situation concerning homophobia and discrimination on grounds of sexual orientation in Estonia

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. Apart from the yearly LGBT Pride, LGBT issues and rights receive little political or public attention in Estonia. A majority of Estonian citizens do not approve giving same-sex couples the right to marry or adopt children.
- [2]. Although Estonia's legislation on fundamental rights goes beyond those of many other EU Member States, the Estonian legal system still does not recognise unmarried couples or couples in civil unions or registered partnerships. This affects the rights of LGBT persons in areas such as freedom of movement, asylum and subsidiary protection, including family reunification. There is no equality body with the mandate to handle discrimination on grounds of sexual orientation.
- [3]. Surveys show considerable negative attitudes toward homosexuals. Forty-one per cent of Estonians stated that they would not like to work with a homosexual, for example. Events such as Gay Pride have been problematic in recent years and instances of hate speech toward LGBT persons have been identified.

B. The Collection of Data

- [4]. The material for this report has been collected from four sources:
 - A legal country report carried out for this study by the chairman of the board of the Estonian Institute for Human Rights, Merle Haruoja and Marianne Meiorg and Kari Käsper.¹
 - A sociological country report carried out for this study by Agnes Alvela.²
 - Data collected through interviews held in Estonia with the LGBT NGOs *SEKÛ* and *Diversity*, *The Ministry of Social Affairs* and *the Gender Equality Commissioner*.
 - Data collected through an online questionnaire sent out to the stakeholders mentioned above.
- [5]. The sociological researchers stated the following:

¹ M. Haruoja, M. Meiorg and K. Käsper (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Estonia*. FRALEX.

² A. Alvela (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Estonia*. Sociological Country Report.

- [6]. It is difficult to draw any definite conclusions from the research conducted, as there is little available information for informed analysis. As most laws that provide specific rights for LGBT persons are relatively recent, there has not been enough time for practices to be developed.³

C. Key Findings

C.1. Attitudes Toward LGBT persons

- [7]. Surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.
- [8]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Estonia was 7.2, with an EU average of 7.9. Romania was the lowest with 4.8.⁴
- [9]. In the 2006 Eurobarometer, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 21 per cent in Estonia (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Estonia. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; in Estonia the figure was 14 per cent (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁵
- [10]. The Ministry of Justice Affairs has referred to a 2007 research project on xenophobic and racist expressions conducted with scientists from Tartu University and Tallinn University.⁶ One of the questions asked: 'People of what specific background would you not want to work with?' Forty-one per cent of respondents stated that they would not want to work with homosexuals.
- [11]. Other quantitative research done in 2002⁷ showed that 52 per cent of LGB respondents (N=437) had considered emigration. Sixty per cent regarded sexual orientation discrimination as a key factor when considering emigrating from Estonia.

³ A. Alvela (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Estonia*. Sociological Country Report.

⁴ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁵ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

⁶ Estonia/Justiitsministeerium [Ministry of Justice] (30.01.2008) *Vastus küsimustele* [Response to questions].

⁷ L. Kotter (2002) 'Sexual Orientation Discrimination in Estonia' in *Sexual Orientation Discrimination in Lithuania, Latvia and Estonia*. Open Society Institute and Kimeta Society.

- [12]. Representatives from the LGBT organisation *SEKÜ*⁸ stated that the growing tension between Estonian and Russian communities has a negative impact on LGBT persons in the sense that it has given rise to right-wing nationalist groups that include anti-homosexual rhetoric in their agendas and messages.

C.2. Criminal Law - Hate Crime

- [13]. There is not much knowledge about the extent and character of hate crimes in Estonia. No comprehensive registration of hate crimes toward sexual minorities has been undertaken by Public Authorities, and little scientific research has been carried out on the matter.
- [14]. Homophobic hate speech has been criminalised in *Karistusseadustik* [the Penal Code].⁹ However, the provision has not been applied in practice, and its effectiveness remains unclear. *SEKÜ* states that there are specific cases of derogatory language and threats against LGBT activists (such as comments on Websites), but the police have refused to investigate.¹⁰
- [15]. In a survey from 2002,¹¹ 12 per cent of LGB respondents were victims of at least one violent attack because of their sexual orientation. Only 22 per cent reported the violence to the police. Police reaction was hostile in 25 per cent of the reported cases. Twenty-eight per cent of respondents had been harassed because they were known or suspected to be lesbian, gay or bisexual. Nearly two-thirds of harassment cases were reported to the police or other authorities. In 40 per cent of these cases, the reaction from the authorities was described as hostile.

C.3. Freedom of Assembly

- [16]. In principle, freedom of assembly is protected under § 47 of the Constitution. More specific regulation is provided by the *Avaliku koosoleku seadus* [Public Assembly Act],¹² which sets out allowable restrictions for freedom of assembly. There is no specific mention of discrimination on the grounds of sexual orientation in the Act, so any discrimination that takes place is a question of the application and interpretation, rather than the text, of the law. Based on the Act, local authorities have specified more detailed rules on the specifics of registering a public event and the responsibilities for the organisers.
- [17]. Inciting hatred, violence or discrimination on grounds of sexual orientation is not mentioned as a basis for prohibiting a

⁸ Field trip meeting with *SEKÜ* and *Diversity* (Estonia, 10 March 2008).

⁹ Estonia/Riigikantselei (2001) *Riigi Teataja* I, 61, 364.

¹⁰ Field trip meeting with *SEKÜ* and *Diversity* (Estonia, 10 March 2008).

¹¹ L. Kotter, (2002) 'Sexual Orientation Discrimination in Estonia' in *Sexual Orientation Discrimination in Lithuania, Latvia and Estonia*. Open Society Institute and Kimeta Society.

¹² Estonia/Riigikantselei (1997) *Riigi Teataja* I, 30, 472

demonstration. Section 3 (3) of the Public Assembly Act prohibits any assembly that incites hatred, violence or discrimination on the grounds of nationality, race, religion or political opinion. Although there have not been any specifically anti-LGBT demonstrations, there does not seem to be a legal basis for prohibiting them.

- [18]. There has been constant public debate surrounding the yearly LGBT Pride parade that has taken place in Tallinn since 2004. During the 2006 parade, counter-demonstrators attacked parade participants and the police were accused of not providing sufficient protection. This prompted Amnesty International to issue a statement calling for better protection for the freedom of assembly.¹³ In 2007, parade organisers issued a public statement that parade organisation ‘has turned out to be more complicated than in previous years’ and accused the public authorities of a lack of cooperation.¹⁴ The organisers also submitted a complaint to the Chancellor of Justice’s office. The Chancellor concluded that although the requirement by *Põhja Politseiprefektuur* [Northern Police Prefecture] to parade organisers to use a private security firm to guarantee participants’ safety is in itself legal, the refusal of the organisers to fulfill the requirement cannot be a ground for refusing to allow the parade to take place.¹⁵ It also established that the Northern Police Prefecture had not followed standards of good governance by not fully cooperating with the parade organisers, as well as not correctly responding to their initial e-mails.¹⁶
- [19]. In conclusion, as pointed out by the Chancellor of Justice in his analysis of the Police Prefecture’s actions,¹⁷ although the authorities seem to be well aware of their negative obligations not to disturb the parade, they are not as much aware of the positive obligation to provide an environment where freedom of assembly and related rights can be enjoyed (for example, by protecting protesters from counter-protesters). The Chancellor of Justice also stated that more analysis of the proposal for a new *Korralduseseadus* [Public Order Defence Act], which will replace the Public Assembly Act, is necessary to determine its impact on freedom of assembly.

¹³ Amnesty International (15.08.2006) *Estonia: The right to freedom of peaceful assembly must be protected*, available at: <http://www.amnesty.org/en/library/info/EUR51/001/2006> (14.02.2008).

¹⁴ R. Mets (02.07.2007) ‘Pöördumine seoses Tallinna Pride 2007 korraldamisega seonduvalt’, in *Eesti Päevaleht*, available at: <http://www.epl.ee/?arvamus=392837> (14.02.2007).

¹⁵ Estonia/Õiguskantsleri kantselei (09.2007) ‘Soovitus õiguspärasuse ja hea halduse tava järgimiseks’ [‘Recommendation to observe legality and good governance’], letter to *politseiprefekt* [Police Prefect] Raivo Kütt, p. 13.

¹⁶ Estonia/Õiguskantsleri kantselei (09.2007) ‘Soovitus õiguspärasuse ja hea halduse tava järgimiseks’ [‘Recommendation to observe legality and good governance’], letter to *politseiprefekt* [Police Prefect] Raivo Kütt, p. 13.

¹⁷ Estonia/Õiguskantsleri kantselei (09.2007) ‘Soovitus õiguspärasuse ja hea halduse tava järgimiseks’ [‘Recommendation to observe legality and good governance’], letter to *politseiprefekt* [Police Prefect] Raivo Kütt, p. 13.

C.4. Family and Other Social Issues

- [20]. According to *Perekonnaseadus* [the Family Law Act],¹⁸ marriage is contracted between a man and a woman. Therefore, in the Estonian legal system only heterosexual marriages can be contracted. And according to the Family Law Act, the only union between two persons that brings with it rights and obligations is marriage (§ 1 (2)).
- [21]. According to *SEKÜ*, assisted insemination is possible but expensive.¹⁹ They further state that LGBT families with children usually face quiet acceptance from those close to them but loud resentment in public and political discourse, which causes concern among LGBT parents regarding what their children may face when going to public institutions like day care or educational institutions.
- [22]. Only heterosexual couples or single women are allowed to adopt children.

C.5. The Labour Market

- [23]. The Employment Directive 2000/78/EC is not fully implemented, although efforts have been undertaken to fully implement it with the new *Võrdse kohtlemise seadus* [Equal Treatment Act].²⁰
- [24]. The main regulation in the field of employment in Estonia is *Eesti Vabariigi töölepingu seadus* [the Republic of Estonia Employment Contracts Act],²¹ which prohibits discrimination based on sexual orientation. Complaints can be submitted to the Chancellor of Justice or to *töövaidluskomisjon* [Labour Dispute Committee]. The Chancellor has only been presented with three applications on the subject, while the latter has received none related to discrimination on the grounds of sexual orientation.
- [25]. According to a 2002 survey, 53 per cent of LGB persons hide their sexual orientation at work. At the same time, 14 per cent reported being harassed at work because of their sexual orientation.²²

C.6. Education

- [26]. There is no research on education and schools in relation to LGBT issues. This section will present information provided by *SEKÜ*.

¹⁸ Estonia/Riigikantselei (1994) *Riigi Teataja* I, 75, 1326.

¹⁹ Field trip meeting with *SEKÜ* and *Diversity* (Estonia, 10 March 2008).

²⁰ Available at:

http://www.riigikogu.ee/?page=pub_oooc_file&op=emsplain&content_type=text/html&file_id=97063 (15.02.2008).

²¹ Estonia/Riigikantselei (1992) *Riigi Teataja* I [State Gazette I], 15/16, 241.

²² L. Kotter. (2002) 'Sexual Orientation Discrimination in Estonia' in *Sexual Orientation Discrimination in Lithuania, Latvia and Estonia*. Open Society Institute and Kimeta Society.

- [27]. LGBT issues are not part of the curriculum, and school teachers often do not know and are not trained in responding to LGBT concerns and questions. There have been cases of teachers preventing conversations with students on LGBT issues. On the other hand, LGBT NGOs have been contacted by teachers asking for material for educational use. Some teachers are reportedly afraid to bring up the topic, fearing consequences. *SEKÜ* has produced a leaflet for teachers but the *Ministry of Education* is very reluctant to support the project.

C.7. Health Service

- [28]. There is a lack of quantitative research or specific action carried out in relation to health services and LGBT persons.
- [29]. According to representatives from *Diversity* and *SEKÜ*,²³ same-sex partners are rarely recognised as next of kin, and there are specific problems regarding lesbian couples expecting children. Cases include a second mother being denied being present at birth, and a doctor stating that it was probably good that a miscarriage occurred, since the baby would have a difficult life with homosexual parents. There is public funding of HIV/AIDS prevention work targeting men who have sex with men.

C.8. Religion

- [30]. There is a lack of research and the church does not appear to be active in relation to LGBT issues.

C.9. Sports

- [31]. There is a lack of data.

C.10. Media

- [32]. There do not appear to be any comprehensive surveys of LGBT representations in Estonian media. Qualitative research, including assessments by LGBT persons, indicate that although the media has become more positive toward LGBT issues in recent years, the use of stereotypical images is still widespread.²⁴ This observation is backed by *SEKÜ*, who stated that there is little debate on LGBT issues in the media, partly because both LGBT persons and politicians are reluctant to publicly discuss the topic.

²³ Field trip meeting with *SEKÜ* and *Diversity* (Estonia 10 March 2008).

²⁴ A. Alvela et al (2007) *GLBT-inimeste ebavõrdne kohtlemine Eestis*. University of Tartu and Ministry of Social Affairs.

C.11. Asylum and Subsidiary Protection

- [33]. Council Directive 2004/83/EC of 29.04.2004 is fully implemented in Estonian national law by the Act on Granting International Protection to Aliens.
- [34]. According to § 4 (1) a refugee is an alien who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership in a particular social group, is outside his/her country of nationality and is unable or, owing to such fear, unwilling to avail himself/herself of the protection of that country and with regard to whom no circumstance exists precluding recognition as a refugee. There is no specification as to what is meant by those grounds for persecution. Nor was explanation provided in the Explanatory Note accompanying the Act's draft.²⁵ It is therefore unclear whether sexual orientation can be considered under 'a particular social group'. In Estonia, the Citizenship and Migration Board is responsible for granting refugee status or subsidiary protection. According to information from the Board, there are no cases on this issue, and thus no practice to determine whether the Board accepts the interpretation of 'a particular social group' offered by Article 10 (1) (d) of the Council Directive.²⁶
- [35]. According to § 7 of the Act on Granting International Protection to Aliens, partners to whom the seekers of asylum or subsidiary protection are not legally married are excluded from subsidiary protection.
- [36]. According to information from the Citizenship and Migration Board, there have been no cases on the grounds of sexual orientation and no statistics have been compiled.²⁷ There is no such statistical information available from the Ministry of Social Affairs or other official or unofficial sources. This includes information regarding the impact and social reality of relevant legislation for LGBT persons.

C.12. Family Reunification

- [37]. According to § 65 of the Act on Granting International Protection to Aliens, the Citizenship and Migration Board decides on the reunification of families only if the persons applying constitute 'family members' of a person enjoying temporary protection. The exhaustive list of such persons is provided in § 7 (4) of the same Act:

- his/her spouse;

²⁵ <http://web.riigikogu.ee/ems/saros-bin/mgetdoc?itemid=052630010&login=proof&password=&system=ems&server=ragne11> (February 15, 2008).

²⁶ Response from the Citizenship and Migration Board.

²⁷ Response from the Citizenship and Migration Board.

- his/her or his/her spouse's unmarried minor child, including adopted child;
 - other close relative who lived with him/her in the country of origin and was dependent on him/her.
- [38]. Registered or merely cohabiting same-sex couples do not have the right to family reunification.
- [39]. According to information from the Citizenship and Migration Board, there have been no cases on the grounds of sexual orientation and no statistics have been compiled.²⁸ There is no such statistical information available from the Ministry of Social Affairs or other official or unofficial sources. This includes information regarding the impact and social reality of relevant legislation for LGBT person.

C.13. Transgender Issues

- [40]. There is no practice, reported cases or statistics on transgender issues.
- [41]. However, according the Gender Equality Commissioner, an application was submitted at the end of 2007 claiming discrimination in the employment application process owing to the applicant's transsexuality and 'the way she looked'. The case was dismissed on the grounds that discrimination could not be proven and other job applicants had better qualifications.²⁹
- [42]. There are a number of legal acts that include provisions regulating specific acts on transgender issues.
- [43]. The regulation of 07.05.1999 no. 32 by the Ministry of Social Affairs *Soovahetuse arstlike toimingute ühtsed nõuded* [Common requirements to medical acts of sex change]³⁰ provides the basis for medical and legal acts related to gender/sex change.
- [44]. According to the regulation of 07.05.1999 no. 32, the precondition for deciding a person's gender and allowing medical acts necessary for gender/sex change is a decision by the medical expert commission appointed by the Minister of Social Affairs. The applicant must submit an application to the Ministry of Social Affairs requesting a decision by the expert commission. He/she must present the following evidence:
- Certification of transsexual identity during at least two years prior to the application;
 - A psychiatrist's decision that excludes the possibility that the wish to undergo gender/sex change is caused by psychiatric disorder;

²⁸ Response from the Citizenship and Migration Board.

²⁹ Field trip meeting with *the Gender Equality Commissioner* (Estonia 11 March, 2008).

³⁰ Estonia/Riigikantslei (27.05.1999) *Riigi Teataja* L, 87, 1087.

- Compatibility of chromosomatic and gonad gender/sex certified by genetic research.
- [45]. The medical expert commission's decision is the basis for a decree by the Ministry of Social Affairs, which authorises medical acts to change a person's gender/sex. At least two years must pass from the beginning of the medical treatment before the expert commission will issue a decision on the change of gender/sex. This will be a basis for subsequent legal changes necessary for a person to wholly acquire the new gender.
- [46]. Name change is performed by the vital statistics office. This possibility is provided by § 15 of *Nimeseadus* [Names Act]:³¹
- ‘If the gender of a person is changed, on the basis of a written application of the person, the parent(s) of the minor or of the guardian of the minor ward, a new given name shall be assigned to the person and a foreign-language surname of the person may be changed if the gender feature is reflected in the surname pursuant to the national tradition of the person’.
- [47]. Section 49 of *Rahvastikuregistri seadus* [Population Register Act] regulates the formation and granting of the new personal identification code for persons who have undergone the gender/sex change, because the code is formed on the basis of a person's sex and date of birth.³² According to § 52 of this Act, the new personal identification code will be formed and granted by an authorised processor ‘upon amendment of the data on the sex of a person on the basis of an application of the person and a certificate of a medical institution holding a corresponding licence’.
- [48]. The formation and granting of the new personal identification code is also the basis for the issuance of a new birth certificate, which will be organised by the vital statistics office (§ 52 of the Population Register Act). The birth certificate is the basis for a new passport.
- [49]. Additionally, the regulation of 18.01.2002 no. 28 ‘*Riikliku pensionikindlustuse registri*’ *pidamise põhimäärus* [Statute for managing the ‘state pension insurance register’]³³ is important because it regulates the state pension insurance register. The data in this register is the basis for accounting for social tax paid by or on behalf of persons, their years of pensionable service and accumulation period and the procedure of determining and paying their state pension and benefits (§ 4 (2)). Paragraph 31 of this regulation provides for a change of data and personal identification code upon a change of gender/sex.

³¹ Estonia/Riigikantselei (2005) *Riigi Teataja* I, 1, 1.

³² Estonia/Riigikantselei (29.06.2000) *Riigi Teataja* I, 50, 317.

³³ Estonia/Riigikantselei (2002) *Riigi Teataja* I, 7, 38.

C.14. Multiple Discrimination

[50]. There is a lack of research regarding multiple discrimination. *SEKÜ* regards the civil society in Estonia as relatively weak, meaning that anti-discrimination organisations are small. *SEKÜ* has attempted to collaborate with Russian minority organisations, but it has proven difficult. Partly due to homophobia in those organisations, partly because the organisations are reluctant to be associated with LGBT organisations.

D. Good Practice

[51]. Good practices are described in Annex 1.