

The impact of the Racial Equality Directive:  
a survey of trade unions and employers  
in the Member States of the European Union

Estonia

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## **1. Demographic background**

Estonia is a multi-ethnic and multi-cultural country with only 1.34 million inhabitants, of whom 216,000 are non-national residents. Most legally resident non-Estonian nationals are not migrants crossing Estonia's international border, but Russians who migrated during the times of the Soviet Union or their descendents. Newcomers are mostly family members of residents or workers from the former Soviet Union.

Estonians form two-thirds of the population and this share has been stable over the period 2000-2008. There are one-quarter Russians and about six per cent of other ethnic nationalities. Estonian language proficiency among adult non-Estonian speaking population is still considered insufficient to allow them to compete with Estonians in the labour market on an equal basis or to generally cope in everyday situations. The majority of young non-Estonian mother tongue speakers, however, consider themselves to be proficient in the Estonian language.

Estonia's constitution prohibits discrimination, but there is no definition of what this covers. EU directives have influenced Estonian national legislation and amendments through existing legislation (Penal Code, Employment Contracts Act and the Legal Chancellor Act). Estonia has adopted two anti-discrimination laws: the Gender Equality Act has defined discrimination on ground of sex and the Equal Treatment Act defines direct and indirect discrimination on the grounds of religion or other beliefs, age, disability or sexual orientation. In line with the Directive discrimination of persons is prohibited in relation to employment and vocational training, association, social protection, education and access to and supply of goods and services.

## **2. Industrial relations background**

The majority of employment contracts are agreed at an individual level. National level collective bargaining with trade unions takes place in some sectors. However, most collective bargaining is still concluded at enterprise level. Trade unions have been unable to conclude agreements between themselves and the two trade union confederations have a fluctuating membership.

Estonia has a very low unionisation rate. In Estonia there are still a few so-called collective agreements between employees and employers, but individual agreements dominate. Social partnership is poorly developed in Estonia and in 2003 union density was only 14% (Kallaste and Eamets 2005), and by 2006 only 9% according to the ELFS (Woolfson et al 2007). There are two major unions, recognised as social partners: the Confederation of Estonian Trade Unions (EAKL, the largest blue-collar workers' union); and the Estonian Employees' Unions' Confederation (TALO, the white collar workers' union). At the end of 2008, EAKL has about 38,000 members. It has 19 member organisations. TALO had organisational problems in 2009 when one of the biggest unions (the teachers' union that made up about two thirds of TALO membership) disaffiliated.

The union interviewees believed the government was not interested in talking to the social partners. A sector union leader commented: *'We dream that some day a real social dialogue will take place.'* The respondent from a trade union peak organisation explained that there have been cases where the government has ignored unions as negotiating partners or has sent documents that were already on a threshold of acceptance and just asked a rhetorical question 'what do you think' without a request for an answer. One positive sign from the crisis is that the *'government is taking trade unions as partners more seriously. Our opinion is asked now in time'*.

Two interviewees from a confederation and a sector union stressed the unions' solidarity principle. As Estonia has a low rate of union coverage, and unionisation in a European sense is young, people have contradictory feelings and attitudes about trade unions. Employees are satisfied with union successes, but do not contribute much to resolving emerging issues. All employees are happy that there is such a thing as a minimum wage and some other minimum standards gained in social dialogue, but people do not understand how it was reached. Most workers do not understand the role of unions and they do not feel that they should be members. In spring 2009 the Estonian media twice expressed the view that the unions' readiness to fight for employees' rights is old fashioned and that strikes are out of date. As elsewhere, such media coverage works against union leaders and union mobilisation.

### **3. Trade union and employer awareness**

Discrimination is often misunderstood. A trade union peak organisation interviewee reported that no-one had brought up a discrimination complaint before going on to say:

*There have been problems with Russian speaking teachers. The problem is not the ethnic origin and that they are Russian speaking, but the problem is about their qualification and skills, which do not correspond to job description and requirement. It is about qualification, experience, skills ... This is a problem!*

A similar analysis defending discrimination by denying its existence was made by an employer of a public transport company who explained:

*Employees are told to learn Estonian, because they cannot work in certain positions without language skills. For example, engine-drivers should know also Estonian besides Russian in a case of an emergency.*

#### **3.1 Trade unions**

There was not much consistency among the trade union respondents in terms of their understanding of the implications of anti-racial discrimination measures. On the one hand, the trade union interviewees reported that they knew the legislation quite well and they participate in law making procedure, reviewing bills and making proposals. However, they stated that due to their limited resources they do not have enough capacity to make more proposals. In connection with the Racial Equality Directive and

discrimination an interviewee from the trade union peak organisation admitted: *'I am afraid that awareness has not increased enough, it is a longer process.'*

Thus one head of a sector trade union had a good knowledge about racial and ethnic discrimination due to her professional work. But she personally thinks that racial discrimination is not an important issue in Estonia for two reasons: the tolerant attitudes of Estonian society and the small number of people from different ethnic backgrounds.

At the same time projects about racial and ethnic discrimination have been organised by trade unions, employers and NGOs have held awareness-raising events, where the EU Commissioner covering gender equality and equal treatment has spoken about discrimination issues, legislation and law enforcement. But when the head of TALO explained that the ETUC sends them information materials, he believed that on discrimination they have only received materials about gender equality. No material has been sent about racial discrimination. He added:

*My training on equality issues is limited to the law-making process and on I have heard is done in other member states and what have been the recommendations. I have not heard about racial equality training in Estonia.*

For some interviewees the problem was the victims of any discrimination: *'Law enforcement depends on people.'* The TALO interviewee added:

*We cannot do anything, if there is no-one to apply for his/her rights. There should be someone who goes to the court with a demand that a law should be implemented.*

This interviewee appeared to blame the victim rather than the violator. The argument suggests that the weaker party has to be responsible in demanding and fighting for their rights: *'A person should look for justice and to protect own rights.'*

Beside the issues of low awareness of employees and employers, interviewees from trade unions were also concerned that laws are not being implemented. One reason for this is the presence of fear as an obstacle to solving conflicts between employer and employee. The legal literacy of employees is low and basic legal processes hardly exist. One interviewee explained: *'Avoiding legal action is caused by fear'*. Employees, members of the trade union, who have asked legal advice from their union's office, often ask the union not to start any actions and discussions with their employer and instead try to cope with their problems themselves.

### **3.2 Employers**

Nearly all Estonian companies are micro and small companies with less than 49 employees. Smaller companies have less capacity to follow changes in equality legislation. The government organises training on equality and diversity management for employers, but these often benefit the larger firms. HR managers of smaller companies thus have a low awareness about diversity management in the way it is understood in

more developed countries and in EU policies. Knowledge about diversity management in theoretical terms has increased but there are no examples of complaints on grounds of racial and ethnic problems. Nonetheless, an interviewee from a US multinational company reported trying to combine international standards and national legislation requirements within its organisational culture.

#### **4. Comments on the Equality Body**

Among our interviewees only officials and leaders of the trade union and employers' peak organisations are aware about equality bodies. They knew about Chancellor of Justice, and Gender Equality and Equal Treatment Commissioner (The Commissioner). The Chancellor of Justice resolves discrimination disputes that arise between persons in private law on the basis of the Constitution and other Acts. In Estonia the Chancellor of Justice has an office with three departments, but the Commissioner has just one assistant. The Commissioner has been in position since 2005 and began their work with gender equality. The Equal Treatment Act was adopted in the end of 2008. According to the Act, the Commissioner's duties were widened in 2009, but the number of staff was not increased.

Other employers reported that while they know that there is a new law about equal treatment and that there is the Commissioner, they did not know the Commissioner's official name. Two employer interviewees had met the Commissioner in some training organised by the trade unions. The trade union interviewees did not comment upon the Directive, but one of them saw gender equality issues as unreal and not so important. The terminology was quite dismissive, referring to a phenomenon, where *'a mosquito becomes an elephant'*. He argued that before the Gender Equality Act and the creation of a department at the ministry and the Gender Equality Commissioner: *'There were even less problems, suggesting that the Equality Body had helped create the problems.'*

The Commissioner explained that complaints to the Commissioner are sometimes made just to get a view on public opinion. Employees want to get moral justice and the public behind them in relation to criticising the employer about violations. According to the Employment Contracts Act in the case of a dispute between the parties over the reason for leaving, a labour dispute resolution body resolves the issue. In Estonia this occurs at the Labour Inspectorate. However, it has been quite passive in filing cases on discrimination or unequal treatment. But the Commissioner notes that the legal framework allows different approaches to be taken by the regional Labour Inspectorate Offices.

## 5. Trade union and employer policies and measures

### 5.1. Trade union policies and measures

Most interviewees stated that racial discrimination does not exist in Estonia. A respondent from EAKL said that racial and ethnic discrimination complaints have never been discovered in practice. *'I think that racial discrimination in the workplace is missing in Estonia,'* he said. There are so few people from other races in Estonia. Racial discrimination is thought not to be a problem due to homogeneous racial background of employees. He also emphasised that *'we do not have any information about xenophobia as a problem at work'*. For him the most urgent and serious problem is discrimination against union members and so no actions are planned on racial or ethnic discrimination.

Union interviewees suggested that unions were not committed to anti-discrimination measures primarily due to an absence of complaints and information about racial and ethnic discrimination. If trade unions have problems with discrimination against union members, unions could offer legal aid for their members. The second reason, why unions are not committed to anti-discrimination, is due to current issues with Employment Contracts Act and its implementation, especially in the context of economic depression when there are massive lay-offs in Estonia. Sherwood (2009) reports that Estonia is in its worst economic predicament since the country gained independence from the Soviet Union in 1991 and the economic downturn appears set to continue according to the Organization for Economic Cooperation and Development (OECD).

A sector trade union interviewee pointed out there was considerable discrimination on grounds of gender. In the service sector, particularly, due to the high proportion of women, there have been many cases of unfair treatment due to maternity and pregnancy. At the same time, the service sector has a multinational membership due to catering business and many national cuisines are represented (Chinese, Indian, etc). Many restaurant chefs and cooks belong to different ethnic groups. One could assume that this situation brings many problems in connection with racial or ethnic grounds. But the interviewee argued the evidence is to the contrary: these people are rather admired by their colleagues due the competences they have and not one discrimination case has occurred.

According to the NAP, dissemination of information among employers and contractors about the new Employment Contracts Act was expected to take place in 2009 – 2010. For example, EAKL is organising training for employee representatives. Union confederations have planned to organise training to introduce the amendments within the Employment Contracts Act. These will be explained to trade unionists and employees, in terms of what the act required and its new procedures.

Our interviews confirmed the lack of evidence of racial discrimination in workplace. Ethnicity is also not a problem, but poor knowledge of the Estonian language is. There have been problems with some retailers from abroad who tried to bring in employees from other countries. For example, the Lithuanian Supermarket chain Maxima is the biggest retail chain in the Baltic States. They brought employees from Lithuania to

Estonia, and even offered the possibility of renting a company flat. These people did not speak Estonian and according to the State Language Act they could not work in jobs where communication and language skills are important. The Supervisory body (the Language Inspectorate) therefore requires that the employer organise language training.

## **5.2. Employer policies and measures**

Interviewed employers did not report taking any special policies and measures in relation to the Directive. Employers' representatives said that they have been busy with debates on the Employment Contracts Act, because according to the Act employers will have more monetary obligations in the future.

Equally, the US multinational interviewee reported that their company did not practise diversity management in their everyday work – because they had only a small number of employees and everything worked well: *'Actually, we know what is taking place in our company.'*

## **6. Views on how to tackle discrimination better**

Interviews with trade unionists and employers have stressed that racial discrimination does not exist in Estonia. All interviewees were convinced that discrimination on ethnic grounds is absent in the workplace, but they have recognised that there are still problems with Estonian language proficiency. Subsidised courses in Estonian for foreigners are offered through the Integration Foundation and training costs are almost covered as far as the individual is concerned. One interviewee who has represented national employers with many Russian speaking employees, stated:

*We send our Russian speaking employees to study Estonian and we ask them to inform us about successes and problems. If people do not learn Estonian, we are forced to fire them, because their competences are inadequate for their job.*

Investing in educational programs and adult training could help to tackle low levels of knowledge about discrimination. Unions and employers pointed out the importance of adequate training and affordable access to information. Union officials were worried about employees' knowledge of right and expected more activities in this field. Many problems, conflicts, and labour disputes could be avoided, when people are aware about their rights.

Many journalists have interviewed politicians and government officials about anti-discrimination issues and have given reflections on parliamentary debates. The media is in a position to contribute to awareness rising. Media coverage, different campaigns and educational programs could change attitudes and make people more tolerant.