



Quality in Gender+ Equality Policies

European Commission Sixth Framework Programme
Integrated Project

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Issue Histories Estonia: Series of Timelines of Policy Debates

Institute for Human Sciences (IWM)
Vienna
2007

Preferred citation: Jaigma, Martin (2007): *Issue Histories Estonia: Series of Timelines of Policy Debates*, QUING Project, Vienna: Institute for Human Sciences (IWM), available at http://www.quing.eu/files/results/ih_estonia.pdf.

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A short history of the development of (gender) equality law or (gender) equality strategies or plans¹

On the whole, one could clearly distinguish a period before accession to the EU and the aftermath in the history of gender equality development in Estonia. Moreover, one should take into consideration that it was only by the late 1990s that all necessary institutions for the independent state were established, along with the adoption of the principal legislation and stabilization of economy.

It was in 1989 when, for the first time, the gender equality topic reached the arena of the wider public debate with the organizing of the Estonian Women's Conference. The adopted programme "Estonian women today and tomorrow" contained a suggestion to pass a law on equality, in order to create a governmental institution, which would tackle the issue, and to include the theme into educational programmes for its faster recognition. However, the neo-conservative public opinion of the time did not share the enthusiasm and was more occupied with going back to the social roots and norms the Soviet occupation had forcibly cut through in 1940. Everything socialist was rejected, and since the new social visions were unknown, the glance was directed to the past.

The Republic of Estonia has also ratified almost all of the main international acts which forbid gender discrimination. A look at the Estonian legislation has shown that very few provisions could actually be used to discriminate men and women. Furthermore, the language of Estonian laws is gender-neutral (there is no gender in Estonian language).

In 1991 and 1992, shortly after Estonia had re-gained its independence it adopted, ratified and committed to several important international agreements, among them the UN Convention on the Elimination of All Forms of Discrimination Against Women (November 1991), the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Convention Against Transnational Organized Crime. Although the themes of human rights and individual rights were rather novel to the newly established state, it hastily tried to catch up with other Western countries in joining all major international conventions and organizations.

The Constitution of the Republic of Estonia, laws of European Union and international agreements ratified by Estonia forbid gender-based discrimination, commit to the elimination of gender inequality and promotion of gender equality. The Constitution of the Republic

¹ The following materials have been used in the composition of this section: Press and Information Department, Estonian Ministry of Foreign Affairs. Fact Sheet. 2004. Estonia Today. Women and men – Equal rights in Estonia. [http://www.sm.ee/eng/HtmlPages/Mehed-naised/\\$file/Naised-Mehed.pdf](http://www.sm.ee/eng/HtmlPages/Mehed-naised/$file/Naised-Mehed.pdf); Ministry of Social Affairs of Estonia webpage: <http://www.sm.ee>; "Estonia. Report presented by the national delegation". 2006. In Human rights and economic challenges in Europe – gender equality. 6th European ministerial conference on equality between women and men. Stockholm 8-9 June, 2006. http://www.coe.int/T/E/Human_Rights/Equality/PDF_MEG-6_NR_Estonia.pdf; Papp, Ülle-Marike. "National gender equality policy". 2000. In *Towards a balanced society: Women and men in Estonia*, ed. Peeter Maimik, Kadi Mänd, and Ülle-Marike Papp. United Nations Development Programme, Ministry of Social Affairs of Estonia. Tallinn: Ilo Print. [http://www.sm.ee/est/HtmlPages/women_men/\\$file/women_men.pdf](http://www.sm.ee/est/HtmlPages/women_men/$file/women_men.pdf); Equal Opportunities for Women and Men in Estonia. Monitoring the EU accession process: equal opportunities for women and men. Open Society Institute, 2002; expertise of Ülle-Marike Papp from the Ministry of Social Affairs.

Estonia², adopted in 1992, states that everyone has the right to free self-realisation and that everyone shall honour and consider the rights and freedoms of others, and shall observe the law in exercising his or her rights and freedoms and in fulfilling his or her duties. This includes the right not to be discriminated on grounds of one's sex and is the prerequisite for exercising the aforementioned rights and freedoms. Article 12 subsection 1 states that everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable. The Article gives priority of international laws and treaties, which are ratified by Estonian parliament, over the national legislation if the two are in conflict with each other. The rule does not apply to constitutional norms.

However, it is reckoned that until 1993 Estonian society was still firmly in the grip traditional and conservative understandings of gender equality, although the foundations to change these perceptions were also laid at this time. In 1995, Estonia for the first time participated in the 4th Women's World Conference in Beijing. The action plan and the final protocol of this conference which established a set of tasks for the governments of all UN member states also became a basis for the priorities in Estonian national action plans. In the aftermath of the Beijing Conference, the inter-ministerial commission was established in 1996, the decisions of which determine the course of gender equality implementation and development in Estonia: creating and strengthening the state structures, dealing with the integration of gender mainstreaming, analyzing the compliance of national legislation with international equality standards, providing access to gender sensitive statistics and improving women's position in the labour market and decision making. Of great importance in promoting women's political and economic activity and the related awareness-raising of the public was the UN Development Programme's project in 1995-1997, which also established the research centre at Tartu University.

In 1997, the conference "Equal opportunities" took place in Tallinn; in the same year in Tallinn, the information forum together with the European Council was organized on family planning and reproductive rights.

Improving the state of affairs in gender equality *de jure* in Estonia were noteworthy, but the practical implications have not shown the same quality, especially in the spheres of the gender wage gap, labour market segregation, women's role in decision making processes and the re-evaluation of gender roles.

In order to achieve the aforementioned objectives, the Gender Equality Bureau was created within the Ministry of Social Affairs in 1996, renamed the Gender Equality Department in 2004. In addition to this, there were a number of women's organization networks, established with the support from international organizations, foreign foundations and especially Nordic countries, which foster the equality issues in Estonian society.

² *State Gazette* 1992, 26, 349: <https://www.riigiteataja.ee/ert/act.jsp?id=633949>; in English: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000&keel=en&pg=1&ptyyp=RT&tyyp=X&query=Eesti+Vabariigi+p%F5hiseadus>

In 1998, a working group for gender equality consisting of national officials of the Baltic and Nordic Countries was created with the task to coordinate the training and cooperation projects for officials and researchers. In 1998, the Europe Agreement entered into force, which also launched the comparative analysis of Estonian and European Union legislation. The results showed significant deficiencies of Estonian legislation in terms of not meeting the goals of the European equality directives. At the same time, the late 1990s turned out to be the period when gender equality issues received a boost from various support programmes, seminars and trainings that raised people's awareness of the topic.

Accession negotiations between Estonia and the European Union were launched on March 31, 1998 with the Accession Conference in Brussels. The general principles of the negotiations were approved and the rules of procedure were agreed upon. The Secretariat of the Accession Conference was formed from EU and Estonian representatives. The EU Presidency emphasized in its opening speech of the Accession Conference the importance of compliance with the pre-accession strategy (provisions of the Europe Agreement and the goals of accession partnership) and the necessity of adopting the EU *acquis*.

In 1999, Estonia joined the accession process with the European Union, which further outlined the new commitments in the sphere of gender equality in social policy, one of them being the adoption of the Gender Equality Act. In the same year, the Government approved the principles of Estonia's policy on elderly people, which does not tolerate discrimination based on age, and supports the inclusion of elderly in social and political life.³ Article 10 of the Employment Contracts Act prohibits discrimination on the basis of age.⁴

Article 67, subsection 1, of the Government of the Republic Act⁵ declares that the area of government of the Ministry of Social Affairs shall include the drafting and implementation of plans to resolve state social issues, the management of public health protection and medical care, employment, the labour market and working environment, social security, social insurance and social welfare, promotion of the equality of men and women and co-ordination of activities in this field, and the preparation of corresponding draft legislation. The promotion of gender equality and coordination of activities towards this objective and corresponding legislative activity as a responsibility of the Ministry was written into the Act through the amendment⁶ added in 2000.

In its regular report⁷ on Estonia's progress towards accession in 2000, the European Commission considered that further progress is needed in order to bring legislation on gender equality in line with the *acquis communautaire*. At that point, the principle of equal treatment for women and men was not sufficiently recognised in Estonia, either legally or conceptually. Furthermore, Estonian legislation did not comply with a number of Directives, including those on the burden of proof, part-time workers, and the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. The laws were generally gender neutral, but the substantive meaning of gender equality and the spirit of the Directives, including the principle

³ Policy on elderly: <http://www.sm.ee/esttxt/pages/goproweb0316>; 7 p., E-text.

⁴ *State Gazette* I 2004, 37, 256: <https://www.riigiteataja.ee/ert/act.jsp?id=745279>.

⁵ *State Gazette* I 1995, 94, 1628: <https://www.riigiteataja.ee/ert/act.jsp?id=12788414>; 44 p., E-text.

⁶ *State Gazette* I 2000, 49, 302: <https://www.riigiteataja.ee/ert/act.jsp?id=72088&replstring=33>, 1 p., E-text.

⁷ European Commission's report: <http://www.eonet.ro/pdf/Estonia.pdf>; 53 p., E-file.

of equal treatment for self-employed men and women and discrimination on grounds of sex, were rarely understood.

In May 2000, Estonia ratified the Amended and Revised European Social Charter⁸. Then, for the first time in a more heated public debate, issues of the equal treatment of men and women were raised. Some crucial articles of the charter that concerned women's and human rights were adopted only after the strong pressure from women's organizations and public criticism (dissected in more detail in the non-employment section). In the same year, Estonia submitted the first, second and the third country report⁹ to the CEDAW Committee.

Under the crosscutting issues section, the Ministry of Social Affairs Strategic Action Plan for the period of 2000-2010 (approved in April 2001) incorporated integration of the principle of gender equality into all national policies, programmes and projects as a long-term objective (until 2010)¹⁰. In 2001 and 2002 respectively, the Government approved the first and the second part of the application plan of Estonia's general conception on the policy of disabled persons "Standard rules to create equal opportunities for disabled people".¹¹ Both contain provisions prohibiting discrimination. One of the principles in legislation is Article 10 of the Employment Contracts Act that prohibits discrimination on the basis of disability or invalidity.¹²

In 2002, the UN committee reviewed Estonia's progress in the fulfilment of the convention on "The elimination of all kinds of discrimination against women"¹³. The committee found positive the high ratio of women with post-secondary education, the increasing number of women studying non-traditional subjects, modern legislation for the protection of mothers and the growth of women's organisations in society. Estonia's deficiencies concentrated around the field of legislation such as insufficient anti-discrimination legislation, inadequate financial and human resources at the Bureau of Gender Equality and the prevalence of violence against women. The critical CEDAW shadow report was compiled by various Estonian women's organizations, including Estonian Women's Studies and Resource Centre (ENUT)¹⁴. The most critical issues indicated by the shadow report were the weakness of national institutional machinery on gender equality and poor implementation of gender mainstreaming, legal illiteracy and access to subsidized legal advice; violence against women, prostitution and trafficking in women, women's business opportunities, inadequately segregated data by sex (statistics, etc.) and funding of gender research.

⁸ *State Gazette* II 2000, 15, 93: <https://www.riigiteataja.ee/ert/act.jsp?id=26389>; 25 p., E-text.

⁹ CEDAW report:

<http://daccessdds.un.org/doc/UNDOC/GEN/N01/516/53/IMG/N0151653.pdf?OpenElement>

¹⁰ The same principles have been conveyed into the Ministry's Strategic Action Plan for the period of 2007-2010: [http://www.sm.ee/est/HtmlPages/Sotsiaalministeeriumiarengukava2007-2010/\\$file/Sotsiaalministeeriumi%20arengukava%202007-2010.pdf](http://www.sm.ee/est/HtmlPages/Sotsiaalministeeriumiarengukava2007-2010/$file/Sotsiaalministeeriumi%20arengukava%202007-2010.pdf); 32 p., E-file.

¹¹ The first part in 2001: <http://www.epikoda.ee/include/blob.php?download=epikmain1&id=0085>; 27 p., E-text. The second part in 2002:

<http://www.epikoda.ee/include/blob.php?download=epikmain1&id=0086>; 17 p., E-text.

¹² *State Gazette* I 2004, 37, 256: <https://www.riigiteataja.ee/ert/act.jsp?id=745279>; 8 p., E-text.

¹³ Review of UN Committee: <http://www1.umn.edu/humanrts/cedaw/estonia2002.html>; 13 p., E-text.

¹⁴ Laas A, S. Ringmaa. 2002. *Supplementary Report to Estonian National Report: Shadow Report*. The CEDAW 26th session on the Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women. Tartu-Tallinn-New York. http://www.ut.ee/gender/doc/CEDAW_2002_16_pages.doc; 16 p., E-file.

In the spring of 2002, a reciprocal understanding memorandum between the European Union and Estonia, regarding Estonia's joining the EU gender equality strategy (2001-2005), was put into force.

In order to raise general public awareness on gender equality, in cooperation with the UN Population Fund, a review "Different but Equal" was published in 2003. The review briefly and clearly presents the basic terminology and problems related to equality of men and women. In 2005 the review was also published in Russian.

On March 25, 2003, the Government approved "The welfare programme for children and people with special needs for years 2004-2006"¹⁵. The main objective of the programme was to develop services supporting the independent subsistence and other means to foster the social inclusion and improve the quality of life of children and people with special needs. Social and economical changes have played a large part in placing these vulnerable social groups into a socially unequal position. The programme targeted children without parental care and those having difficulties with subsistence, but also specialists working in child welfare. Of people with special needs, the programme was directed to disabled people of working age, also disabled children, their families and people with severe or long-term psychological or behavioural disorders and specialists working in the field.

The next significant step in gender equality development in Estonia was the adoption of the Gender Equality Act¹⁶ on April 7, 2004, which was, on the one hand, the result of the analysis conducted by the Government in 1995-2000 on the situation of women and their possibilities for exercising various rights in society, and, on the other side, the outcome of strong pressure from the European Union and action by local NGOs.

The Estonian government first approved the premises of the draft of the Gender Equality Act in 2000. In December 2001, the draft was sent to the Parliament for the proceeding. The first parliamentary reading¹⁷ of the draft took place in March 2002 and the second reading¹⁸ in September 2002 after which it was suspended. After the parliamentary elections in March 2003, the amended draft of the Gender Equality Act was resubmitted to the newly elected Parliament, initiated by the factions of the Estonian Centre Party and Social Democrats, and passed the first reading¹⁹ before summer vacations on the 29th of May 2003. Then it was suspended again. The revised draft, now called the Act on Equality of Men and Women, was approved by the government (devised by the Ministry of Social Affairs) in January 2004 and was sent back to the Parliament where its first reading²⁰ took place in February. During the second reading²¹, the draft initiated by the Centre Party and Social Democrats in 2003 was amalgamated with the Government's draft which was taken

¹⁵ Welfare programme for children:

[http://www.sm.ee/est/HtmlPages/lasteprogramm/\\$file/lasteprogramm.pdf](http://www.sm.ee/est/HtmlPages/lasteprogramm/$file/lasteprogramm.pdf); 13 p., E-file.

¹⁶ *State Gazette* I 2004, 27, 181: <https://www.riigiteataja.ee/ert/act.jsp?id=738642>; 9 p., E-text.

¹⁷ Parliamentary stenogram: 13.03.2002 http://web.riigikogu.ee/ems/stenograms/2002/03/t02031307-12.html#P892_166200; 25 p., E-text.

¹⁸ Parliamentary stenogram: 18.09.2002 http://web.riigikogu.ee/ems/stenograms/2002/09/t02091802-09.html#P940_187149; 36 p., E-text.

¹⁹ Parliamentary stenogram: 29.05.2003 http://web.riigikogu.ee/ems/stenograms/2003/05/t03052907-06.html#P250_50421; 16 p., E-text.

²⁰ Parliamentary stenogram: 10.02.2004 http://web.riigikogu.ee/ems/stenograms/2004/02/t04021004-06.html#P374_69699; 22 p., E-text.

²¹ Parliamentary stenogram: 19.02.2004 http://web.riigikogu.ee/ems/stenograms/2004/02/t04021905-04.html#P330_76305; 11 p., E-text.

as the original version, but now called again the Gender Equality Act. The second reading was adjourned and continued on March 24, 2004²². The third reading²³ and the adoption of the Act took place on April 7, 2004.

However, during the process of the proceedings of the Gender Equality Act, the Ministry of Justice proposed the alternative draft of the Act on Equality and Equal Treatment²⁴ that initially wanted to include all kinds of discrimination, including gender-based, but there were objections raised by the Ministry of Social Affairs, and also women's organizations that wanted to keep the Gender Equality Act a separate law due to reasons described below. Eventually, the idea of separate laws prevailed.

As to NGO activities, the Estonian Women's Studies and Resource Centre²⁵ (ENUT) was monitoring the proceeding of the Gender Equality Act's draft from the beginning. Representatives of ENUT participated in the round table on the issues of gender equality which was organized by Estonian Law Centre Foundation in April 2002. In April, another forum on gender equality took place in Tallinn. ENUT supported the adoption of the separate gender equality act not the general one developed by the Ministry of Justice that would cover all fields of discrimination, otherwise there would not be efficient legal protection for people and the application of positive special measures would be hindered. In August 2002, ENUT sent the letter to the Constitutional Commission of the Parliament and the Government. Sixteen women's organizations supported the appeal. In late August, ENUT sent the appeal through its database to all women's and other civil organizations in order to join the new public letter to the Parliament, where the importance of the quick adoption of the Act was explained. Sixty-three organizations joined the appeal, including women's factions of many political parties (from left to right), Open Estonia Foundation and Estonian Representation of Amnesty International. In September 2002, ENUT initiated a postcard-campaign, where people could send postcards demanding the swift adoption of the Act to the Constitutional Commission of the Parliament.

In early 2003, the Annual Conference of Estonian Women's Organizations urged the Parliament to adopt the Gender Equality Act without delay. The same concern was voiced by the Estonian Women's Association's Round Table²⁶ (EWAR) with their address²⁷ to the Speaker of the Parliament, the Prime Minister and the leader of the Constitutional Commission of the Parliament in September 2003. The address reminded that the adopted act should be a separate one dealing with gender equality not the general one covering all fields of discrimination. EWAR sent another letter to the Ministry of Social Affairs in October 2003, demanding the adoption of the Gender Equality Act and expressing the wish to cooperate in the development of the national gender equality plan. Also a meeting took place between EWAR and the Minister of Social Affairs. In January 2004, the Annual Conference

²² Parliamentary stenogram: 24.03.2004 http://web.riigikogu.ee/ems/stenograms/2004/03/t04032409-17.html#P457_90233; 17 p., E-text.

²³ Parliamentary stenogram: 07.04.2004 http://web.riigikogu.ee/ems/stenograms/2004/04/t04040710-10.html#P435_92263; 5,5 p., E-text.

²⁴ Parliamentary stenograms: 20.11.2002 http://web.riigikogu.ee/ems/stenograms/2002/11/t02112009-20.html#P1961_319647; 5,5 p., E-text. 22.01.2003 http://web.riigikogu.ee/ems/stenograms/2003/01/t03012202-12.html#P751_161261; 16 p., E-text.

²⁵ <http://www.enut.ee/enut.php>

²⁶ <http://www.enu.ee/>

²⁷ <http://www.enu.ee/enu.php?keel=1&id=165>; 1 p., E-text.

of Estonian women's organizations sent the appeal²⁸ to the Parliament in order to improve the draft of the Gender Equality Act. In March 2004, EWAR participated in the project competition of women's cooperation organized by the Ministry of Social Affairs with the project that intended to introduce the Gender Equality Act and its application in women's organizations across all counties and local authorities.

The Gender Equality Act entered into force in May 1, 2004. As to the content, the Gender Equality Act aims to guarantee equal treatment for men and women and to foster gender equality mainstreaming in all spheres of social life. In this act, and for the first time, Estonia introduced terms such as "discrimination against women" and other forms of discrimination into the legislation. The act also provides the means to combat sexual discrimination both in private and public sectors and has created the instrument to demand compensation in case the person's rights are violated. The Act is qualified as progressive since it performs in all administrative levels in terms of applying a gender mainstreaming strategy. In addition, educational and research institutions and employers are obliged to foster equal treatment of women and men. The Act provides definitions for key concepts such as gender equality, equal treatment, (in)direct discrimination and sexual harassment along with instituting the rule of shared burden of proof. Certain positive measures can be used in relevant circumstances when the situation of one sex is disadvantageous relative to the other. The Act founded also the institution of the Gender Equality Commissioner which is an independent establishment dealing with gender related complaints. Finally, the Gender Equality Act defines the tasks of the Ministry of Social Affairs and has created the Gender Equality Council, which serves as the advisory body for the Government of the Republic.

The above mentioned period of 2001-2004 comes to the fore as a separate period as it reflects Estonian society's understandings of human rights, stereotypical gender roles and patriarchal ideology. Manifestation of the latter is 500 publications on gender inequality and equality published in the media within these three years. As a parallel activity, amendments were made to the existing legislation with the primary goal to revoke provisions that discriminated against men (e.g. mother's rights were replaced by parent's rights etc.).

Prior to Estonia's accession to the EU, several projects backed by international organizations (UNDP, ILO, Nordic Council of Ministers) were carried out that first and foremost aimed to raise the public awareness. In 2001-2003, a great number of international conferences, seminars and schoolings took place. This was also the period when the most sensitive topics, such as violence against women, and trafficking in women and prostitution, were opened to public discourse, which resulted in surveys, trainings and a few political statements. In order to better secure women's economical independence, the ILO programme "More and Better Jobs for Women" (1999-2003) was launched which also promoted women's entrepreneurship. The period is also marked by the establishment of international contacts and domestic networks. Estonia joined the European Union on May 1, 2004. Consequently, a whole array of new projects and policies were implemented.

The Estonian National Development Plan for the Implementation of the EU Structural Funds SPD 2004-2006 contained a gender aspect. Together with the European Commission,

²⁸ <http://www.enu.ee/enu.php?keel=1&id=166>; 2 p., E-text.

the Government of Estonia prepared a Joint Inclusion Memorandum²⁹ where long-term goals for gender equality activities were set. Based on the Memorandum, the National Action Plan for Social Inclusion for 2004-2006³⁰ was prepared, which foresaw concrete goals, actions and resources to reduce poverty and exclusion. The Action Plan was not only a strategy but the first attempt to integrate the strategies and action plans of different spheres into a unified approach to increase social inclusion. The main target groups of the Action Plan were the unemployed (especially long-term unemployed and their families), people with disabilities, handicapped children, school drop-outs, people with housing problems and victims of crime.

In the first gender mainstreaming project that was carried out under the European Union Gender Equality Programme "Gender Impact Assessment as a Core Measure for Gender Mainstreaming" (September 2003-September 2004) the goal of the Ministry of Social Affairs as the project promoter was to improve the understanding of gender equality and the dual-track approach to achieve equality and to develop specific methods and tools, in particular gender impact assessment, for the promotion of gender mainstreaming in Estonia. The first manual for Gender Impact Assessment was also compiled by the Ministry of Social Affairs. The Phare Twinning Project "Development of Administrative Capacity of National Authorities in the Field of Gender Mainstreaming" was organized in between July 2004 and December 2005 that involved the Ministry of Health and Social Affairs of Saxony-Anhalt, Germany and the Estonian Ministry of Social Affairs.

Estonia's National Employment Action Plans have been based on the European Employment Strategy. The Employment Guidelines represent a set of objectives, which, until 2003, were grouped under four "pillars" (employability, entrepreneurship, adaptability, equal opportunities) together with horizontal objectives (including gender mainstreaming). The main objectives for the promotion of equal opportunities in the National Employment Action Plan were: the creation of employment opportunities and increasing the employment of women; reconciling work and family life; supporting women as entrepreneurs; and increasing the competitiveness of their businesses.

In March 2006, the Estonian National Report on Strategies for Social Protection and Social Inclusion 2006-2008³¹ was prepared under the Open Method of Coordination of the European Union and in compliance with the revised objectives and framework approved by the European Council. The report is the first report on social protection and inclusion that has been prepared under the revised principles and in the light of new common objectives. It consists of three "pillars": social inclusion, pensions and health and long-term care. In order to ensure comparability of national reports and facilitate exchange of good practices between Member States, the report follows the Guidelines drawn up by the Social Protection Committee concerning the structure and content of the document³².

According to the Government action plan for 2007-2013, training and technical assistance is oriented towards achieving readiness to integrate the equality principle into all action plans and policies in accordance with the Treaty of Amsterdam; and elimination of trafficking in women is foreseen according to the relevant strategic action plan. As mentioned

²⁹ <http://www2.sm.ee/kaasatus/failid%2FSotsiaalse%20kaasatuse%20%FChismemorandum%20%28inglise%20keeles%29.pdf>; 71 p., E-file.

³⁰ [www.sm.ee/est/HtmlPages/NAP_valitsusse/\\$file/NAP_valitsusse.doc](http://www.sm.ee/est/HtmlPages/NAP_valitsusse/$file/NAP_valitsusse.doc); 51 p., E-file.

³¹ http://ec.europa.eu/employment_social/social_inclusion/docs/2006/nap/estonia_en.pdf; 59 p., E-file.

³² http://ec.europa.eu/employment_social/social_protection_committee/spc_topics_en.htm

before, according to the Gender Equality Act, all state and local authorities and institutions are obliged to use a gender equality mainstreaming strategy.

Currently, the Inter-Ministerial Committee for Promoting Gender Equality is trying to elaborate the state development plan of gender equality up to 2008. The development plan would act as a base for various inter-ministerial duties in engaging with the variety of issues (horizontal and vertical gender segregation in work and educational sphere, revising gender stereotypes from school textbooks, fighting violence against women). The key emphasis would be placed upon awareness raising and gender training. Of the important projects, the following should be initiated: supporting women in making economic decisions, the role of mass media in shaping power relations, training state officials in order to integrate gender mainstreaming in action plans, and developing assessment methods for gender influence. However, the elaboration of this national plan has fallen into a sort of lethargy as people working in it have been changing too often.

Another current issue drawing attention is the draft of the Equal Treatment Act, which was suspended in 2003 but revived in 2007. It is still based on the draft which was in the proceeding in 2002-2003, but without the section dedicated to gender equality, which is now covered by a separate law. The reason for re-submitting the revised draft to the parliament was the letter of the European Commission to Estonia from June 28, 2006 that concerns the Directives 2000/43/EC and 2000/78/EC on equal treatment issues which Estonia is obliged to follow but has not done so. Since the European Commission has started the infringement proceedings, the Government considered the quick adoption of the Act important. The draft underwent the first reading³³ in February 2007. However, due to the general elections in March 2007, the draft fell out of the proceeding. The new version was sent to the Parliament again on May 31, 2007, on the same grounds as before (pressure from the European Commission).

³³ Parliamentary stenogram: 14.02.2007, http://web.riigikogu.ee/ems/stenograms/2007/02/t07021405-20.html#P743_161914; 7 p., E-text.

A short history of the development of gender equality machinery in government and its relationship with governmental institutions for other equalities³⁴

Gender equality machinery

In 2000, with the amendment to the Law on the Government of the Republic, the Ministry of Social Affairs was attributed three additional functions: promoting equality between men and women, coordination of these activities and preparation of relevant draft laws.

The general functions of the **Ministry of Social Affairs** in the field of gender equality were specified by the Gender Equality Act, creating more detailed rights and obligations in order to supervise the implementation of the Gender Equality Act. The Ministry provides consultations on matters related to the implementation of the principle of equal treatment and gives instructions for the implementation of the act. It concludes analyses on the effects of gender equality legislation. The Ministry then publishes reports on the implementation of the principle of equal treatment for men and women. The Ministry of Social Affairs is responsible for providing to all persons information on matters related to implementation of the principle of equal treatment for men and women. If necessary, the consultant shall explain to a person which institution is competent to resolve a possible case of discrimination. At the request of the person, assistance shall be provided upon preparation of a written application, and the application shall be submitted to the competent body. Applications shall not, however, be submitted to the courts or labour dispute committees.

Gender Equality Bureau and the Department of Gender Equality

The Gender Equality Bureau was established in December 1996. In June 2000 the ministry was attributed three additional functions under law: promoting the equality of men and women, coordination of these activities and preparation of relevant draft laws. From 1 January 2004 the unit operates under the authority of the Deputy Secretary General of Social Affairs as the Gender Equality Department. The staff of the Department consists five civil servants, supported by analysts working in the policy information and analysis departments, who prepare different indicators for measuring the situation of gender equality in Estonia, and coordinate research activities and analysis of disaggregated data. The ministerial bureau of gender equality at the Ministry of Social Affairs was reorganized and expanded by the Minister of Social Affairs Decree No. 47 of May 4, 2004 on the Department of Gender Equality.

The functions of the Department include the elaboration of gender equality policies and coordination of implementing and elaborating gender mainstreaming measures. Article 9

³⁴ The following materials have been used in the composition of this section: Ministry of Social Affairs of Estonia webpage: <http://www.sm.ee>; "Estonia. Report presented by the national delegation". 2006. In Human rights and economic challenges in Europe – gender equality. 6th European ministerial conference on equality between women and men. Stockholm 8-9 June, 2006, http://www.coe.int/T/E/Human_Rights/Equality/PDF_MEG-6_NR_Estonia.pdf; Sepper, Mari-Liis and Marika Lintam. 2005. Equal opportunities for men and women. Monitoring law and practice in Estonia. Open Estonia Foundation. Open Society Institute, http://www.soros.org/initiatives/women/articles_publications/publications/equal_20050502/eowmestonia_2005.pdf.

of the GEA provides a function of promoting gender equality of all agencies of state and local government. They are required to promote gender equality systematically and purposefully, and to change the conditions and circumstances which hinder the achievement of gender equality. Upon planning, implementation and assessment of national, regional and institutional strategies, policies and action plans, the agencies take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society. Considering the overall level of awareness on gender equality issues, guidelines and consultations need to be provided in order to guarantee the fulfilment of the promotion obligation provided in Article 9.

The Department has the power to draft governmental and ministerial policy decisions in the respective area; it participates in dialogue with the concerned interest groups, elaborates surveys and reports on the compliance of internal legislation with international standards. Its main concrete task is to coordinate the work of strategies to integrate the gender equality principle into all governmental and municipal politics. The Estonian National Gender Equality Strategy is being elaborated under the coordination of the Department of Gender Equality. The Department deals with all matters concerning gender equality, including drafting relevant legislation and policies, raising awareness, coordinating the implementation of gender mainstreaming, and cooperating with the academic community in producing research on gender issues.

In addition, the Department may counsel anyone on questions of equal treatment or help victims of discrimination. In order to fulfil its obligations, the decree grants the Department numerous rights. Among other things it may demand any department or unit of ministry or public offices under the responsibility of the Ministry of Social Affairs to provide information or help, create commissions or working groups, and to draft orders or suggestions for amending legal norms or signing treaties.

Working Group for Promoting Gender Equality

The Working Group for Promoting Gender Equality was established in February 2002. It was headed by the Minister for Social Affairs and composed of the representatives of different ministries. Its task was to develop a strategic development plan for eliminating the inequality of men and women and integrating gender equality into the action plans, programmes and projects of state institutions in different areas. The working group was rearranged into the Inter-ministerial Committee for Promoting Gender Equality by the Government Order from November 27, 2003. The Commission's essential task is to draft, according to Article 2 of the EC Treaty, a development strategy on incorporating the principles of eradicating gender inequality and promoting equality into plans of actions, projects and programmes for all public authority bodies, to develop a national action plan on gender equality and gender mainstreaming. It should also take suggestions on the adopted gender mainstreaming measures in the special fields. The Commission has a right to form working groups and expert commissions and to involve in its work specialists of specific fields or ministries. The members of the committee act also as ministerial focal points for gender equality issues. The financing of the commission is provided by the Ministry of Social Affairs. However, the Commission has a tendency to fall into a sort of lethargy due to the frequently revolving cadres.

Gender Equality Council

Another body aimed at modelling gender equality policies is the Gender Equality Council, which was created by the GEA. The Gender Equality Council is an advisory body within the Ministry of Social Affairs. Its tasks include approving general objectives of gender equality policy and advising the Government on matters related to the promotion of gender equality. The Council may present its opinion to the Government concerning compliance with the GEA of national programmes presented by the ministries.

Gender Equality Commissioner

The Gender Equality Commissioner is an independent and impartial expert who acts independently and monitors the implementation of the GEA. The Commissioner is appointed to the office by the Minister of Social Affairs for five years and its activities are financed from the state budget.

Pursuant to the Gender Equality Act the Commissioner monitors compliance with the requirements of the GEA, accepts applications from persons and provides expert opinions, analyses the effect of laws on the status of men and women in society, makes proposals to the Government of the Republic and to government agencies, as well as to local governments and their agencies, regarding alterations and amendments to legislation, advises and informs the Government of the Republic, government agencies and local government agencies on issues related to implementation of the Gender Equality Act, and shall take measures to promote gender equality. The GEA created a new institution that aims to combat discrimination and to promote gender equality. The most important new regulation grants the Commissioner powers to accept applications from persons and provide opinions concerning possible cases of discrimination. The purpose of an opinion is to provide an assessment which, in conjunction with this Act, international agreements binding on Estonia and other legislation, allows for an assessment of whether the principle of equal treatment has been violated in a particular legal relationship. In order to provide an opinion, a Commissioner has the right to obtain information from all persons who may possess information which is necessary to ascertain the facts relating to a case of discrimination, and demand written explanations concerning facts relating to the alleged discrimination based on sex, and submission of documents or copies thereof. Without the consent of the applicant, the Commissioner may disclose to the public only the content of an application concerning which proceedings are conducted. In the course of his or her activities, the Commissioner analyses the effect of legislation on the situation of women and men in society, and makes proposals to the Government for amendments to legislation. The GEA entered into force on May 1 and at the beginning of October 2005 the Gender Equality Commissioner was appointed and has already received several complaints, but the institution as such will still need to be developed in order to guarantee the necessary effectiveness of the work.

The Chancellery of Justice

The institution was established in 1992, when the Constitution was adopted by referendum. The Constitution and the Chancellor of Justice Act form the legal bases of the Chancellor of Justice's activities. The Chancellor is appointed by the Parliament at the proposal of the President of the Republic for a term of seven years. Once a year, the Chancellor presents an overview of his activities to the Parliament.

An important legislative change took place on February 25, 1999 when the Act on the Chancellor of Justice was amended creating a new legal remedy for victims of discrimination.

The Chancellor of Justice is an independent official who reviews the legislation of general application for conformity with the Constitution of the Republic of Estonia and other acts. The Chancellor of Justice also has certain powers similar to the institutions of Ombudspersons in Scandinavian legal systems, meaning that everyone has the right of recourse to the Chancellor of Justice in order to have individual rights protected by way of filing a complaint to verify whether a state agency, local government agency or other persons performing any public function adheres to the principles of observance of the fundamental rights.

The amendment to the Act on the Chancellery of Justice provides a function of promoting gender equality and applying the equal treatment principle. From 2004 everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by filing a petition to request verification as to whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration. The Chancellery is therefore competent to: analyze the effect of the implementation of legislation on the condition of different social groups; inform the Parliament, Government, local government and the public of how the principles of equality and equal treatment are applied; make proposals for legislative amendments to the Parliament, Government, local government bodies and employers; promote, in the interests of adherence to the principles of equality and equal treatment, the development of national and international cooperation between individuals, legal persons and agencies; and promote, in cooperation with other legal and natural persons, the principles of equality and equal treatment. It should be noted that the Chancellery of Justice will perform the aforementioned tasks only in the course of her or his main functions. According to the GEA, disputes concerning discrimination shall be resolved in court and also pursuant to the procedure provided for in the Act on the Chancellor of Justice, the Act on Gender Equality or other acts. Upon violation of a prohibition of discrimination in employment (including gender difference in pay) or publishing a discriminatory offer of employment or training provided for in Articles 6 and 8 of the GEA, an injured party may demand compensation for damage and termination of the harmful activity. An injured party may, in addition, demand a reasonable amount of money to be paid to the party as compensation for non-patrimonial damage caused by the violation. One must emphasize that the compensation claim may be presented solely before the court of law. Neither labour dispute committees nor any other legal body may entertain such a claim. Upon determination of the amount of compensation, a court shall take into account the scope, duration and nature of the discrimination, and also whether the violator has eliminated the discriminating circumstances or not.

The institution of the Chancellor of Justice is vested also with conciliatory functions. With regard to legal remedies available for victims of discrimination, the Chancellor of Justice commences proceedings in cases in which a petitioner personally or through the representative refers to a state agency whose activities have violated the person's fundamental rights.

Through the recent amendment to the act in question, the Chancellor was given additional supervisory competence over the observance of fundamental rights and freedoms. In order to provide additional recourse for victims of discrimination, a conciliation procedure

to be conducted by the Chancellor of Justice was instated. The right to file a complaint has been granted to everyone who finds that a person or a private legal entity has discriminated against him or her on the basis of sex; race; nationality or ethnic origin; colour; language; origin; religion or religious beliefs; political or other opinion; property or social status; age; disability; sexual orientation or other attributes specified by law.

A precondition for initiating procedure of conciliation is that no court judgment shall have entered into force in the matter of the petition, and at the time of the filing of the petition, the matter shall not be subject to judicial proceedings or mandatory pre-trial complaint proceedings.

A significant development in the role of **NGOs** as promoters of gender equality is the amendment to Article 26 of the Act on the Chancellery of Justice which provides that in conciliation proceedings for resolution of discrimination disputes, a person who has a legitimate interest to control compliance with the requirements for equal treatment may also act as a representative. Trade unions and women NGOs may be considered as persons with a legitimate interest to submit a petition in the name of the victim initiating conciliation proceedings.

Law-making process

First of all, it is important to note- and take into account when dealing with histories of specific policies in the current deliverable- that Estonia's law-making and policy formation process is not overly transparent and it is difficult to trace who or which institution or organizations stood behind a particular initiative. In order to get an adequate picture of key actors or voices (especially non-governmental ones) which have exercised a decisive influence upon the process – unless the whole process has not become for some reason a matter of a heated public debate in media – one usually has to have access to such information through personal connections or to be close to where such developments take place. It is not rare that even experts do not know who exactly stood behind certain policy initiatives. Otherwise, drafts, as seen from the official explanatory memorandums accompanying each of them, are mostly prepared by ministerial officials. This, in turn, does not mean that there were never NGOs involved in the process, but it can happen that in the end they are simply not mentioned. However, the number of such policy processes with active involvement from NGOs is rather negligible. They have stepped in only at the most crucial legislative moments and such occasions are also documented in the current report. In all other cases, unless stated differently, governmental initiatives have not apparently conflicted with civil society's pursuits or policy processes have been instigated solely by governmental actors.

The law-making process in Estonia consists of several phases. The first phase of law-making consists of all the preparatory work that is necessary before a draft law can be handed over to the Parliament (Riigikogu) for legislative proceeding. In this phase, the concept and structure of the future Act is worked out, its scope is determined, terms are defined and the initial version of the text is drawn up. In the explanatory memorandum accompanying each draft Act, its authors explain the purpose of the new Act.

The second phase in law-making begins with the initiation of the draft Act in the Riigikogu. Differently from the first phase, the second one is subject to strict regulation. Legislative proceeding of a draft Act in the Riigikogu can be initiated only by a member, faction or committee of the Riigikogu or by the Government of the Republic. For conducting the legislative proceeding of a draft Act, the Board of the Riigikogu appoints a committee to function as the leading committee of the draft Act. After the leading committee has taken a position on the draft Act, it submits the draft Act to the plenary assembly of the Riigikogu for deliberation. Deliberations of draft Acts at sittings of the Riigikogu are called readings. A draft Act has to pass three readings in all.

To sum up, when speaking of the actors who have raised and instigated issues and law-making processes relevant to gender equality in Estonia throughout the period monitored by Quing, the main bulk of documents and legislative initiatives still originate from ministerial offices, based on the surveys ordered by the ministries, which have been, for example, conducted by independent think-tanks such as PRAXIS³⁵, University of Tartu³⁶ or the Open Society Institute³⁷. The third sector or non-governmental organizations in Estonia are relatively weak and their voice is not sufficiently strong to be heard by policy makers and politicians. The way they channel the implementation of equality policies nowadays is mainly through projects, seminars, joint events etc, while governmental institutions generally display indifference to these issues. The most serious impetus in Estonia's law-making for several necessary gender equality policies, with concrete results, has derived from the necessary implementation of EU directives, and the international and EU pressure. The policy makers will then try to implement only the necessary minimum.

It should also be said that no serious feminist movement has been established in Estonia. Although all major women organizations that existed during the interwar period, that is prior to 1940, have been re-established, their activities mainly are confined to the education of their own membership and involvement in their own spheres of interest. The only exception to this are maybe two women's umbrella organizations – the Roundtable of Estonian Women's Associations and Cooperation Network of Estonian Women - which have occasionally been more vocal in some crucial policy formation processes and expressed their opinion on separate issues.

In all, mechanisms of civil society in Estonia are still in their formative and developing stage. This has left the imprint of its "absence" in the formation of many of the issue histories chosen by the Quing project.

Gender equality monitoring and implementing mechanisms, gender budgeting

In all, the main institution that has been created to implement the equality policies in Estonia is the Gender Equality Department in the Ministry of Social Affairs. Monitoring of the implementation is done by the Gender Equality Commissioner. Evaluation takes place primarily through international (UN, European Council, EU) reports, and by some solitary surveys commissioned by the Ministry of Social Affairs. There is, of course, international

³⁵ <http://www.praxis.ee/>

³⁶ http://www.ut.ee/index.aw/set_lang_id=1

³⁷ <http://www.oef.org.ee/et/sisu/info/Info/>

monitoring of the processes in the form of systematic and regular reports. In the case of the application of structural funds, the consideration is limited only to the number of work places that have been created for men and women, and while educational and medical databases do all contain data on sex, nobody is analysing them from the gender sensitizing aspect.

There is no special institution in Estonia which would monitor the gender equality situation according to some established indicators, such as the indicators created at the level of the EU Council of Ministers to monitor the accomplishment of the Beijing platform. National statistics are still gathered only by the Statistical Office of Estonia. However, its employers have been schooled to handle the gender-related statistics. Nevertheless, there are random and separate quantitative surveys conducted by universities, ministries and research units whose databases remain in the respective institutions. In spite of this, it is difficult to develop any indicators as they all have different theoretical and methodological approaches.

What is hoped now is that, for example, entrepreneurs will start to be gender sensitive while handling their personnel data. This would be done according to the governmental decree which hopefully will be enforced in the near future. For Estonia it would be a big step ahead when personnel data could be analyzed from a gender perspective. As to the current situation, statistics are often gathered in the form of tables where many features are combined.

The review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action (report by the Finnish Presidency in 2006) reveal also the use of the main instruments of gender mainstreaming in the EU member states. According to the review, gender impact assessment in law drafting in Estonia is practically an unknown concept. Gender impact assessment in the drafting of various kinds of policy programmes, action plans and development projects is still at its initial stage. Gender budgeting is practically an unknown concept in Estonia.

NON-EMPLOYMENT

Introduction to the sub-issues and topics

In Estonia, the topics within non-employment most relevant for the QUING project are the following:

- Tax-benefit policies
- Reconciliation of work and family life
- Access to the labour market
- Equal Pay/gender pay gap
- Other

The period after 2000 until 2004 was significantly influenced by accession to the European Union and the harmonisation of the national legislation with the EU acquis. In this period equal treatment and anti-discrimination provisions were introduced into the labour legislation and the Gender Equality act was adopted.

One of the key topics within non-employment is the **reconciliation of work and family life**, where the main issues are pregnancy and maternity leave, parental leave, family and parental benefits, part-time work and flexible working time. Provisions regulating these policies are dealt with in different laws, e.g. the Holidays Act, the State Family Benefits Act, Labour Market Service Act, Act on Parental Benefit, which have been amended over the period covered by QUING. This period is also marked by evident changes in the attitudes and values of Estonians about gender equality in the area of employment and family life. The results of several surveys carried out in Estonia in the period 1999-2003 demonstrated that at the end of the 1990s and early 2000s mother's employment was no longer seen as a hindrance to creating emotional bonds with the child, as it was perceived in the early 1990s, and that career and economic independence is equally important for women and men.

The main shifts in the **tax-benefit policies** concern family and parental benefits. Parental benefit was introduced in 2004 to compensate the loss of income due to raising a small child and help to reconcile work and family life. While the state's family benefits (child birth-, child- and childcare allowance, single-parent's child allowance, conscript's child allowance and foster care allowance) are a general right for a parent or caregiver, the right to parental benefit – a wage compensation - derives from employment.

Reforms in the pension system were introduced in 2000 by adopting the State Pension Insurance Act. One of the most important principles of the Act is the equalisation of the retirement age of women and men at 63 years by 2016. According to the Act a 2-year pensionable service for each child is granted to the parent who has raised a child for at least 8 years. This provision is intended as a compensation for the child care work that is carried out by one of the parents, the majority of whom are mothers.

A critical area from a perspective of equal treatment is the issue of **equal pay / gender pay gap**, which has been strengthened by transposition of the EU legislation. The Act on Wages and the Gender Equality Act prohibit the unequal treatment of women and

men in remuneration for the same or equivalent work. The Act on Wages also prohibits an increase or decrease in wages on the basis of an employee's sex, race, ethnic origin, marital status or family obligations etc.

However, Estonia remains among the EU countries with the highest gender pay gap. Female employees continue to earn almost 25 percent less than their male counterparts. Concern extends to the differences in pensions between women and men, where among people receiving a national pension (the lowest type of pension) there are eight times more women than men. The monitoring report on equal opportunities for women and men in Estonia, prepared by the Open Society Institute/Network Women's Programme, recommends several measures for closing the gender pay gaps, among which are the harmonisation of the concept of 'equal pay for work of equal value' in national legislation and strengthened monitoring in respect of the principle of equal pay by Labour Inspections.³⁸

In relation to **care work and informal work**, the main issue has been the provision of childcare as regards reaching the Barcelona targets for increasing the number of pre-school children in childcare facilities (nurseries and kindergartens). In Estonia, childcare is mainly provided by the parents, especially for children up to 3 years old, particularly due to the lack of places in nurseries and kindergartens and the high price of childcare services. However, no additional provisions regarding childcare facilities or services have been initiated recently in Estonia. Affordable and quality childcare services and increased inclusion of pre-school children remain future challenges for care and reconciliation policies.

Intersectionality of gender and other categories (disabled people, age, ethnic origin, race) emerged mainly in relation to access to employment, equal pay and gender differences in pensions.

Actors

Parliament

Social Commission of the Parliament

Constitutional Commission of the Parliament

State Institutions and Agencies

Ministry of Social Affairs³⁹

Ministry of Justice⁴⁰

Ministry of Finances⁴¹

Ministry of Population Affairs⁴²

Social Insurance Board⁴³

Estonian Labour Market Board⁴⁴

³⁸ Sepper, Mari-Liis and Linntam, Marika (2005) Equal Opportunities for Women and Men: Monitoring law and practice in Estonia. Open Society Institute

³⁹ <http://www.sm.ee/>

⁴⁰ <http://www.just.ee/>

⁴¹ <http://www.fin.ee/>

⁴² <http://www.rahvastikuminister.ee/>

⁴³ <http://www.ensib.ee/>

Confederation of Estonian Trade Unions⁴⁵
Estonian Employers' Confederation⁴⁶
Estonian Health Insurance Fund⁴⁷
Estonian Tax and Customs Board⁴⁸

Experts

Stefan Clauvert, lawyer of European Trade Union Confederation, NETLEX
Olavi Kärnsa (expert on self-employment)

Advisory bodies

Medical Faculty of the University of Tartu⁴⁹

International influence

Directives of the European Commission
International Labour Organization

NGOs

Estonian Women's Association (Cooperation Network of Estonian Women)⁵⁰
Estonian Women's Association's Round Table⁵¹
Open Society Institute⁵²

Timeline

Pre-QUING period

1992

Tax-benefit policies

The Holidays Act (now repealed). The Act entitles a woman to paid pregnancy leave and maternity leave of 18 weeks, in the case of a multiple birth or a delivery with complications 20 weeks. An adoptive parent of a child of up to one year of age is granted a leave of 10 weeks for which health insurance compensation is paid.

Parental leave is granted to a child's mother or father at their request until the child attains three years of age. For the duration of parental leave, an employment contract is suspended

⁴⁴ <http://www.tta.ee/>

⁴⁵ <http://www.eakl.ee/>

⁴⁶ <http://www.ettk.ee/>

⁴⁷ <http://www.haigekassa.ee/>

⁴⁸ <http://www.emta.ee/>

⁴⁹ <http://www.med.ut.ee/>

⁵⁰ <http://www.ewl.ee/>

⁵¹ <http://www.enu.ee/enu.php>

⁵² <http://www.oef.org.ee/et/>

and for this period of time the employee is paid a child care allowance by the state, pursuant to the State Family Benefits Act.

Compensation for the period of pregnancy leave and maternity leave is paid pursuant to the Health Insurance Act.

Pursuant to the Superannuated Pensions Act, persons who are engaged in a certain profession have the right to retire before the general retirement age. The list of these professions contains more traditionally male professions (defence forces, police, fire-fighting, shipping, aviation, mining, etc.) and less traditionally female professions (textile workers, nursing home personnel, etc.).

Pursuant to the Old-Age Pensions at Favourable Conditions Act, special pensions are provided to those persons who have been engaged in hazardous professions. However there are more men employed in such professions and hence proportionally more men among recipients of this special pension.

Reconciliation of work and family life

The Holidays Act (now repealed) entitles women before or after pregnancy leave or maternity leave to receive a holiday in full during the first working year regardless of the amount of time worked. Men whose wives are on pregnancy leave or maternity leave have the same right. An employer is required to grant a holiday at the time requested to a woman raising a child up to three years of age. The provision is valid also for a man raising a child (children) alone. The Act sets out the granting of pregnancy leave and maternity leave: based on a certificate for maternity leave, a woman is granted pregnancy leave of 70 calendar days before giving birth and maternity leave of 56 calendar days after giving birth. In the case of a multiple birth or delivery with complications, a maternity leave of 70 calendar days is granted. Pregnancy leave and maternity leave are added together and granted in full, regardless of the date of birth of the child.

The Act entitles a mother or father of a child to parental leave at his or her request until the child attains three years of age. For the duration of a parental leave, an employment contract is suspended.

A mother or father is granted an additional child care leave of three calendar days per working year at his or her request if the mother or father has one or two children under fourteen years of age, and six calendar days if the mother or father has three or more children under fourteen years of age or at least one child under three of age. (A guardian raising a child without a parent is also entitled to such leave).

According to the Employment Contracts Act it is prohibited for an employer to terminate an employment contract with a pregnant woman or a woman raising a child under three years of age, except in cases specifically provided for by law.

Access to the labour market

According to Article 29 of the Constitution, an Estonian citizen has the right to freely choose his or her sphere of activity, profession and place of work. The state organizes vocational

training and assists persons who seek employment in finding work and supervises working conditions.

The Employment Contracts Act does not contain a clearly defined legal norm that would establish the right to equal conditions in access to employment and application of equal selection criteria. According to Article 19 (2), it is not illegal to take into account the sex of an employee in hiring or assigning duties if this is unavoidable due to the nature of the work or working conditions. According to Article 35 of the Act, it is prohibited to hire and employ women for heavy work, work which poses a health hazard or underground work. The list of work which is prohibited for women is determined by the Government of the Republic regulation no. 214. The list contains more than 40 jobs from the area of production where employment of women is prohibited. As all labour legislation is being harmonized with the EU law, this list is a kind of relic from the Soviet era and needs to be reviewed.

Primary Sources:

State Gazette 1992, 37, 481. Puhkuseseadus (Holidays Act). 7 p., E-text.

State Gazette 1992, 15/16, 24. Töölepingu seadus (Employment Contracts Act). 45 p., E-text.

State Gazette 1992, 26, 349. Eesti Vabariigi Põhiseadus (The Constitution of the Republic of Estonia). 27 p., E-text.

State Gazette 1992, 21, 294. Väljateenitud aastate pensionide seadus (Superannotated Pensions Act). 7 p., E-text.

State Gazette 1992, 21, 292. Soodustingimustel vanaduspensionide seadus (Old-Age Pensions at Favourable Conditions Act). 5 p., E-text.

1993

Tax-benefit policies

In the pension system regulated by the State Allowances Act there have been no major differences between average pensions of men and women.

The formula for calculating old-age pensions used so far (base amount plus pensionable service component) brought to the same level people who previously had different income because the pension did not depend on the earlier income but only on the length of pensionable service. Such a system was more favourable towards women. The equalized pension system was like a kind of compensation for earlier wage differences between men and women.

According to the Employees Disciplinary Punishment Act a female employee shall retain at least 70 per cent of the wages payable to her after the deduction of a fine if the employer has a document certifying that the employee is pregnant (Article 18).

According to the act it is prohibited to impose suspension from work without pay on an employee if the employer has a document certifying that the employee is pregnant or the mother of a disabled child or a child under three years of age, is raising either a disabled

child or a child under three years of age without a mother, or is the guardian or a caregiver of a disabled child (Article 20).

Access to the labour market

The Collective Agreements Act stipulates that terms and conditions of a collective agreement which are less favourable to employees than those prescribed under other laws shall be invalid. There is currently no special provision on equal pay in collective agreements.

Primary Sources:

State Gazette 1993, 15, 256. Riiklike elatusrahade seadus (State Allowances Act). 14 p., E-text.

State Gazette I 1993, 26, 441. Töötajate distsiplinaarvastutuse seadus (Employees Disciplinary Punishment Act). 7 p., E-text.

State Gazette I 1993, 20, 353. Kollektiivlepingu seadus (Collective Agreements Act). 5,5 p., E-text.

QUING period

1995

Tax-benefit policies

The Social Protection of the Unemployment Act (adopted in 1994, entered into force in 1995) regulates the registration of persons as unemployed and the payment of state unemployment benefits, single benefits and stipends for unemployed persons through employment offices. Persons who have been employed or engaged in an activity equal to work for at least 180 days during the twelve months prior to registration as unemployed have the right to receive the state unemployment benefit. Exceptions are enumerated in the Act.

Benefits are generally paid for up to 270 days during the period a person is registered as unemployed, an unemployed woman has the right to continue receiving the state unemployment benefit after the referred period until giving birth, if her due date for delivery as calculated by a doctor is within seventy calendar days.

Primary Sources:

State Gazette I 1994, 81, 1381. Töötü sotsiaalse kaitse seadus (Social Protection of the Unemployed Act). 7 p., E-text.

1996

Reconciliation of work and family life

The Public Service Act (adopted in January 1995, entered into force in January 1996) stipulates that a pregnant woman or a person raising a disabled child, one who is disabled from childhood or child less than three years of age shall not be permitted to be sent on official travel without the person's consent. An official during her pregnancy, or a person who

raises a child under three years old, may not be released from service due to redundancy, long-term incapacity for work or health condition, or based on the results of evaluation.

Access to the labour market

The Individual Labour Dispute Resolution Act regulates the procedure and conditions for resolving individual labour disputes between employees and employers, both of whom have the right to recourse to labour dispute committees or to the courts in order to resolve such disputes. No discrimination on the basis of sex has been ascertained regarding individual labour disputes.

According to Article 87 of the Act, if the termination of an employment contract is declared unlawful, an employee has the right to reclaim his or her former position. In such a case, a labour dispute resolution body shall issue a decision on the reinstatement of the employee to his or her former job or position. If an employee contests the lawfulness of the termination of his or her employment contract but does not request reinstatement, a labour dispute resolution body shall, upon declaring the termination of the employment contract unlawful, deem the employee to have left employment upon his or her own initiative as of the date that the decision of the labour dispute resolution body is made public.

Equal pay /gender pay gap

The Republic of Estonia ratified the ILO Convention no. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, as well as Article 4 of the European Social Charter.

Primary Sources:

State Gazette I 1995, 16, 228. Avaliku teenistuse seadus (Public Service Act). 55 p., E-text.

State Gazette I 1996, 3, 57. Individuaalse töövaidluse lahendamise seadus (Individual Labour Dispute Resolution Act). 13 p., E-text.

1998

Tax-benefit policies

The State Family Benefits Act (now repealed) which was enforced in 2002 did not change the main principles of the 1998 Act. See State Family Benefits Act in 2002.

The Act regulates the following benefits: birth grant; child benefit; maintenance allowance (since 2000, childcare allowance); supplementary maintenance allowance; single parent's allowance; conscript's child allowance; school grant; foster care allowance; start-independent-life allowance.

Access to the labour market

Article 5 of the Advertising Act stipulates the following: An advertisement is offensive if it is contrary to good morals and customs, calls on people to act unlawfully or to violate prevailing standards of decency, or if it contains such activities. An advertisement is considered

offensive in particular if the advertisement presents, incites or endorses discrimination on the grounds of nationality, race, colour, sex, age, language, origin, religion, political or other opinion, and financial or social status or other circumstances.

Although the Act does not refer specifically to job advertisements, it has been suggested that job advertisements which refer to the grounds listed in the provision on non-discrimination would violate the law.

Primary Sources:

State Gazette I 1997, 42, 676. Riiklike peretoetuste seadus (State Family Benefits Act). 10 p., E-text.

State Gazette I 1997, 52, 835. Reklaamiseadus (Advertising Act). 10 p., E-text.

1999

Reconciliation of work and family life

According to the Occupational Health and Safety Act, the employer is required to create suitable working and rest conditions for pregnant women and women who are breastfeeding. The employer is required to comply with the restrictions provided for by laws to ensure the safety of pregnant and breastfeeding women. Pregnant and breastfeeding women should have the possibility to lie down in appropriate conditions in the rest area.

Access to the labour market

The International Labour Organisation (ILO) started in 1999 a programme “More and better jobs for women” in Estonia. The main aim of the programme was to shape a favourable business climate for women and to provide business training. Lecturers have been leading Estonian specialists as well as experts from Finland. By the end of 2000, about 1000 women had participated in the training.

Equal pay /gender pay gap

In order to reduce wage discrimination, a brochure based on the EU Code of Practice was published by the Ministry of Social Affairs in Estonian. The publication is called “Guidelines for equal pay for equal work to men and women” and has been distributed in public agencies as well as among representative of non-profit associations.

Other

In 1999, a new employment and training development plan was drawn up for the period 2000-2003. One of the priorities laid down in the plan is to guarantee equal opportunities for men and women in the labour market. The plan provides for the improvement of national statistics, including gender-sensitive indicators of administrative statistics, methodology, analysis and presentation of data collection. Implementation of the plan will enable the future collection of more adequate and analysable data on the situation of women in the labour market.

Primary Sources:

State Gazette I 1999, 60, 616. Töötervishoiu ja tööohutuse seadus (Occupational Health and Safety Act). 26 p., E-text.

2000**Tax-benefit policies**

According to the Labour Market Service Act, employers are paid a labour market service subsidy through the employment office if the employer employs an unemployed person with a lower competitive ability. Unemployed pregnant women and persons raising a child under six years old are also considered as unemployed persons with a lower competitive ability. When employing full-time an unemployed pregnant woman or a person raising a child under six years old, the employer has the right to a labour market subsidy to the amount of the minimum monthly wage in the first six months, and half of the minimum monthly wage in the following six months. Under the Act, the registered unemployed persons have the right to get the wage subsidy to the amount of 100 percent of the minimum wage during the first six months and 50 percent of the minimum wage during the next 6 months of his/her employment period.

The State Pension Insurance Act entered into force from 1 January 2000 (now repealed after the new act was adopted in 2002). One of the most important principles of the Act is equalization of the retirement age of men and women at 63 years by 2016.

The Act took into consideration the EU directive 79/7/EEC of the gradual implementation of the principle of equal treatment of men and women in social insurance.

There are benefits in the pension system that women use more often than men. There is a provision in the State Pension Insurance Act which grants one of the parents 2 years of pensionable service per each child whom the parent has raised for at least eight years. Although the provision extends to both the mother and father, in reality it is mostly used by mothers.

Among people receiving the lowest type of pension – national pension – there are eight times more women than men. One reason is the fact that women more frequently lack the necessary 15 years of pensionable service to receive a general old-age pension. Another factor is the higher age of the national pension – 65 years for men and 60 years for women, and the shorter average life expectancy of men.

Pursuant to the Social Tax Act, the State shall pay social tax on the basis of the minimum monthly wage for persons who are on parental leave with a child of up to 3 years of age or for one unemployed parent who raises a child of up to 3 years of age (Article 6). They will also have the right to all medical examinations and medical services funded by the health insurance fund.

Pursuant to the Social Benefits of Disabled Persons Act, as of 1 January 2000, monthly allowances will continue to be paid to a single disabled parent, but the range of eligible persons is extended to include one disabled parent who is married. (According to the Child

Benefits Act, until 31 December 1999, a single parent's child allowance is paid to a single disabled parent at 1½ times the normal child allowance rate).

Access to the labour market

Under the Labour Market Service Act, the following registered unemployed persons are considered less competitive in the labour market: disabled persons; pregnant women and women who are raising children under six years of age; young people aged 15–24; and people released from prisons. The level of the wage subsidy is 100 percent of the minimum wage during the first six months and 50 percent of the minimum wage during the next 6 months of his/her employment period.

In the framework of Phare 2000, the project "Support to the Balanced Development of Labour Market Services" will be implemented. The project will start in 2001 at the latest and within it a system for monitoring and assessing labour market policy will be worked out. Systematic assessment of the effects of labour market policy will enable increased efficiency and the orientation of labour market measures to different target groups, including women, on the basis of objective information.

The government will finance from the state budget the preparation of the programme "Increasing Employment, Avoiding Long-term Unemployment and Prevention of Exclusion from Employment of Persons Belonging to Risk Groups". Promoting of equal opportunities for women and men is integrated in this programme as a horizontal dimension.

Equal pay /gender pay gap

In May 2000, Estonia ratified the Amended and Revised European Social Charter. The proceeding of the charter stirred up public criticism and discontent from the women's organizations as the Government initially wanted to exclude several key articles, justifying it with the reasoning that the State should not ratify something which it cannot currently fulfil. Amongst the articles which the Coalition wanted to leave out was article 4/3 (to recognize the right of men and women workers to equal pay for work of equal value). The most vocal in the protests against these exclusions was the Estonian Women's Association, supported also by other women's organizations. Eventually the final version of the Charter, which was adopted by the Parliament, included article 4/3. (See also under sub-issue Other).

The Trade Unions Act gives trade unions authority to play an important role in drawing the attention of state supervisory bodies to violations of the principle of equal pay.

Other

In May 2000, Estonia ratified the Amended and Revised European Social Charter. The proceeding of the charter stirred up public criticism and discontent from the women's organizations as the Government initially wanted to exclude several key articles, justifying it

with the reasoning that the State should not ratify something which it cannot currently fulfil. The articles which the Coalition wanted to leave out were the following: 20 (all workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) and 26 (all workers have the right to dignity at work). The most vocal in the protests against these exclusions was the Estonian Women's Association, supported also by other women's organizations. Eventually the final version of the Charter, which was adopted by the Parliament, included the article 20.

Estonia signed the European Social Security Code on 24 January 2000.

According to Trade Unions Act, in terms of collective labour relations, trade unions can initiate proceedings in equality matters. Article 24(2) of the Trade Unions Act stipulates that if an employer violates a legal provision and a worker who is a member of a trade union accordingly submits a complaint to the union, then the union can order that the violation be stopped and inspect all relevant documents and data.

According to the decision of the meeting of the government on April 18, 2000 on drafting the law on equality between women and men, the draft law will contain the prohibition of discrimination in employment in matters such as hiring, determination of wages, working conditions, sending on vacation etc. The exact norms and requirements will be established by laws regulating the respective fields, for example, the requirement of equal pay by the Wages Act, prohibition of discrimination with respect to working conditions by the Employment Contracts Act etc.

In assessing risks, employers must also take into consideration the biological risk factors which have been established by the Government Regulation from May 5, 2000.

If the assessment shows the existence of a risk, an employer must take measures to guarantee safe working conditions, to consult the working environment council and, if necessary, a doctor; and inform the female worker and a working environment representative of the results of the assessment and of the measures to be taken. Furthermore, an employer must ensure to a pregnant woman the use of a rest room with the opportunity to lie down, and an employer is required to grant a pregnant woman free time for ante-natal examination. If such examination takes place during the working time, it must not be deducted from the wages. In order to ensure a safe working environment for a female worker, the employer may temporarily facilitate the working conditions, change the organisation of work (including the shortening of the working day and enabling suitable breaks) or temporarily transfer the female worker to a daytime or evening job. If the referred measures do not ensure safe working conditions for the breastfeeding worker, the employer is obliged temporarily to transfer the female worker to easier work or another job, taking into account her abilities and professional experience. One of the measures that an employer is allowed to use is temporary transfer to a daytime or evening job. If the employer cannot temporarily offer the female worker an easier or other work, the employer must temporarily release the worker with the consent of the labour inspector. The doctor shall decide on the duration of such temporary release.

Primary Sources:

State Gazette I 2000, 57, 370. Tööturuteenuse seadus (Labour Market Service Act). 9 p., E-text.

State Gazette I 1998, 64/65, 1009. Riikliku pensionikindlustuse seadus (State Pension Insurance Act). 27 p., E-text.

State Gazette II 2000, 15, 93. Parandatud ja täiendatud Euroopa Sotsiaalharta ratifitseerimise seadus (Amended and Revised European Social Charter). 25 p., E-text.

Stenogram of the parliamentary debate on the adoption of the European Social Charter: 10.11.1999. 9 p., E-text.

Stenogram of the parliamentary debate on the adoption of the European Social Charter 31.05.2000. 10 p., E-text.

State Gazette I 2000, 57, 372. Ametiühingute seadus (Trade Unions Act). 12 p., E-text.

State Gazette I 2000, 102, 675. Sotsiaalmaksuseadus (Social Tax Act). 13. p., E-text.

State Gazette I 1999, 16, 273. Puuetega inimeste sotsiaaltoetuste seadus (Social Benefits of Disabled Persons Act). 11 p., E-text.

The Government Regulation "Bioloogilistest ohuteguritest mõjutatud töökeskkonna tervishoiu ja tööohutuse nõuded" (Occupational health and safety requirements deriving from the biological risk factors). 17 p., E-text.

Protest letter of Estonian Women's Association:

Oviir, Siiri. 1999. Naisi ei tohi diskrimineerida (Women should not be discriminated).

Postimees, November 9, Opinions section; <http://arhiiv2.postimees.ee:8080/leht/99/11/09/>; 1 p., E-text.

Secondary Sources:

Hammer-Pratka, Kati. 2000. Eesti naisorganisatsioonide seisukoht sotsiaalpoliitika mõjutamise suhtes seoses sotsiaalharta mitteratifitseerimisega Riigikogus (The position of Estonian women's organizations in affecting the social policy in relation to non-ratification of the Social Charter in the Parliament). *Newsletter of ENUT* (Estonian Women's Studies and Resource Centre) 2000/1, <http://www.enut.ee/enut.php?id=54#naisorganosatsioonid>.

Oviir, Siiri. 2000. Eesti ühinemine sotsiaalharta ja sellest tulenevad ülesanded (Estonia's accession to the Charter and tasks related to it). *Newsletter of ENUT* 2000/2, <http://www.enut.ee/enut.php?id=55#oviir>; 2,5 p., E-text.

Oviir, Siiri. 2000. Eesti naine väärib õiglust (Estonian woman deserves justice). *Postimees*, January 8, Opinions section; <http://arhiiv2.postimees.ee:8080/leht/00/01/08/>; 3 p.

Sepp, Eda. 2000. Eesti naised ja Euroopa Sotsiaalharta (Estonian women and European Social Charter). *Newsletter of ENUT* 2000/2, <http://www.enut.ee/enut.php?id=55#eda>; 5 p., E-text.

Valvet, Merle. 2003. Eesti peab esitama Sotsiaalharta täitmise aruande (Estonia has to present the report on the fulfilment of the Social Charter). *Newsletter of ENUT* 2003/1, http://www.enut.ee/lisa/uudised_2003_1.pdf; 2 p., E-text.

Tax-benefit policies

The Unemployment Insurance Act, which entered into force in 2001, provides for benefits upon unemployment, collective termination of employment contracts and insolvency of employers. The Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security is also transposed in the Act.

Reconciliation of work and family life

In 2001 a survey "Families with children and national family policy: problems of reconciling professional and family life and their connection with the demographic behaviour of the population" (Lastega pered ja riiklik perepoliitika: kutsetöö ja pereelu ühtesobitamise probleemidest ja nende seosest elanikkonna demograafilise käitumisega) was carried out, commissioned by the Office of the Minister for Population Affairs. The survey was conducted by researchers at the Institute of International and Social Studies of the Tallinn Pedagogical University and it focused on the situation of women with under 10 year old children in Tallinn in the labour market and on the most frequent obstacles to reconciling work and family life. For the first time on such a wide scale the survey raised the problem of the irreconcilability of work and family life in Estonia. The Committee was also concerned about the situation of young women who face difficulties on the labour market owing to the domestic and family responsibilities assigned to them.

Access to the labour market

In connection with European integration, a new National Employment Action Plan for the year 2002 was drawn up at the end of May 2001. Following the principles of the EU's employment policies the central activities of the plan are as follows: increasing employability, developing entrepreneurship and job creation, encouraging adaptability of businesses and their employees, and strengthening equal opportunities for women and men.

Equal pay /gender pay gap

The Confederation of Estonian Employees Unions' Action Guidelines for 2001–2005 promises to abide by the principle of equal pay for work of equal value.

Other

The "Occupational health and safety requirements for the work of pregnant women and women who are breastfeeding" have been established by the Government Regulation from February 7, 2001, with the aim of guaranteeing them a safe working environment. An employer is obliged to fulfil the occupational health and safety requirements set out in the Regulation if a female worker submits to the employer a doctor's written certificate concerning her condition. According to the Regulation, an employer has the duty to assess the risks inherent in all works which may prove dangerous and which are performed by or to which are exposed to pregnant women or women who are breastfeeding (for the purposes of this regulation a 'female worker' is a woman who is breastfeeding). On the basis of the

nature, degree and duration of risk factors, the safety or health risks of a female worker are assessed, as well as possible harmful effects on her pregnancy or on the health of the breastfed child. The Regulation establishes the list of works that pregnant women are not allowed to perform and of the works that women who are breastfeeding are not allowed to perform. Pursuant to the regulation a pregnant woman must not be obliged to work in hyperbaric atmospheres; where there is risk of infection with the rubella virus and toxoplasmosis, unless it is proved that the pregnant woman is protected against such infection by immunization; with lead and its toxic compounds; underground; at night, and with manual handling of loads. Breastfeeding women must not be obliged to work with lead and its toxic compounds and underground. The regulation is based on the European norms on safe working environment (Directive 92/85/EEC of the Council of the European Union). Pregnant workers are not obliged to perform night work. According to Article 3(4) of the Government Regulation, if night work may affect the health of a worker who is breastfeeding or the health of a breastfeeding child, an employer is obliged to temporarily transfer the worker to daytime work. If the labour inspector of the employer establishes that it is not possible for the employer to temporarily transfer the worker to daytime work, the worker concerned is released from work for the period prescribed by a doctor.

Primary Sources:

State Gazette I 2001, 59, 359. Töötuskindlustuse seadus (Unemployment Insurance Act). 30 p., E-text.

The Government regulation "Töötervishoiu ja tööohutuse nõuded rasedate ja rinnaga toitvate naiste tööks" (Occupational health and safety requirements for the work of pregnant women and women who are breastfeeding). 3 p., E-text.

Results of the survey "Families with children..." are contained in the following collection: *Naine, perekond ja töö 2000. Pere-elu ja kutsetöö kokkusobitamise probleemidest väikeste lastega peredes* (Woman, family and work 2000: the problem of fitting family-life and work together in families with small children), ed. Leeni Hansson. Tallinn: Institute of International and Social Studies at Tallinn Pedagogical University. 200 p., E-text is not available.

2002

Tax-benefit policies

According to the Holidays Act, a mother or father shall be granted parental leave at his or her request for raising a child of up to 3 years of age. For the duration of parental leave, an employment contract or service relationship shall be suspended and the employee shall be paid a benefit pursuant to the Parental Benefit Act or a child care allowance pursuant to the State Family Benefits Act. Beginning from 2002, pregnancy and maternity leave benefits and parental benefits are calculated on the basis of the income that was earned during the previous year and was subject to social tax.

Amendment to the Public Service Act in 2002. Article 51 of the Act states that during pregnancy, an official shall be entitled, based on a certificate for sick leave prepared by a doctor, to temporary easement of her conditions of service or to a temporary transfer to

another position, except a position to be filled by way of competition. The difference in wages shall be compensated. If the easing of the conditions of service or the transfer provided is impossible, the official shall be released from the performance of her duties for the period prescribed in the certificate for sick leave and shall be paid a compulsory health insurance benefit.

According to the State Family Benefits Act, one of the goals of the act was to change the amount of the child allowance and to support children who are without parental care, by raising the allowance of the child under guardianship and establishing a new kind of family benefit – adopted child allowance.

At the same time, the general principles of the State Family Benefits Act adopted in 1999 were not changed.

According to Article 58 in the Health Insurance Act there is stipulation of the period of time serving as basis for calculation of maternity benefit or adoption benefit. Pursuant to this, a pregnant woman has the right to receive maternity benefit on the basis of a certificate for maternity leave for 140 calendar days or, in the case of a multiple birth or delivery with complications, for 154 calendar days if the pregnancy and maternity leave of the woman commences at least 30 calendar days before the estimated date of delivery as determined by a doctor. The number of the days by which the pregnancy and maternity leave of the woman commences later than the term provided for in this subsection shall be deducted from the period for which the woman has the right to receive maternity benefit.

If the conditions of employment or service of a pregnant woman have been eased during her pregnancy, the woman has the right to receive maternity benefit for 140 calendar days or, in the case of a multiple birth or delivery with complications, for 154 calendar days if the pregnancy and maternity leave of the woman commences at least 70 calendar days before the estimated date of delivery as determined by a doctor. The number of the days by which the pregnancy and maternity leave of the woman commences later than the term provided for in this subsection shall be deducted from the period for which the woman has the right to receive maternity benefit.

The persons specified in clause 5 (2) 4) or 5) or subsection 5 (3) of this Act have the right to receive maternity benefit for 140 calendar days or, in the case of a multiple birth or delivery with complications, for 154 calendar days on the basis of a certificate for maternity leave. The number of the days by which the certificate for maternity leave is issued later than the term provided for in subsection (1) of this section shall be deducted from the period for which the woman has the right to receive maternity benefit.

One person adopting a child under 10 years of age has the right to receive adoption benefit for 70 calendar days on the basis of a certificate for adoption leave.

Reconciliation of work and family life

The Holidays Act, with amendments was adopted by the parliament on April 4, 2001 and entered into force on January 1, 2002. The Act is in accordance with the following directives: 96/34/EC, 92/85/EEC, 93/104/EEC, 94/33/EEC, 97/81/EC. According to the act a father of the

new-born child will be entitled to an additional right for child-care leave for 14 calendar days during a mother's pregnancy and maternity leave. The holiday pay for father's additional child care leave is paid from the state budget. The amendment is a significant new right for fathers and clearly acknowledges that both men and women have family responsibilities.

According to the act, at the request of the employee, the employer is required to grant a holiday without pay to: a woman raising a child of up to fourteen years of age, a man (guardian) raising a child of up to fourteen years of age alone, one of the parents (guardian, caregiver) raising a disabled child.

However, according to the new regulation a man's right to holiday without pay is extended, regardless of the fact whether he raises the child of up to fourteen years of age alone or not. A parent, guardian or caregiver of a disabled child up to 16 years old is entitled to one day of additional holiday per month for which compensation is paid on the basis of average wage from the funds of the social insurance budget. A person raising a child under 1.5 years old is granted additional breaks to feed a child. These are included in the working time and are paid for on the basis of average wage from the fund of the social insurance budget.

Persons raising children under 14 years old or disabled children under 16 years old are entitled to work part-time. These persons may be required to work at night and on holidays or work overtime only with their own consent. Pregnant women are also entitled to part-time work. They may not work at night or on holidays even if they wish. Overtime work is also ruled out for them.

Another measure to support families is that a mother raising a child under 7 years old or a disabled child under 16 years old is not required to have previous employment in order to register as unemployed. In the absence of the mother or during the time when mother is employed the same provision applies to the father or guardian. When drawing up a schedule of annual regular vacations larger guarantees could also be given to persons raising children older than three years. For example, their vacations could coincide with the time of school holidays, etc. From the aspect of raising children it is important to regulate working time even more flexibly.

The adopted Working and Rest Time Act took into consideration the following European Council Directives: 93/104/EC (concerning the organisation of working time), 93/33/EC (Young Worker's Directive), 97/81/EC (concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC) and 92/85/EEC (measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding).

The employer is required to grant a leave from work to the pregnant woman for pre-birth medical examination at the time indicated by the doctor, and such time is considered to be included in the working time.

According to the Amendment to Act on Wages (Article 24¹), the act regulates guarantees for ante-natal examination to pregnant women in a way that average wages shall be continued for pregnant woman to whom an employer is required to grant free time for ante-natal examination indicated in a decision of a doctor.

Equal pay /gender pay gap

Amendments were made to the Act on Wages in 2001 concerning the equal pay principle for men and women. The act was then put in accordance with the Council Directive 75/117/EEC of 10 February 1975 on the Approximation of Laws of the Member States Relating to the Implementation of the Principle of Equal Pay for Women and Men, ILO Convention nr. 100 and Article 141 of Amsterdam Treaty. The amendment Act which was adopted on 16 of May 2001 will guarantee equal pay for the same work or work of equal value for both men and women. The principle of equal pay contributes to the elimination of discrimination between men and women. The worker has a right to receive equal pay and, in case of discrimination, file a claim for compensation. The Act entered into force on 1 of January 2002. According to the Wages Act, employers must inform employees of the legal framework concerning the principle of equal pay at the start of the employment relationship. This provision is significant not only because it serves an informative function for employees, but also because it places responsibility for imparting such information with the employers themselves.

Other

The approved National Action Plan for Employment foresees the steps to strengthen the policy of equal opportunities for men and women and to further promote gender mainstreaming.

Primary Sources:

State Gazette I 2001, 42, 233. Puhkuseseadus (Holidays Act). 10 p., E-text.

State Gazette I 2002, 62, 377. Avaliku teenistuse muutmise seadus (Amendment to Public Service Act). E-text.

State Gazette I 2001, 95, 587. Riiklike peretoetuste seadus (State Family Benefits Act). 13 p., E-text.

State Gazette I 2001, 17, 78. Töö- ja puhkeaja seadus (Working and Rest Time Act). 10 p., E-text.

State Gazette I 2001, 50, 287. Palgaseaduse muutmise seadus (Amendment to Act on Wages). 5 p., E-text.

State Gazette I 2002, 62, 377. Ravikindlustuse seadus (Health Insurance Act). 47 p., E-text.

Eesti Vabariigi tööhõive tegevuskava (National Action Plan for Employment). 43 p., E-text.

2003

Tax-benefit policies

In October 2003, the Estonian Women's Associations' Round Table (EWAR) sent the address to the Social Commission of the Parliament in relation to the proceeding of the Act on Parental Benefit. EWAR voiced concern that in the draft only the mother of the child can receive the benefit before the child attains six months of age. According to EWAR this was an example of discrimination against fathers, which would eventually have a negative effect

on women's status in society and in the labour market. However, EWAR's concern was ignored.

Reconciliation of work and family life

In order to improve reconciliation between work and family life, the office of the Minister of Population Affairs prepared a "Strategy on Implementing the Fundamentals of Population Policy 2005–2008". The strategy tries to craft measures that safeguard a better economic situation and a feeling of security among the families with small children. More precisely, this involves the redesign of the system of state benefits, including family benefits, in order to increase its efficiency; especially by supporting those families with children that are under economic stress, and by developing new options for childcare (for example, day-care). In other words, a favourable environment for the flexible reconciliation of work and family life is to be designed.

Primary Sources:

Address sent by Estonian Women's Associations' Round Table. 1 p., E-text.

Rahvastikupoliitika elluviimise strateegia 2005-2008 (The strategy of implementing the population policy 2005-2008). 38 p., E-text.

2004

Tax-benefit policies

Another important legislative development was the adoption of the Act on Parental Benefit, which was enforced on January 1, 2004.

The purpose of the Act is to compensate for the loss of income arising from raising a child and to support the reconciliation of work and family life. Persons who have not received income before the birth of a child shall be ensured income to the extent of the benefit rate. The right to receive the benefit has been granted to a parent, adoptive parent, step-parent, guardian or caregiver raising a child. Before the child attains six months of age, the mother of the child has the right to receive the benefit except in cases when the mother of the child has deceased; fails to perform the obligation to raise and care for the child arising from the Act on the Family; or the adoptive parent, guardian or caregiver has the right to receive the benefit. Fathers, however, do not have the respective right.

The amount of the benefit per calendar month shall be calculated on the basis of data concerning the social tax paid for the person, which is calculated as a percentage of the average income of the applicant for the benefit per calendar month. The amount of the benefit per calendar month shall be 100 percent of the above calculated average income per calendar month. The maximum amount of the benefit per calendar month, however, may be three times the average monthly income in Estonia, as approved by the Government. The benefit shall be granted for a 365-day period beginning with the date on which the right to receive the benefit arises.

The draft was developed according to the coalition's family and population policy. The main policy makers were the Ministries of Social Affairs and Finances.

Reconciliation of work and family life

With the amendments to the Act on Employment Contracts, the act now includes the definition of unequal treatment, exceptions to this principle and separate notions of direct and indirect unequal treatment. It is not considered discriminatory to grant preferences on grounds of pregnancy, childbirth, and providing care to minor or adult children who are incapacitated for work or to parents who are incapacitated for work.

Pregnant employees cannot be forced to perform any duties that may endanger their health nor work at night. Employers are required to ensure leave from work for pregnant employees for pre-birth medical examination without reducing the employees' salary.

Pregnant women cannot be required to go on business trips. Based on a certificate of sick leave issued by a doctor pregnant women can request temporary relief of working conditions or temporary transfer to another work. In that case, the employee is compensated the difference in wages in accordance with the procedure established in the Health Insurance Act.

The employer is prohibited to terminate the employment contract with a pregnant woman or a person raising a child under three years old, except in the case of liquidation of a company, agency or other organisation, declaring of the bankruptcy of the employer, unsatisfactory work results during a probationary period, violation of work duties by the employee, loss of trust in the employee, indecent act of the employee, or hiring of a full-time employee. However, even on the above grounds the employment contract with a pregnant woman or a person raising a child under three years old can only be terminated with the consent of a labour inspector.

Under the Gender Equality Act, employers have a duty to create working conditions which are suitable for both women and men and support the reconciling of work and family life, taking into account the needs of employees.

Access to the labour market

At the Annual Conference of Estonian Women's Organizations in January 2004, the appeal initiated by the Association of Estonian Women Entrepreneurs and the non-profit organization ETNA Eestimaal (entrepreneurship of rural women) was sent to the government. It contained the following suggestions: to establish a support and advisory system that would foster women's entrepreneurship, to conduct a survey that would monitor the gender aspect in entrepreneurship and to gender sensitize the collection of data that relates to entrepreneurship issues.

The greatest concern about the Act on Employment Contracts in force is that women are prohibited by a government decree to work in numerous jobs, which constitutes a case of 'overprotection'. The decree from 1992 establishes a list of difficult and unhealthy jobs prohibited for women and lists sanitary and general underground jobs women are not allowed to work in. Although Estonia promised to review this list of about 40 different jobs where women are not allowed to work, it has not yet done so.

The National Employment Plan, 2004 adopted by the Ministry of Social Affairs' Decree No. 170 of April 21, 2004, has an overall goal to increase employment, decrease long-term unemployment and prevent at-risk groups from "falling out" of the labour market. In order to achieve these goals, several gender specific means are mentioned and being deployed by the National Plan. The most important active employment measures include the establishment of public employment offices and their services; the training of unemployed workers; providing subsidies for employers who employ less competitive unemployed workers; and granting start-up capital to launch entrepreneurship activities. There are also plans to promote small entrepreneurship among unemployed women and to direct special attention to young women who enter the labour market for the first time, and women who want to return to work and who are willing to create their own working position.

Equal pay /gender pay gap

The Confederation of Estonian Trade Unions' Action Guidelines for 2004–2007 (point 3.4) provides the goal of complying with the principle of equal pay of female and male workers for work of equal value and the establishment of evaluation criteria of work of equal value. The Confederation considers it one of its tasks to increase the visibility and openness of wage systems.

According to the Gender Equality Act, the employer must not establish conditions for remuneration or other conditions which are less favourable regarding an employee of one sex compared to an employee of the other sex doing the same or equivalent work. The Act provides a basis to compare the wages of men and women doing the same or equivalent work. The Act is applicable for abolishing discrimination triggered by different systems of remuneration, classification of posts or criteria of evaluating work.

The employee has the right to demand that the employer explain the bases for calculation of salaries, and to get a written explanation from the employer within 15 working days concerning the employer's activities, if the employee is of the opinion that he or she has been discriminated against.

Other

On May 1, 2004 several amendments to the Act on Employment Contracts entered into force. The prohibition of unequal treatment as provided in the earlier version of this act was complemented by several norms. The act now includes the definition of unequal treatment, exceptions to this principle and separate notions of direct and indirect unequal treatment. The Act first abstains from using terms such as 'discrimination' and 'principle of equal treatment' (Articles 10(1) to 10(3)) and then uses the aforementioned terms alongside 'direct discrimination' and 'indirect discrimination'. The amendments in question provide a victim of discrimination with the right to demand compensation for harm incurred through unequal treatment.

Accordingly, Estonian legislation provides for the first time ever specific protection for employees who work part-time⁵³. Article 13(1) of this act stipulates that part-time workers

⁵³ The right to part-time work is seen here as a general category, not as a reconciliation measure for parents.

must have equally good working conditions as compared to full-time workers, unless unequal treatment is justified by objective circumstances that derive from law or collective agreement. The equal working conditions are determined through a comparison with those of full-time workers who work for the same employer and do the same or equal work. If this is deemed to be impossible, the collective agreement is to define a comparable full-time worker. In case there is no collective agreement, a comparison will be made with the worker doing the same or equal work in the same region as the part-time worker.

It is not considered discriminatory to grant preferences on grounds of pregnancy, childbirth, and providing care to minor or adult children who are incapacitated for work or to parents who are incapacitated for work.

Discrimination occurs where a person applying for employment or an employee is discriminated against on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in workers' associations, political opinions or membership in a political party or religious or other beliefs.

Employers are required to assess the exposure of women workers to factors dangerous for health, the nature, level and duration of such work, including the possible effect on pregnancy and breastfeeding. Women workers and their representatives should also be informed of the results of any risk assessment and safety and health measures that have been taken.

National Action Plan for Social Inclusion devises strategies that should tackle the following issues: access to resources and services, education, improving health and health related services, social protection, victim's protection, lessening risks of social exclusion, and lessening violence against women and trafficking in human beings.

Article 6 of the Gender Equality Act provides the framework and necessary definitions for prohibition of discrimination in professional life. In professional life, cases in which an employer selects for employment or a position, hires or admits to internship, promotes, selects for training or performance of a task or sends for training a person of one sex and overlooks a person with higher qualifications and of the opposite sex shall be deemed to be discriminating, unless there are strong reasons for the decision of the employer or such decision arises from circumstances not related to gender.

An employer discriminates against an employee when upon hiring it establishes conditions which put persons of one sex at a particular disadvantage compared with persons of the other sex. If an employer directs work, distributes work assignments or establishes working conditions in a way that persons of one sex are put at a particular disadvantage compared with persons of the other sex it is also deemed to be discriminatory.

When a person suspects discriminating behaviour the employer is required, at the person's request, and within ten working days as of submission of a pertinent written application, to provide a written explanation to the person. In the explanation the employer must submit information concerning the person who was selected, such as his or her length of

employment, education, work experience and other skills required for the work and other skills or reasons which give the person a clear advantage, or other reasons.

Under the Gender Equality Act a person can protect his or her rights also in the cases where the employer directs work, distributes work assignments or establishes working conditions such that persons of one sex are put at a particular disadvantage compared with persons of the other sex. The law prohibits the employer to limit the duration or extent of work due to pregnancy, child-birth or other circumstances related to gender.

The law requires employers to collect statistical data concerning employment which is based on gender and which allows, if necessary, the relevant institution and the employers themselves to monitor and assess whether the principle of equal treatment is complied with in employment relationships.

The employers have the obligation to inform employees of the rights guaranteed to them by the Gender Equality Act and regularly provide relevant information to employees and/or their representatives concerning equal treatment for men and women in the organisation and measures taken in order to promote equality. The Gender Equality Act also protects against the use of counter-measures by the employer.

The National Employment Plan foresees the development of flexible working hours in order to promote women's employment and to help reconcile work and family life. The Government has agreed to increase the budgetary resources for children's day care establishments.

Primary Sources:

State Gazette I 2003, 82, 549. Vanemahüvitise seadus (Act on Parental Benefit). 6 p., E-text.

State Gazette I 2004, 37, 256. Töölepingu seaduse muutmise seadus (Amendment to Employment Contracts Act). 8 p., E-text.

Riikliku tööhõive plaan (National Employment Plan). 62 p., E-text.

Eesti Ametiühingute Keskliidu tegevussuunad aastateks 2004-2007 (Confederation of Estonian Trade Unions' Action Guidelines for 2004–2007). 5 p., E-text.

Sotsiaalse kaasatuse riiklik tegevuskava (National Action Plan for Social Inclusion). 51 p., E-text.

State Gazette I 2004, 27, 181. Soolise võrdõiguslikkuse seadus (Gender Equality Act). 9 p., E-text.

Secondary Sources:

Muuli, Kalle. 2003. Vanemahüvitis – tähtis samm rahva säilimiseks (Parental Benefit – an important step for nation's survival). *Postimees*, December 31; <http://www.postimees.ee/010104/esileht/siseuudised/122918.php>; 1 p., E-text.

Oviir, Siiri. 2004. Võrdõiguslikkuse seadust on vaja (Law on Gender Equality is needed). *Postimees*, March 24; <http://www.postimees.ee/250304/esileht/arvamus/129845.php>; 3 p., E-text. Siiri Oviir was the member of the Parliament (Center Party).

Papp, Ülle-Marike. 2004. Soolise võrdõiguslikkuse seadus – positiivsed erimeetmed (Gender Equality Act – positive special measures). *Sotsiaaltöö* 6: 30-31

2005

Reconciliation of work and family life

National Action Plan for Estonia's economic growth and employment was approved by the Government on October 13, 2005, and is devised for the implementation of Lisbon Strategy. In order to reach the Lisbon goals, the Government planned to adopt certain measures, in particular regarding the improvement of the child-care system.

Equal pay /gender pay gap

The Confederation of Estonian Employees Unions' Action Guidelines for 2005–2009 promises to abide by the principle of equal pay for work of equal value.

Primary Sources:

Eesti majanduskasvu ja tööhõive tegevuskava 2005-2007 (National Action Plan for Estonia's economic growth and employment). 70 p., E-text.

Teenistujate Ametiliitude Keskorganisatsiooni TALO tegevussuunad aastateks 2005 – 2009 (Confederation of Estonian Employees Unions' Action Guidelines for 2005–2009). 9 p., E-text.

2006

Access to the labour market

Draft law on Labour Market Services and Benefits Act is being drawn up that will also prohibit discrimination against job seekers on the basis of sex.

2007

Tax-benefit policies

The amendment to the Parental Benefit Act was elaborated according to the article in Coalition's family and population's policy. The idea of the Act is to allow parents with young children to stay at home longer than before. The payment of the parental benefit will be prolonged by 120 days. According to the current law, the parental benefit is provided till the 455th day since the appropriation of the maternity benefit. The new law extends this period up to 575th day.

Persons who do not have the right to maternity benefit have the right to receive the parental benefit till the child is 18 months old (as compared to the 14 months of the current law). The Amendment will enter into force on January 1, 2008.

Primary Sources:

State Gazette I 2007, 44, 317. Vanemahüvitise seaduse muutmise seadus (Amendment to Parental Benefit Act); 6 p., E-text.

INTIMATE CITIZENSHIP

Introduction to the sub-issues and topics

In Estonia, the topics within intimate citizenship most relevant for the QUING project are the following:

- Reproductive rights, including abortion, reproductive assistance
- Civil partnerships and gay marriage, discrimination on the basis of sexual orientation
- Divorce, separation, marriage

One of the key sub-issues in intimate citizenship in Estonia is **reproductive rights** and issues associated with it, including family planning. These issues have been closely intertwined with the prevalent discourse in society about the continuation of Estonian people and sustainable development of the nation. While the period of late 1980s and early 1990s with its mood of optimistic expectancy and certain euphoria (regarding recreation of the independent state) induced a short-lived baby-boom, it was followed by a period of negative natural growth and fears of the looming future. The negative trends were not only related to the radical policy reform of the 1990s and the decreased economical security of families but also to the general European demographic trends and growing importance of individualistic values. The birth rate at the beginning of the millennium compared to the 1980s has decreased by almost half in absolute numbers. The latter developments, in turn, have induced a series of actions, from national plans and legislative measures to a call- at the top of almost every political party agenda- for families to have more children in relation to concern about Estonia's demographic curves. Hence, in talking about turning points, then one should point to the downward demographic turn of early 1990s, which was followed by a series of slogans and declarative programmes by politicians to produce offspring. Only when it was realized that empty words are not really enough did the crucial aspect of financial support surface.

Estonian family policies do not define the family but obviously what is meant is the traditional two-parent family. However, as surveys and research shows, there have been major changes in family behaviour throughout recent history which question the ruling position of the family with two biological parents. This introduces the sub-issue of **civil partnerships** and **partnering** in general. The family based on traditional registered marriage is losing popularity in Estonia. Increasingly more couples do not officially register their partnership, even when children are born into the family. The traditional family model is more often observed by non-Estonians. Estonians have the leading edge in Europe in terms of the number of cohabiting couples. While in the EU countries in the mid 1990s 7% of all partnerships were cohabiting couples, in Estonia it was 14%, which grew to 21% in 1998. As a result, Estonia is one of the leaders in Europe also in terms of children born out of wedlock. **Gay marriages** and same-sex unions, however, seem to be a "non-topic" in Estonia. According to the public opinion poll commissioned by the European Commission on discrimination, in Estonia there is the smallest number of people (26%) who believe there is

discrimination against homosexuals in the country.⁵⁴ Any attempt so far to bring the discrimination issue (the legal non-recognition of same-sex partnerships) to the fore has been met by the overwhelmingly traditionalist and conservative public opinion, which also includes most of the policy makers. The voice of gay and lesbian civil society organizations is weak, as are the organizations themselves. Their fight for civil partnerships embracing same-sex couples lists one major appeal to the policy makers in late 2005 and a few articles in newspapers. Portrayal of the issue in the media has improved over the years (increasing objectivity and neutrality) but there almost no responsibility is taken when it touches upon the third-party related content, like commentaries in newspapers' online-versions and news portals. Since high natural growth and national-conservative ideals have been almost every government's top priority, one cannot be very enthusiastic about a speedy change of attitudes towards legislation.

Divorce, separation and marriage. Divorces and disintegration of cohabiting relationships produce single-parent families, which in the Estonian setting mean mostly single mothers. Women constitute the majority of single parents, only 1% of single parents are single fathers. The difficult economic situation of single mothers is related to the fact that the support from the other parent is not sufficient. In Estonia, the model of the "clean break" is usually followed in a divorce that leaves children to be raised by their mother while the divorced men hardly meddle in this process. After the divorce, the living standard of a single mother deteriorates and her social network changes. However, it is difficult to obtain a full overview since official statistics take into account only divorces of legally married couples and not cohabiting ones.⁵⁵

Actors

Parliament

Social commission of the Parliament

Legal commission of the Parliament

Constitutional commission of the Parliament

State Institutions and agencies

Ministry of Social Affairs

Ministry of Justice

Ministry of Internal Affairs⁵⁶

Ministry of Foreign Affairs⁵⁷

State Chancellery⁵⁸

⁵⁴ Rannajõe, Elisa-Maria. 2007. Eesti elanikud ei arva, et homoseksuaale eriti ahistatakse (Estonian people do not think that homosexuals are much harassed). *Postimees*, February 8.

⁵⁵ Statistics of the abovementioned issues from: Pall, Katre. 2003. Vabaabieliu - uus väljakutse sotsiaalpoliitikas (Cohabitation - a new challenge in social policy). *Sotsiaaltöö* 6: 21-23; Hansson, Leeni. 2004. Perekonna funktsioonidest (On the functions of family). *Sotsiaaltöö* 3: 28-30; Hansson, Leeni. 2002. Mitteabiellulised kooselud 1990ndate aastate Eestis (Non-marital cohabitations in Estonia in early 1990s). In *Eesti perekonna eritahud* (Different facets of Estonian family), 5-18. Tallinn Pedagogical University.

⁵⁶ <http://www.siseministeerium.ee/>

⁵⁷ <http://www.vm.ee/>

President of the Republic⁵⁹
Citizenship and Migration Board⁶⁰

Advisory bodies

Legal Department of the University of Tartu⁶¹
Medical Department of the University of Tartu
Association of Estonian Women Doctors⁶²
Institute of Estonian Language⁶³
Tallinn University⁶⁴

International influence

EU Directives

NGOs

Estonian Family Planning Union⁶⁵

Gay and Lesbian Information Centre (GLIK). GLIK was founded in June 2004, in cooperation with the Estonian Gay Association and National Institute of Health Development. GLIK was established to share information about sexual minorities in Estonia, but also about the relevant institutions and organizations. GLIK is supported through the GLOBAL Fund project competition to fight HIV and AIDS. <http://www.gay.ee>

The Estonian Gay Association (does not have a separate web environment, information in www.gay.ee)

NPO Mea Culpa. Lesbians' information portal, contains also chat-rooms and forums; <http://www.meaculpa.ee/>

NPO Teistmoodi. Non-profit organization representing minorities. <http://www.diversity.ee/>

NPO KITA & P. Organization involved in peer education.

Timeline

Pre-QUING period

1992

Civil partnerships, partnering and gay marriages

New Criminal Code enforced from June 1, finally decriminalized homosexual behaviour. Prior to that, homosexuality could be punishable by two to five years imprisonment.

⁵⁸ <http://www.riigikantselei.ee/>

⁵⁹ <http://www.president.ee/et/>

⁶⁰ <http://www.mig.ee/est/>

⁶¹ <http://www.iuridicum.ee/>

⁶² <http://www.ens.ee/>

⁶³ <http://www.eki.ee/>

⁶⁴ <http://www.tlu.ee/>

⁶⁵ <http://www.amor.ee/>

Primary Sources:

State Gazette 1992, 20, 288. Kriminaalkoodeks (Criminal Code). 46 p., E-text.

1994**Reproductive rights, abortion, reproductive assistance**

The establishment of the Estonian Family Planning Union, an institution involved in improving sexual and reproductive health, whose main areas of activity have been promotion of sexual education at schools and development and supporting a network of youth counselling bureaus in Estonia.

Divorce, separation, marriage

General Principles of the Civil Code Act (now repealed)

Article 128 on Restrictions on application of foreign law. Foreign law does not apply and the rights and obligations arising thereof shall not be deemed valid in Estonia if these are contrary to Estonian law, the constitutional order or good morals. In such cases, Estonian law applies.

Article 143 on the Law applicable to contract of marriage

(1) The preconditions for a contract of marriage for either prospective spouse shall be determined by the law of the country of residence of the prospective spouse.

(2) The law of the country where marriage is contracted applies to the form of the contract of marriage.

(3) A marriage contracted abroad or at a foreign representation located in Estonia shall be deemed valid in Estonia if it complies with the requirements of subsections (1) and (2) or with the requirements of the law of the state of citizenship of the prospective spouse.

Primary Sources:

State Gazette I 1994, 53, 889. Tsiviilseadustiku üldosa seadus (General Principles of the Civil Code Act). 38 p., E-text.

QUING period**1995****Civil partnerships, partnering and gay marriages**

Family Law Act. According to the Act, marriage is conducted between a man and a woman.

Divorce, separation, marriage

The Family Law Act was adopted in 1994 and entered into force in 1995. According to the Act, marriage is conducted between a man and a woman. Marriage is contracted on the mutual desire of the prospective spouses. Marriage will not be contracted if a prospective spouse does not confirm his or her desire to marry or if a prospective spouse is not of the age to marry or if hindrances to contracting a marriage become evident.

A marriage will not be contracted between persons of whom at least one is already married; between direct ascendants and descendants, brothers and sisters, half-brothers and half-sisters, adoptive parents and adopted children, or between children adopted by the same person; also between persons of whom at least one has been placed under guardianship due to his or her restricted active legal capacity.

Spouses retain the same rights upon entering into marriage as they had before the marriage relationship. Equality of the spouses is protected by law. According to Article 6 of the Family Act, agreements that restrict the personal rights and freedoms of spouses are void.

Proprietary rights of the spouses are determined by law and marital property contract if it has been concluded. The property that spouses acquire during the marriage is joint property of the spouses. Spouses have equal rights to possess, use and dispose of joint property. Spouses possess, use and dispose joint property according to agreement; in the absence of agreement the court at the request of a spouse will settle disputes concerning possession or use of joint property. The property that was in ownership of a spouse prior to marriage is his or her separate property just like property that he or she has acquired during the marriage through gifts or inheritance, and property that the respective spouse has acquired after the termination of the marital relationship as well as personal effects acquired during the marriage. The right of possession, use and disposing of separate property belongs to the owner of the separate property.

Upon entering into marriage, spouses have a mutual obligation to maintain a spouse who needs assistance and is incapacitated for work, and to maintain a spouse during pregnancy and child-care until the child attains three years of age. According to the Constitution, the family is obliged to take care of its needy members.

The law does not restrict the right of spouses to initiate a divorce and the administration of proceedings takes place pursuant to law on the basis of application by either of the spouses. According to the Family Act, a divorce is executed conclusively in court. If spouses are in dispute over the divorce, the divorce will be decided by court. Both a wife and husband have the right to turn to court. A divorce is granted if the court ascertains that continuation of the marriage is impossible. Upon granting a divorce, a court will, at the request of the spouses, settle disputes concerning a child and disputes concerning payment of maintenance or division of joint property.

Certain obligations will continue also after the divorce. A divorced spouse who needs assistance and is incapacitated for work has the right to receive maintenance from his or her former spouse if the divorced spouse became disabled or attained pensionable age during the marriage. A divorced spouse has the right to receive maintenance during pregnancy and child-care until the child attains three years of age if the child was conceived during the marriage. If a marriage lasted at least twenty-five years, a divorced spouse has the right to receive maintenance from the divorced spouse even if the spouse who needs assistance attained pensionable age or became disabled within three years after the divorce.

Upon termination of marriage, joint property is divided. The latter is determined according to the situation at the time of factual termination of the marriage relationship. In the case of dispute, a court will divide the joint property at the request of one or both of the spouses. When dividing the joint property of the spouses, their shares are considered as

equal, regardless of the fact that one of the spouses did not receive income in connection with raising of a child or for other effective reasons. Upon division of the joint property of spouses, the property remaining with each spouse is designated as a share in common ownership of things or proprietary rights and obligations. If upon division of joint property the value of the property remaining with a spouse is greater than his or her share in the joint property, a court will order monetary compensation to be paid by the spouse to the other spouse.

Article 40 deals with the confidentiality of artificial insemination. A donor for artificial insemination does not have the right to demand ascertainment of the identity of the mother or child or declaration of himself as father of the child. A court shall not establish the filiations of a child from a donor in artificial insemination. Persons who arrange artificial insemination are required to maintain the confidentiality of the artificial insemination. Article 39 states that if a man has given written consent to the artificial insemination of his spouse, the child shall be deemed to descend from him. This certifies that fatherhood is not only related to genetic connection but depends on agreement.

Other

According to Article 5 of Citizenship Act, Estonian citizenship is acquired by: a child if at least one of the parents of the child holds Estonian citizenship at the time of the birth of the child; a child born after the death of his or her father and if the father held Estonian citizenship at the time of his death; a child found in Estonia unless the child is proved to be a citizen of another state.

The Citizenship Act does not establish any special conditions for the acquisition or restoration of Estonian citizenship on the basis of a person's sex. Thus, both men and women can apply for Estonian citizenship according to the same rules. The loss of citizenship by a husband does not automatically entail the change of citizenship of the wife. The change takes place only on the basis of a personal application.

Provisions discriminating on the basis of sex that were contained in the 1940 Citizenship Act, enacted in 1992, according to which women who were foreigners acquired Estonian citizenship upon marriage to an Estonian citizen, have been excluded from the current Citizenship Act.

According to the Citizenship Act, children have the right to Estonian citizenship by birth if one of their parents was an Estonian citizen at the time of the birth of the child. If the parent is not yet Estonian citizen but wishes to receive Estonian citizenship, the parent has the right together with his or her application to apply also for Estonian citizenship to the child. On the basis of the foregoing, which of the parents is an Estonian citizen is not important. If the child's parents are of different citizenship, the parents will decide which country's citizenship the child will acquire.

Primary Sources:

State Gazette I 2004, 75. Perekonnaseadus (Family Law Act). 32 p., E-text.

State Gazette I 1995, 12, 122. Kodakondsuse seadus (Citizenship Act). 15,5 p., E-text.

1996

Other

Adoption of the Personal Data Protection Act. The purpose of this Act is protection of the fundamental rights and freedoms of persons with regard to processing of personal data in accordance with the right of persons to freely obtain information disseminated for public use. Data relating to state of health, genetic information or sexual life is considered personal data. Processing of sensitive personal data revealing ethnic or racial origin, state of health, genetic information or sexual life is permitted without the consent of the person if the processing is carried out: 1) for performance of obligations prescribed by law; 2) for protection of the person's life, health or freedom; 3) for performance of a task in the public or general interest which is assigned by law to a chief processor or a third person to whom the data are disclosed.

Primary Sources:

State Gazette I 1996, 48, 944. Isikuandmete kaitse seadus (Personal Data Protection Act). 19 p., E-text.

1997

Reproductive rights, abortion, reproductive assistance

According to the Artificial Insemination and Embryo Protection Act only adult women of up to 50 years of age who have active legal capacity are, at their own request, permitted to undergo artificial insemination. No-one may compel or persuade a woman to undergo artificial insemination. A woman's consent to artificial insemination has to be in writing. In order for a married woman to undergo artificial insemination, her husband's written consent, which has to be consistent with the consent granted by the woman, is necessary. The husband's consent has to set out whether he agrees to artificial insemination of his wife with his sperm even after his death. A woman has the right to refuse to undergo artificial insemination until it is carried out and declare her consent void. The husband also has the right to declare his consent void in writing until the beginning of the procedure of artificial insemination. In the event of artificial insemination of a woman with the sperm of a man who had not granted his consent thereto or had declared his consent void, the issue of the child's filiations will be settled pursuant to the provisions of the Family Law Act.

Civil partnerships, partnering and gay marriages

Regulation of vital registration records' composition, change, amendment, restoration, repeal and issuing of certificates of marital status. Article 54, sub-item 4 of the regulation states that marriage cannot be concluded between persons of the same sex. However, it does not say anything about persons who have changed their sex therefore there is no obstacle to such marriages.

Primary Sources:

State Gazette I 1997, 51, 824. Kunstliku viljastamise ja embrüokaitse seadus (Artificial Insemination and Embryo Protection Act). 9 p., E-text.

State Gazette I 1997, 62, 1067. Perekonnaseisuaktide koostamise, muutmise, parandamise, taastamise ja tühistamise ning perekonnaseisutunnistuste väljaandmise korra kinnitamine (Regulation of vital registration records' composition, change, amendment, restoration, repeal and issuing of certificates of marital status). 19 p., E-text.

1998

Reproductive rights, abortion, reproductive assistance

Pursuant to the Abortion and Sterilization Act, an abortion may be performed only with the woman's consent. No one shall force or influence a woman to abort her pregnancy. A request for an abortion must be made in writing. Pursuant to the Criminal Code, performing an abortion against the will of the pregnant woman is punishable with imprisonment for two to six years (art. 120).

A pregnancy may be aborted if a woman has been pregnant less than 11 weeks. If the pregnant person is younger than 15 years of age, an abortion may be performed until the twenty-first week of pregnancy. The decision regarding whether an abortion is necessary shall be made by the physician who will perform the abortion. The age of a minor is determined by her passport, birth certificate or another personal identification document (articles 5, 6 and 11 of the Abortion and Sterilization Act).

If a woman requests an abortion, the physician performing abortions shall explain to her, before the abortion, the biological and medical meaning of abortion and the related risks, including possible complications. A report shall be made on counselling that will be signed by the person who was counselled and the physician (article 12 of the Abortion and Sterilization Act).

Primary Sources:

State Gazette I 1998, 107, 1766. Raseduse katkestamise ja steriliseermise seadus (Abortion and Sterilization Act). 5 p., E-text.

2000

Reproductive rights, abortion, reproductive assistance

The strategy document "The state reproductive health programme for 2000-2009" (development of which was funded by the Ministry of Social Affairs) was approved by the Government in December, without state financing. The programme is to be carried out by the Estonian Family Planning Union with the financial help from different funds.

The programme aims to improve the state of the reproductive health of Estonian people, to establish the foundation for the birth of wanted children. The general target group is the whole Estonian population; the prioritized groups consist of young people aged 10-25, people of reproductive age, and people with special needs, primarily handicapped people.

As a result of the programme, sexual education will be implemented in all Estonian schools with the unified curriculum; the number of induced and repeated abortions would decrease;

factors affecting reproductive health would be registered (registering and analysis of venereal diseases and abortions); the mortality rate of infants and mothers would decrease; and people's opinions about reproductive and sexual health would be changed.

Primary Sources:

Reproduktiivtervise riiklik programm aastateks 2000-2009 (The state reproductive health programme for 2000-2009). 10 p. No e-file available.

2001

Reproductive rights, abortion, reproductive assistance

In 2001 a survey "Families with children and national family policy: problems of reconciling professional and family life and their connection with the demographic behaviour of the population" was carried out, commissioned by the Office of the Minister for Population Affairs.

2002

Reproductive rights, abortion, reproductive assistance

Article 132 from the Penal Code states that the surrogate motherhood or transfer of a foreign ovum, or an embryo or foetus created from it, to a woman whose intention to give away the child after birth is known is punishable by a pecuniary punishment.

The Minister of Population Affairs composes the "Conception of children and family policy of the Republic of Estonia", where the role of the family is emphasized as the proper growing environment. According to the document, the family's task is to secure the emotional and economical wellbeing of children, the upbringing of children and full support of their development.

Civil partnerships, partnering and gay marriages

On September 16, parliamentary interpellation about the possible changes in the law to introduce same-sex marriages took place. Procedural request was submitted by members of the faction of the national-conservative Pro Patria, the answer was given by the Minister of Justice. Parliamentarians asked the question due to media reports according to which the law on same-sex marriages could be enforced in autumn of the same year. A member of Pro Patria stressed that their party's principle is to support traditional family values.

Primary Sources:

State Gazette I 2001, 61,364. Karistusseadustik (Penal Code). 115 p., E-text.

Eesti Vabariigi laste- ja perepoliitika kontseptsioon (Conception of children and family policy of the Republic of Estonia). 4 p., E-text.

Parliamentary interpellation from September 16, 2002. Arupärimine samasooliste abielu võimaldavate seadusmuudatuste kohta (Interpellation about the amendments of the legislation allowing same-sex marriages). Parliamentary stenogram. 10 p., E-text.

2003

Reproductive rights, abortion, reproductive assistance

In 2003, the regulation of the Minister of Social Affairs came into force which allows the prescription for contraceptive pills to be used two or three times. The regulation abolished a previous situation where people had to wait several weeks for a doctor's appointment to get a prescription.

The amendment to the Artificial Insemination and Embryo Protection Act was adopted on the suggestion of the Estonian Society of Women Doctors and is aimed at the liberalization of ova donation. In general, the amendment was meant to improve the applicability of the law, interconnectivity of various laws in the health sector and to increase the chances of infertile women getting pregnant through artificial insemination.

Civil partnerships, partnering and gay marriages

An amendment was made to Article 22 of the Social Welfare Act. The grant of a subsistence benefit is based on the income of the benefit applicant and his or her family members. In the grant of a subsistence benefit, persons who are married or living in the same dwelling in a conjugal relationship, their children and parents who are maintained by them, or other persons using one or more sources of income jointly or with a shared household, are deemed to be family members.

Estonia has the problem of defining cohabitation in the case of family social benefits. The law leaves it undefined (lack of clarity in relation to what is actually meant by conjugal relationship), and people often want to equate this with cohabitation. Thus, the determination of such cases is the responsibility of the local government social workers.

Divorce, separation, marriage

In 2003 the Estonian Children's Foundation organised a campaign "A child needs a father", which was aimed at informing the public about the importance of a father-figure, the role of a father and encouraging fathers to build a relationship with their children.

Primary sources:

State Gazette I 2003, 18, 102. Kunstliku viljastamise ja embrüokaitse seaduse muutmise seadus (Amendment to the Artificial Insemination and Embryo Protection Act). 5 p., E-text

State Gazette I 2003, 58, 388. Sotsiaalhoolekande seaduse muutmise seadus (Amendment to the Social Welfare Act). 2 p., E-text.

2004

Reproductive rights, abortion, reproductive assistance

Development of the draft "Foundations of the population policy". According to the governmental decree from May 30 2003, and the working plan of the Government for the

second half-year of 2003, the Minister for Population Affairs had a task, based on the coalition programme, to elaborate a long-term plan of measures to influence the demographic situation and the action plan proceeding from that for years 2004-2007, and to submit it to the Government in November 2003. Also, the inter-ministerial commission was formed to analyse the Estonian demographic situation and to elaborate the state programme measures. The commission consisted of the representatives from the ministries of Education and Science, Culture, Internal Affairs, Social Affairs and Finances. Apart from inter-ministerial representatives, a working group of population researchers was included. The outcome of the work was the "Implementation strategy of population policy for years 2005-2008", which was approved in May 2004.

The three main pillars of the policy are listed as follows: to raise the birth rate to the level of the population's reproduction; to achieve increase in the life expectancy of both men and women and increase in the average active life expectancy to at least the average level of Europe; and to achieve a favourable gender-and-age-related structure of the population on the whole territory of the Republic.

Establishment of Gay and Lesbian Information Centre in Tallinn

Primary sources:

Rahvastikupoliitika elluviimise strateegia 2005-2008 (Implementation strategy of population policy for years 2005-2008). 38 p., E-text.

2005

Civil partnerships, partnering and gay marriages

On December 30, 2005, several non-profit gay and lesbian organizations – Gay and Lesbian Information Centre, Estonian Gay Association, Mea Culpa, Teistmoodi, KITA & P – made a public address to the Republic of Estonia to end the discrimination and to propose a legislative initiative that would recognize same-sex partnerships. The address was directed to the Ministers of Social Affairs and Justice, Chancellor of Justice, and Chairpersons of parliament's legal, constitutional and social commissions. The main concern of the address was the draft of the new Family Law that would not allow registration of same-sex partnerships.

Other

Adoption of Names Act. Legislation effective in Estonia stipulates that upon contraction of marriage spouses choose the surname of one spouse as the common surname, both spouses retain their pre-marital surnames or, at the request of a spouse, the surname of the other spouse is added to the spouse's pre-marital surname. Upon divorce, a spouse who changed his or her surname upon marriage may retain the surname taken upon marriage or resume his or her pre-marital surname according to his or her wish. A change in surname will be noted in a court order or divorce registration. Changing or resuming of a surname depends only on the wish of the person.

Primary sources:

State Gazette I 2005, 1, 1. Nimeseadus (Names Act). 2 p., E-text.

Public address of the civil society organizations to the Republic of Estonia in order to end the discrimination and to start the legislative initiative to legalize same-sex partnerships. 3 p., E-text.

Secondary sources:

Kampus, Lisette. 2006. Ma ei taha abielluda, tahan perekonda (I don't want to marry, I want family). *Eesti Päevaleht*, January 4. <http://www.epl.ee/?artikkel=308728>; 2,5 p., E-text. Lisette Kampus is a member of NPO Teistmoodi.

Linde, Väino. 2006. Homoabieliu seadustamine on variserlik mäng (Legalizing gay marriages is a hypocritical game). *Postimees*, January 3. <http://www.postimees.ee/030106/esileht/siseuudised/187708.php>; 1 p., E-text. At the time of the statement, Väino Linde was the Chairman of the Legal Commission of the Parliament.

Reinsalu, Urmas. 2006. Homoabieliu keelamine on seaduslik (Forbidding gay marriages is legal). *Postimees*, January 3. http://www.postimees.ee/030106/online_uudised/187698.php; 1 p., E-text. At the time of the statement, Urmas Reinsalu was the Chairman of the Constitutional Commission of the Parliament.

2006**Reproductive rights, abortion, reproductive assistance**

With the amendment to the Artificial Insemination and Embryo Protection Act from 2006, women up to 40 years of age with health insurance have the right to be partially compensated for the costs and medicine related to the procedure of the artificial insemination. The person has the right to compensation for up to three procedures of artificial insemination. The policy was developed in order to increase the fertility among childless couples who cannot have children in the natural way, and whose access to artificial insemination would otherwise be limited due to their economic circumstances.

“Development plan to support infertility treatment 2007-2010” was approved by the Government in 2006 and was elaborated in cooperation with the Ministry of Social Affairs and the Bureau of the Minister for Population Affairs. Leading women doctors and specialists of infertility treatment were also involved in crafting the document. In supporting infertility treatment, the goal of the plan is to achieve the natural growth required for the population's reproduction. The idea of the plan is also to gather all the activities associated with infertility treatment into a single coordinated entity, which would be financed by the Estonian Health Insurance Fund and the state budget and which would improve the availability and results of the treatment to the ones who need it.

On August 11, EWAR presents its suggestions to the Ministry of Justice in relation to the draft of the Family Law Act.

Other

Adoption of Citizen of the European Union Act. The draft of the Act was developed in the Ministry of Internal Affairs and sent to the parliament.

The necessity to adopt the draft was conditioned by the obligation to harmonize the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

The Act was adopted without any significant debates on the issue and was uniformly voted for.

Primary sources:

State Gazette I 2006, 32, 245. Kunstliku viljastamise ja embrüokaitse seaduse täiendamise seadus (Amendment to the Artificial Insemination and Embryo Protection Act). 2 p., E-text.

Viljatusravi toetamise aluspõhimõtted 2007-2010 (Development plan to support infertility treatment 2007-2010). 16 p., E-text.

State Gazette I 2006, 26, 191. Euroopa Liidu kodaniku seadus (Citizen of the European Union Act). 33 p., E-text.

2007

Reproductive rights, abortion, reproductive assistance

Programme of the Coalition of the Estonian Reform Party, Union of Pro Patria and Res Publica and Estonian Social Democratic Party for 2007-2011, approved in April 2007.

The priority list of the current government in the programme starts with the Family and Population policy and states the following:

The main goal of the Governing Coalition is to achieve a positive population growth in Estonia through an increase in the birth rate, longer average life expectancy and improvement of the living standards. It is followed by 17 points of action to achieve the set goal.

Civil partnerships, partnering and gay marriages

In April, EWAR sent the letter of suggestions to the Ministry of Justice, pointing to the fact that the new draft of the Family Law Act does not pay any attention to the associations which according to Estonian value judgements are considered a family: mothers with children, fathers with children, cohabiting families, and same-sex partnerships. EWAR also claimed that it is time to start developing the draft law regulating partnership relations and to indicate in the Family Law Act that the rights of such people will be regulated in the partnership law. EWAR made a remark that if the current draft is named the Family Law Act, then all forms of associations should be mentioned, not only the marriage. Otherwise the draft should be renamed the Marriage Law.

The new Family Law Act would not differ from the current one as to the prerequisites to conclude a marriage. The principle that a marriage is concluded between a man and a woman would still hold.

There are some indications that the Ministry of Justice will prepare the ground for the draft to regulate all forms of partnerships that should be sent to the Parliament some time in 2008.

Divorce, separation, marriage

The new draft of the Family Law Act is being developed in the Ministry of Justice. The current status of the document states that in May 2007 it was sent to the State Chancellery for approval.

The necessity for the new Family Law Act is primarily conditioned by the rapid development of Estonian private law. The current Family Law Act entered into force in 1995, and its regulative method and ideology rely much on the Marriage and Family Code of the Estonian SSR from 1969. The main problem of the current law is its low level of regulation. It contains a great amount of declarative norms, but often lacks the legal basis for a person to demand judicial protection for his or her interests and rights. Obscure provisions have resulted in the increase of court cases. Secondly, the new law is needed because of the civil law's reform. Thirdly, due to the frequent contacts and cooperation with international organizations and family law experts from other countries, there was awareness that more attention should be paid to the family institutions and means of legal protection (e.g. regulation of the child care, maintenance costs based on real needs).

The new Family Law Act would not differ from the current one as to the prerequisites to conclude a marriage. The principle that a marriage is concluded between a man and a woman would still hold.

Other

In July, a draft law of the amendment to the Advertising Act was sent for approval to the Ministry of Justice. According to the draft, commercials cannot portray persons as sexual objects, show indecent nudity or use sexist remarks. This particular amendment rests on the decision of the European Council and member states regarding the portrayal of men and women in the media and on other international suggestions (Beijing conference).

Primary Sources:

Reformierakonna, Isamaa ja Res Publica Liidu ning Sotsiaaldemokraatliku Erakonna valitsusliidu programm aastateks 2007-2011 (Programme of the Coalition of the Estonian Reform Party, Union of Pro Patria and Res Publica and Estonian Social Democratic Party for 2007-2011). 35 p., E-text.

Perekonnaseaduse eelnõu (Draft of the Family Law). 60 p., E-text.

Reklaamiseaduse muutmise seaduse eelnõu (Draft of the amendment to the Advertising Act). 10 p., E-text.

GENDER-BASED VIOLENCE

Introduction to the sub-issues and topics

In Estonia, the sub-issues most relevant to the Quing project are the following:

- Domestic violence and violence in partnerships
- Sexual assault and rape
- Trafficking, prostitution

On the whole, one could say that from mid 1990s until now there have been and still are a number of debated topics (sub-issues) on the societal level that can be gathered under the notion of gender-based violence, but they have not resulted in a rich field of policy documents. Since the re-gaining of independence in 1991 until the new millennium, there was, as it seems, a temporal gap where such gender-based issues were not dealt with in Estonia. The general audience was rather ignorant until the first and extensive domestic research projects on violence against women were conducted in 2001-2003 which shed light on the extent of such violence. Estonian legislation on violence is in need of supplementation. The legislation does not recognize explicitly terms such as “violence against women” or “family violence”. There is no mention of the specific crime that touches upon intimate violence or violence in a couple-relationship. From time to time, the debate emerges whether Estonia needs a separate law for family violence. The Estonian police force is still often short of the motivation, resources and time to continue preliminary investigations and such criminal cases are then closed due to insufficient proof. Even if the case reaches the court, the offender’s punishment for inflicting bodily harm is usually conditional and proves to be only of reprimanding character for the offender.

One of the key-issues is **domestic or family violence**. However, this area of concern is not regularly measured and statistically covered in Estonia, meaning that the official statistics cannot fully reflect the scope of the issue. At the moment, Estonia is among the states where most of the cases of violence against women remain unregistered / reported and are not included in the official statistics. A large majority of the victims of violence against women do not seek help from the police. The police statistics have records mostly of the cases of murder or when the ambulance has been called to the scene. In a way, this is a result of the inadequate efforts of the state to educate its citizens. School curricula do not contain topics of violence against women or gender discrimination; relevant training programmes for universities and vocational schools are based on voluntary attendance, and the same applies for future professionals (police, social workers, judicial personnel etc.). Where such training does take place, it is mostly carried out only by NGOs. The Civil Code and Family Law Act do not contain any specific provisions on cases of violence against women, including domestic violence.

There are no medium- or long-term coordinated action plans for the different professions to combat violence against women in Estonia. Most state institutions lack concrete action plans for the prevention of prostitution and trafficking in women, with the

exception of the Central Criminal Police, the action plan of which primarily calls for international cooperation.

An important milestone in the policy process was the amendment to the Code of Criminal Procedure in 2006, which established barring orders to protect the victims, including victims of violence against women. From that point onwards victims can appeal for a restraining order based on the Code of Civil Procedure.

The Act on Gender Equality was passed by the Estonian Parliament on April 7, 2004. The Act contains a definition of sexual harassment, but it does not include any preventive or punishment measures. There are no professions with special laws, compulsory codes or guidelines for dealing with cases of violence against women. There are general rules for the hearing and for the treatment of all victims and the collection of evidence and information, as set forth in the Code of Criminal Procedure.

As to the sub-issue of **rape**, the new Penal Code from 2002 defines rape as sexual intercourse with a person against his or her will, or taking advantage of a situation in which the person was not capable of resisting or comprehending the act. The definition of rape extends to rapes within the family. Sexual intercourse with someone under the age of 14 is criminalised by the penal code. The data on rapes are reported to and officially registered by the police, yet such data about rapes and attempted rapes are insufficient since only a minority of cases are reported to the police and therefore do not give an accurate estimate of the number of incidents that occur. Still, some improvements have taken place to facilitate the victim's situation in police departments: special interviewing rooms with modern equipment have been installed where statements are video taped so that a victim of crime does not have to provide repeated testimonies of his or her sufferings. In some police prefectures there are also specially trained female officers who can recognise the behaviour of a sexually abused person and are able to handle the person in an appropriate manner.

Another important sub issue is **trafficking in women and prostitution**. Prostitution is not a "visible" area of concern in Estonia – there is no street prostitution and there were no particular quarters. A rise in the scope of the problem of prostitution in Estonia was noticeable in 1992 when the first sexual services firms operating in rented private apartments appeared, mostly offering the services of call-girls. Growing gradually, the activity reached its maximum extent in 1994-1995 and has since been decreasing, the proportion of minors among prostitutes is also declining. In order to prevent the spreading of trafficking in human beings and prostitution, the police have been cooperating with the local governments and also non-profit associations, with the aim to conduct the explanatory work and supporting actions among underage girls who constitute the largest risk group.

Police structures are being created to fight trafficking in women and forced prostitution, and to improve international communication, co-ordination and co-operation of different police structures through Interpol and Europol. In 1998, a drugs and prostitution team was created in Tallinn criminal police. Trafficking in human beings violates basic human rights pursuant to the Constitution of the Republic of Estonia, above all human dignity, personal freedom, freedom of movement, privacy and self-determination. Although the Estonian Penal Code did not directly specify trafficking in human beings as a criminal offence, there were around 15 articles prohibiting activities which are linked to human trafficking. The new Penal Code which was enforced in September 2002 finally criminalized

trafficking in women. On 4 December 2002 Estonia ratified the United Nations Convention against Transnational Organized Crime, supplemented by two protocols (trafficking and smuggling in persons).

The surveys organized within the framework of the Nordic-Baltic information campaign against trafficking in women indicate that on the whole, people in Estonia are poorly informed of the nature of human trafficking and have insufficient or no knowledge in the issues of human rights, gender equality and the damage caused to society by the increase in human trafficking and prostitution.

The socio-economic situation of women in Estonia is generally worse than that of men as women are mostly to be working in occupations that have lesser prestige and lower wages. Therefore, women are more likely to become the victims of trafficking. Members of the Russian-speaking community in the northeast of Estonia constitute a large number of victims, because of their even less favourable socio-economic position. Till recently, Estonia used to be solely a source country of women and girls who were trafficked for the purpose of sexual exploitation to the Nordic countries and Western Europe. However, nowadays Estonia is becoming more and more a country of destination due to the country's rapid economic growth since the 1990s and workforce deficit. Primarily, this touches upon the people from the less developed republics of the former Soviet Union but the scope is likely to expand. However, as there is still a gap in the standard of living between Estonia and the EU average, the danger for local people to fall victim to human trafficking to the other parts of the EU remains. The Schengen Agreement and dissolution of the internal EU borders may contribute to aggravating the issue as well.⁶⁶

Actors

Parliament

Judicial commission of the Parliament

Legal commission of the Parliament

Constitutional commission of the Parliament

Courts

Justice of the Supreme Court⁶⁷

State Institutions and Agencies

Ministry of Justice

Ministry of Social Affairs

Ministry of Internal Affairs

Ministry of Finances

Estonian Police Administration⁶⁸

Statistical Office of Estonia⁶⁹

⁶⁶ Information in this section has been supplemented by the following materials: webpage of the Ministry of Social Affairs; *Violence against women in Estonia. A report to the Human Rights Committee*, http://www.omct.org/pdf/VAW/Publications/2003/Eng_2003_06_Estonia.pdf; interview with Sirje Otsavel from Tartu Women's Shelter in May 2007.

⁶⁷ <http://www.riigikohus.ee/>

⁶⁸ <http://www.pol.ee/>

Citizenship and Migration Board
Border Guard⁷⁰
Estonian Tax and Customs Board

Advisory bodies

Rector of Estonian Public Service Academy
Public prosecutors
Sworn advocates
University of Tartu
The Institute of International and Social Studies of Tallinn University⁷¹
Estonian Bar Association⁷²
Estonian Lawyers Association⁷³

NGOs

Association of Estonian Women Shelters⁷⁴
Estonian Centre for Social Programmes⁷⁵
Estonian Women's Associations' Round Table
Crime Prevention Foundation⁷⁶
Estonian Parents' Association⁷⁷

International influences

Directives of the European Commission
UN Committee on the Elimination of Discrimination against Women
UN Committee on Economic, Social and Cultural Rights
CEDAW
World Organization Against Torture (OMCT)

Timeline

Pre-QUING period

1991

Other

Article 13 of the Code of Criminal Procedure stipulates that justice in criminal matters is administered according to the principle of equality of persons before the courts regardless of a person's origin, social status, financial situation, race, nationality, gender, education,

⁶⁹ <http://www.stat.ee/>

⁷⁰ <http://www.pv.ee/>

⁷¹ <http://www.iiss.ee/>

⁷² <http://www.advokatuur.ee/>

⁷³ <http://www.juristideliit.ee/est/>

⁷⁴ <http://www.enu.ee/enu.php?keel=1&id=197>

⁷⁵ <http://www.sotsiaalprogrammide.ee/>

⁷⁶ <http://www.kesa.ee/>

⁷⁷ <http://www.laps.ee/>

language, attitude towards religion, field and type of activity, place of residence and other circumstances.

The following treaties were acceded to during this year: International Covenant on Civil and Political Rights and its Optional Protocol (the Second Optional Protocol was not ratified); International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women (the Optional Protocol was not ratified); International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child; Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (the Optional Protocol is not ratified).

Primary Sources:

State Gazette ÜT 1961, 1, 4. Kriminaalmenetluse koodeks (Code of Criminal Procedure). 144 p., E-text.

1992

Sexual assault and rape

The Criminal Code deals only with the rape of women, the Code of Criminal Procedure does not distinguish between the sexes.

Rape in especially aggravated circumstances may result in a sentence of imprisonment up to 15 years. At the same time, sexual intercourse knowingly committed by an adult with a person under 14 years of age is punishable in any case (Criminal Code Article 116).

Primary Sources:

State Gazette 1992, 20, 288. Kriminaalkoodeks (Criminal Code). 46 p., E-text.

1994

Other

In 1994, the Ministry of Internal Affairs starts to create a database on victims of crime. From that time on, it became possible to make a separate statistical analysis of women who have become victims of crime.

QUING period

1995

Trafficking and prostitution

In 1995, Article 202/6 of the Criminal Code on the prohibition of pimping was adopted, which establishes a punishment for pandering, and Article 201 of the Criminal Code, which prohibits a person to give permission to engage in prostitution on premises belonging to him/her.

Primary Source:

State Gazette I 1995, 24, 336. Kriminaalkoodeksi muudatuse seadus (Amendment to the Criminal Code). E-text.

1996

Domestic violence and violence in partnerships

Beginning from 1996, data about the people coming to shelters and rehabilitation centres started to be registered and analysed. In addition, a training programme for police officers was launched to help them recognise incidents of family violence, to more effectively restrain persons committing acts of violence and provide assistance to victims.

Other

European Convention on the Protection of Human Rights and Fundamental Freedoms was ratified and entered into force on April 16, 1996. The Estonian Government ratified Protocols 1-5 and 7-11 on April 16, 1996.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was ratified in November 1996 (entered force in March 1997, Protocols 1 and 2 were ratified at the same time).

Primary Sources.

State Gazette II, 1996, 36/37, 132. Piinamise ja ebainimliku või alandava kohtlemise või karistamise tõkestamise Euroopa konventsiooni ja selle protokollide nr. 1 ja 2 ratifitseerimise seadus (Ratification of Protocols 1 and 2 of European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). 10 p., E-text.

1997

Other

The Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty

European Framework Convention for the Protection of National Minorities was ratified in January 1997 and entered into force in February 1998.

Convention relating to the Status of Refugees was acceded to in April with reservations on Articles 23, 24, 25 and 28. The Protocol relating to the Status of Refugees was ratified at the same time.

Primary Sources:

State Gazette I 1998, 2, 42. Pornograafilise sisuga ja vägivalda või julmust propageerivate teoste leviku reguleerimise seadus (The Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty). 5 p., E-text.

1998

Trafficking and prostitution

From 1998 to 2002, Estonia participated in the international STOP-programme financed by the European Union. The programme was aimed at analysing the causes of prostitution, to

observe problems related to prostitution both nationally and internationally, and to gather and distribute information about the phenomena of commercial sex. The programme sought to establish cooperation with the police and authorities of different European Union member states.

Article 20 of Advertising Act (adopted in 1997, enforced in 1998) states that advertising of prostitution is prohibited.

Other

The Estonian Government ratified Protocol 6 of European Convention on the Protection of Human Rights and Fundamental Freedoms on April 17, 1998.

Primary Sources:

State Gazette I 1997, 52, 835. Reklaamiseadus (Advertising Act). 10 p., E-text.

1999

Domestic violence and violence in partnerships

On the initiative of the Baltic-Nordic working group for gender equality, both the situation of family violence and violence against women was mapped in Estonia.

2000

Domestic violence and violence in partnerships

In April 2000, the Ministry of Social Affairs in co-operation with the Open Society Institute and International Criminal Prevention Institute (HEUNI) carried out a pilot study to test the methodology for a comparative international survey on violence against women. 102 women who had been victims of violence were interviewed. The study showed that 62% of the women considered the incident as a severe case of violence, at the same time only 24% of the victims had informed the police of the incident. A criminal charge was filed against the offender in only two cases of all the incidents.

In 2000, police departments in Estonia started to create special interviewing rooms with modern equipment where statements are video taped so that a victim of crime does not have to provide repeated testimonies of his or her sufferings. In some police prefectures there are also specially trained female officers who can recognize the behaviour of a sexually abused person and are able to handle the person in an appropriate way.

2001

Domestic violence and violence in partnerships

A representative sociological survey on violence against women was carried out at the beginning of 2001 by the Estonian Open Society Institute. On the basis of the results of the

survey, a national strategy to combat violence against women will be prepared. At the beginning of 2001, a number of police officers were given a five-day training session on the essence of violence against women and on practical methods of handling victims and violent persons.

In 2001, the Estonian Institute for Open Society Research developed a system of indicators to measure the abuse of women at the request of the Ministry of Social Affairs. It has not been officially implemented, and no further studies in this area have been financed by the state since then. The Estonian Institute for Open Society Research also compiled a special domestic violence form in cooperation with the West Estonian Police Prefecture, which is to be filled in by all police patrols. The domestic violence form considers aspects of gender; the relationship between the victim and the abuser; previous incidents of abuse etc.

The Estonian Open Society Institute publishes its groundbreaking work on gender-based violence: "Voices of the silent ones. A book of gender violence. Victims are speaking, experts are counselling, scientists are analysing".

Sexual assault and rape

The Penal Code states that sexual intercourse with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation is punishable by 1 to 5 years of imprisonment.

The same act is punishable by 6 to 15 years of imprisonment if: it is committed against a person of less than 18 years of age; committed by two or more persons; serious damage is thereby caused to the health of the victim; it causes the death of the victim; it leads the victim to suicide or a suicide attempt, or it was committed by a person who has previously committed a criminal offence provided in this Division.

Other

ILO C 182 Worst Forms of Child Labour Convention was ratified in September.

Primary Sources:

State Gazette I 2001, 61, 364. Karistusseadustik (Penal Code). 115 p., E-text.

Secondary Sources:

Proos, Ivi and Iiris Pettai. 2001. *Violence against women in Estonia. According to data from a sociological research*. Estonian Open Society Institute. Tallinn.

Raamat soolisest vägivallast. Räägivad ohvrid, nõustavad eksperdid, analüüsivad teadlased. (Voices of the silent ones. A book of gender violence. Victims are speaking, experts are counselling, scientists are analysing), ed. Helve Kase. Tallinn: Tallinna Raamatutrükikoda. Estonian Open Society Institute, Information Bureau of the Nordic Council of Ministers, Bureau of Equality of the Ministry of Social Affairs of Estonia.

Domestic violence and violence in partnerships

In the Penal Code there is no specific definition of violence against women or violence in a couple-relationship in the Estonian law. Acts of violence can be prosecuted as offences against the person as of 1 September 2002 when the new Penal Code entered into force. Acts of violence, such as beating or recurrent beating, are qualified as physical abuse. The greater seriousness of offences against a family member is due to aggravating circumstances laid down in the general part of the Penal Code. An aggravating circumstance is the commission of the offence against a person who is in a service related, financial or family-related dependent relationship with the offender; self interest or other base motives, commission of the offence with particular cruelty or by causing degradation of the victim, commission of the offence knowingly against a person who is less than 18 years of age, pregnant, in an advanced age, in need of assistance or has a severe mental disorder (§ 58). The Penal Code also does not use the term 'domestic violence'. The crimes involving violence against women are listed in Chapter 9 on "Offences against the Person," within its Division 2 "Offences against Health," Subdivision 1 "Offences Hazardous to Health" and Subdivision 2 "Acts of Violence" as well as within Division 7 "Offences against Sexual Self-Determination". Yet this list cannot be exhaustive, since in practice there are cases of domestic violence that involve other crimes as well, which could be liable to punishments listed in other articles of the Penal Code.

The Estonian Institute for Open Society Research has arranged training seminars on domestic violence for practicing professionals, including the police, prosecutors, judges, and health, social, child and family protection personnel. The training was financed by the Open Estonia Foundation, as well as other sources.

Establishment of the first women's shelter in Tartu.

The CEDAW expressed its concern about violence against women and girls, including domestic violence in Estonia. Therefore, the Committee urged the Government to place high priority on comprehensive measures to address violence against women in the family and in society, and to recognize that such violence, including domestic violence, constitutes a violation of the human rights of women under the Convention. In the light of its general recommendation 19 on violence against women, the CEDAW called upon the Government to ensure that such violence constitutes a crime punishable under criminal law, that it is prosecuted and punished with the required severity and speed, and that female victims of violence have immediate means of redress and protection. It recommended that measures be taken to ensure that public officials, especially law enforcement officials, the judiciary, the medical professions and social workers are fully sensitized to all forms of violence against women. The CEDAW invited the Government to undertake awareness- raising measures, including a campaign of zero tolerance, to make such violence socially and morally unacceptable. It also recommended the introduction of a specific law prohibiting domestic

violence against women, which would provide for protection and exclusion orders and access to legal aid.

Trafficking and prostitution

In 2002, a joint campaign against the trafficking in women was initiated by the Nordic and Baltic countries with the support of the Nordic Council with the aim to initiate a public discussion about trafficking in women as a social problem in Estonia and to bring about a change in the attitudes of the public concerning that issue.

Since 2002, the Gender Equality Department of the Ministry of Social Affairs, together with the Estonian Women's Studies and Resource Centre has held several courses on trafficking in persons for teachers, vocational experts, and social and victim support workers.

The General Assembly adopted the United Nations Convention against Transnational Organized Crime in November 2000. The Convention is currently supplemented by two Protocols, one is trafficking in persons and one is on smuggling in persons. On December 4 2002 Estonia ratified this Convention.

Primary Sources:

State Gazette I 2001, 61, 364. Karistusseadustik (Penal Code). 115 p., E-text.

Concluding observations, UN Doc. CEDAW/C/2002/1/CRP.3/Add.7. 30 p., E-text.

2003

Domestic violence and violence in partnerships

A nationwide network of support groups for victims of domestic violence and abuse, developed by the Estonian Centre for Social Programmes⁷⁸, was established in 2003. The support groups provide psychological and legal help and courage to change the situation. Given the opportunity, the support groups cooperate with the district police, social workers, shelter and the state victim's help worker.

The World Organization Against Torture (OMCT) expresses its concern regarding violence against women in Estonia at the Seventy-Seventh Session of the UN Human Rights Committee. OMCT is deeply concerned by statistics that reveal that domestic violence is a serious problem in Estonia. Despite the gravity of this problem, there is no specific law in Estonia outlawing domestic violence. In addition, there is a lack of awareness concerning the seriousness of this issue not only among the general public but also among police and hospital workers.

Trafficking and prostitution

In 2003, a project supported by the Nordic Council was carried out aiming, among other things, at determining the problems encountered by the specialists working in the area of prevention of trafficking. Employees and officers of the police, border guard, the Prosecutor's

⁷⁸ <http://www.sotsiaalprogrammide.ee/>

Office, courts, the Citizenship and Migration Board and non-profit associations were questioned. It showed the lack of information exchange between the relevant institutions, the lack of the clear guidelines about the lines of responsibility and a general deficiency in knowledge about trafficking.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was signed.

The World Organization Against Torture (OMCT) expresses its concern regarding violence against women in Estonia at the Seventy-Seventh Session of the UN Human Rights Committee. OMCT is disturbed by Estonia's status as a source country for trafficked women. Although Estonia has a new Penal Code which criminalizes trafficking, it is essential that this law be fully implemented in order to protect the rights of women in Estonia.

Sexual assault and rape

The World Organization Against Torture (OMCT) expresses its concern regarding violence against women in Estonia at the Seventy-Seventh Session of the UN Human Rights Committee. OMCT is troubled by the lack of reliable information concerning rape in Estonia. While the Estonian government has taken some steps to create a more conducive environment for encouraging women to report the crime of rape, the crime remains unreported in the majority of cases. More efforts must be made to train police officers and others involved in the judiciary and law enforcement to be sensitive to all forms of gender based violence, including rape, and to investigate and prosecute these crimes with appropriate determination.

Primary Sources:

Press release of the World Organization Against Torture from March 19, 2003:
<http://www.omct.org/index.php?id=&lang=eng&actualPageNumber=2&articleId=4704&itemAdmin=article>; 2 p., E-text.

Secondary Sources:

Pettai, Iris. 2003. Millist prostitutsioonipoliitikat vajab Eesti? (What kind of a prostitution policy does Estonia need?). *Eesti Ekspress*, December 16;
<http://www.ekspress.ee/viewdoc/3003FEC6D360BEF7C2256DFE0058DE3A>; 4 p., E-text.

2004

Domestic violence and violence in partnerships

The development plan for 2004-2007 approved by the Ministry of Justice on March 5 2004 provides for the fight against crime as one of the target areas, and one of its sub-objectives is also the reduction of family violence. To achieve this objective, specific parameters have been set for the Prosecutor's Office for each year, which should also ensure effective work of investigative authorities in detecting, registering and investigating cases of family violence.

The National Action Plan for Social Inclusion devises strategies that should tackle the following issues: access to resources and services, education, improving health and health related services, social protection, victim's protection, lessening risks of social exclusion, and lessening violence against women and trafficking in human beings.

Till July 1, 2004, cases of family violence were investigated based on the provisions of private charges. Often the investigation was hampered due the fact that the victims withdrew their complaints and the cases had to be closed. On July 1, 2004, the new Code of Criminal Procedure was introduced which left out the matter of private charges. Until then, the majority of the cases of family violence belonged precisely under the § 121 on physical abuse in the Penal Code with the right of the victim only to press for criminal proceedings. By the leaving out of private charges one no longer needs the victim's statement in order to investigate cases of family violence.

In spring 2004, the non-profit organization the Estonian Centre of Social Programmes together with the Estonia Open Society Institute instigated the cooperation project "Professional Police against Domestic Violence" with the West-Estonian Police District. During the project, the system of police statistics was developed and put into use in the West-Estonian Police District (recording police statistics on domestic violence), together with the elaboration of a police guide to solve the cases of violence, and cultivation of the cooperation network among the various specialists in family violence. The goal of the pilot project is to apply the tested systems and guides across Estonia in the future.

In order to increase the efficiency of the police, family violence and violence against women within families were declared a priority field in 2004 by the Police. Police officers have to gather and preserve the data on problematic families within their districts, to check them regularly and apply necessary measures to avoid the violation of laws.

Trafficking and prostitution

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was ratified in May.

In March 2004, Estonia ratified the UN supplementary protocol on trafficking in persons. The protocol proposes that all states should elaborate strategies and take measures in order to prevent and combat trafficking in human beings and to protect persons who have fallen victim to human trafficking.

The National Action Plan for Social Inclusion devises strategies that should tackle the following issues: access to resources and services, education, improving health and health related services, social protection, victim's protection, lessening risks of social exclusion, and lessening of violence against women and trafficking in human beings.

With the aim to prevent human trafficking, telephone consultation services were commenced in October 2004 which provided free legal consultation and information on safe travelling and

job search. The above was a one-year project "Anti-trafficking hotline for women" financed by foreign embassies (USA, Great Britain and Finland) and carried out by the non-profit associations the AIDS Prevention Centre, "Living for Tomorrow" and "Unioni" from Finland.

At the initiative of the Personal Protection Service, beginning from 2004, a course dealing with the problem of human trafficking, its nature, prevention work among risk groups and networking with relevant institutions was included in the in-service training programme for police constables. Within the period of 2004 to 2005, a total of seven in-service training courses in regional police work and criminal prevention were carried out at the Paikuse Police School.

Estonian Women's Associations' Round Table (EWAR) sent the letter to all party factions in the Parliament and also to MPs in order to enhance the fight against prostitution, to toughen punishments against the mediators of sex and to adopt the law that would forbid the purchase of sex. The whole issue from the viewpoint of EWAR should be connected with the national programme to reduce women's unemployment, support for women's entrepreneurship and single mothers, and the rehabilitation programme for prostitutes.

The National Action Plan for Social Inclusion devises strategies that should tackle the following issues: access to resources and services, education, improving health and health related services, social protection, victim's protection, lessening risks of social exclusion, and lessening of violence against women and trafficking in human beings.

Sexual assault and rape

The Gender Equality Act includes a definition of *sexual harassment*, which constitutes one form of gender discrimination. According to this definition 'sexual harassment' occurs where, in any subordinate or dependent relationship, any form of unwanted verbal, non-verbal or physical activity or conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment and the person refuses to submit to such conduct as it is a direct or indirect prerequisite for getting hired, maintaining the employment relationship, participation in training, receipt of remuneration, or other advantages or benefits. The legal definition in the Gender Equality Act may be divided into six elements which all must be present in order to establish that sexual harassment took place. Article 6 of the Act prohibits sexual harassment and considers it to be discrimination if an employer does not fulfil its obligation to protect its employees from this kind of action. An employer is responsible for the failure to perform the duty of care if the employer is aware or should reasonably be aware that sexual harassment has occurred and fails to apply the necessary measures to terminate such harassment.

Other

The Estonian Government ratified Protocol 13 of European Convention on the Protection of Human Rights and Fundamental Freedoms on February 25, 2004.

The Act on Support to Victims regulates the state organization of victim support and the procedure for payment of state compensation to crime victims. Compensation is provided in cases where acts are committed against another person's life or health, and where the injured person dies, sustains serious damage to his or her health, or sustains a health disorder lasting for at least six months. The purpose of the victim support service is to maintain or enhance the ability of victims of negligence, mistreatment or physical, mental or sexual abuse to cope. A total of 35 victim support officials are employed in the social affairs boards of all counties. Their functions include supporting crime victims during preparations for court sessions and appointing a personal advocate, if necessary.

Primary Sources:

Sotsiaalse kaasatuse riiklik tegevuskava (National Action Plan for Social Inclusion). 51 p., E-text.

State Gazette I 2003, 27, 166. Kriminaalmenetluse seadustik (Code of Criminal Procedure). 197 p., E-text.

State Gazette I 2004, 27, 181. Soolise võrdõiguslikkuse seadus (Gender Equality Act). 9 p., E-text.

State Gazette I 2004, 2, 3. Ohvriabi seadus (Act on Support to Victims). 16 p., E-text.

Sotsiaalse kaasatuse riiklik tegevuskava (National Action Plan for Social Inclusion). 51 p., E-text.

EWAR's letter Prostitutsiooni ohjeldamisest Eestis (Containment of prostitution in Estonia) from March 17, 2003, to factions of the Parliament. 1 p., E-text.

Secondary Sources:

Klandorf, Kalle. 2004. Seksiostu karistamine ei päästa (Punishing the purchase of sex is not the remedy). *Eesti Päevaleht*, March 17; <http://www.epl.ee/?artikkel=260321>; 2,5 p., E-text. Klandorf was the police counsellor to the North Police Prefecture.

Luht, Kristiina. 2004. Rootsi eeskujuga seksi ostmise vastu (With the example of Sweden against the purchase of sex). *Eesti Päevaleht*, March 8; <http://www.epl.ee/artikkel/259518>; 2 p., E-text. Kristiina Luht works in the Department of Gender Equality at the Ministry of Social Affairs.

Papp, Ülle-Marika. 2004. Soolise võrdõiguslikkuse seadus – positiivsed erimeetmed (Gender Equality Act – positive special measures). *Sotsiaaltöö* 6: 30-31.

Rahumägi, Jaanus. 2004. Prostituudi ost tuleb keelustada (Buying a prostitute must be banned). *Postimees*, March 3;

<http://www.postimees.ee/030304/esileht/arvamus/128000.php>; 2 p., E-text. Jaanus Rahumägi was the member of the Parliament, Res Publica faction.

Tõnisson, Liina. 2004. Võrdõiguslikkuse seadust on vaja (Law on Gender Equality is needed). *Postimees*, March 24;

<http://www.postimees.ee/250304/esileht/arvamus/129845.php>; 2,5 p., E-text. Liina Tõnisson was the member of the Parliament (Centre Party).

2005

Domestic violence and violence in partnerships

On January 28, EWAR sends the letter to the Ministry of Justice in order to support the suggestions made by the Ministry of Social Affairs on tackling violence against women.

Trafficking and prostitution

As protection for victims of trafficking in women, the Baltic States' common witness protection programme can be applied in accordance with the Act on Witness Protection despite the fact that there are no special provisions in the Act concerning violence against women.

In its Cabinet Meeting of 13 January 2005, the Government of the Republic discussed issues related to human trafficking and decided that, as one of the measures of criminal policy, the Ministry of Justice will start co-ordinating the prevention of human trafficking. The meeting also agreed on the preparation of a relevant national action plan.

On 28 August 2005, the Minister of Justice and the Minister of Interior Affairs of the Republic of Estonia signed the so-called Laulasmaa declaration. As human trafficking is an important source of illegal income, and taking account of its clandestine and trans-national character and its hazardous effect on the most vulnerable members of the society, it was agreed in the declaration that the fight against crime related to the trafficking in human beings will become a common priority of the Prosecutor's Office and the police forces.

In spring 2005, the Ministry of Justice put up a web page www.kuriteoennetus.ee which, among other, provides information on the problem of human trafficking and advises on how to avoid becoming a victim.

On June 2, EWAR sends the letter to the Ministry of Justice in connection with the draft national action plan on the fight against trafficking in human beings.

On June 3, EWAR submits Estonia's application of the EWL-CEDAW joint project Promoting Preventative Measures to Combat Trafficking in Human Beings for Sexual Exploitation.

Other

According to the Victim Support Act, the State Victim Support System was established on January 1. The provision of victim support services shall be ensured by the Ministry of Social Affairs in accordance with the principle of regionality. The Ministry of Social Affairs shall co-operate with state and local government authorities and legal persons in providing victim support services, involve and supervise victim support volunteers and organise training for such volunteers.

Provision of legal aid is regulated by the Act on State Legal Aid which entered into force in 2005. Legal aid may be claimed for legal advice and representation in criminal, civil and administrative procedures, pre-trial proceedings and in court.

A natural person may receive state legal aid if the person is unable to pay for competent legal services due to his or her financial situation at the time the person is in need of legal aid or is able to pay for legal services only partially or in instalments or whose financial situation does not allow meeting basic subsistence needs after paying for legal services.

Primary Sources:

State Gazette I 2005, 39, 307. Tunnistajakaitse seadus (Act on Witness Protection). 9 p., E-text.

State Gazette I 2004, 56, 403. Riigi õigusabi seadus (Act on State Legal Aid). 22 p., E-text.

Laulasmaa deklaratsioon kuritegevusevastase võitluse eelistustest (Laulasmaa declaration on the priorities in the fight against crime). 1 p., E-text.

2006

Domestic violence and violence in partnerships

On January 12, an international seminar “No to intimate violence” takes place in Tallinn. Participants included representatives from Norwegian, Danish, Lithuanian and Latvian institutions involved in the fight against intimate violence, and people from Estonian women’s shelters, civil society organizations and state institutions.

On May 7, women’s shelters and other organizations dealing with victim support send the letter to the Commission of Justice of the Parliament in connection with the amendment to the Code of Criminal Procedure.

Amendment to the Code of Criminal Procedure. Since the barring order imposed on the offender loses validity upon the verdict being passed (as it is only a subject of the criminal proceedings and not seen as the preventive measure in the criminal procedure), the victim can, according to the article 310¹ of this amendment, apply at the same court session – after the criminal conviction – for the barring order pursuant to Article 1055 of the Law of Obligations Act (civil proceedings), the breaking of which would be already punishable: either pecuniary or imprisonment. Before that change the draft required a victim to file a new separate civil court case after the termination of the criminal procedure that would have been very demanding and time consuming. Now the victim can do it within the criminal case. Such a change to the draft amendment was brought in by the parliament’s legal commission during the draft’s second reading, after considerable pressure from NGOs, primarily women’s shelters (although this is not reflected in stenograms). The amendment was considered important from the vantage point of victim protection, mostly of the women who would need continuous protection against violent husbands and now do not have to go through several exhausting court cases.

For the first time in 2006, a specific budget was earmarked in the state budget for the tasks of combating violence against women in its different forms, and the whole amount of approximately 66 000 euros was allocated to the state-run Tallinn Crisis Centre (Shelter). However, the state budget does not have an annual amount earmarked for the support of NGOs working in the field of violence against women.

Trafficking and prostitution

On January 18, EWAR sends the letter to the Government in connection with the draft national action plan on the fight against trafficking in human beings in 2006-2009.

“Development Plan for Combating Trafficking in Human Beings 2006-2009”⁷⁹ was approved by the Government on January 26, 2006. The Plan is guided by the definition of human trafficking as determined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime and Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.

The East Police Prefecture applied for resources from the police budget to carry out a follow-up project in trafficking in human beings called "Preventive work with girls in the risk group" in 2006.

Primary Sources:

State Gazette I 2006, 31, 233. Karistusseadustiku, kriminaalmenetluse seadustiku, tunnistajakaitse seaduse ja väärteomenetluse seadustiku muutmise seadus (Amendment to the Code of Criminal Procedure). 6 p., E-text.

Parliamentary stenogram of the second reading of the draft on the amendment to the Code of Criminal Procedure. 3 p., E-text.

Inimkaubanduse vastu võitlemise arengukava 2006-2009 (Development Plan for Combating Trafficking in Human Beings 2006-2009). 36 p., E-text.

2007

Trafficking and prostitution

The Ministry of Education commissioned a controversial study film for schools that dissects the issue of prostitution. The film was made by the Crime Prevention Foundation and treats the selling of one's own body and the purchase of sex as something usual, a natural phenomenon. The film concludes with the message that prostitution is everybody's free choice but not the best of all those possible.

Protests against the distribution of the film in schools were voiced by EWAR that sent the letter to the Ministers of Education, Justice and Social Affairs, and also to several

⁷⁹ The Plan in Estonian: <http://www.just.ee/orb.aw/class=file/action=preview/id=28017/T%E4iendatud+inimkaubanduse+arengukava.pdf>; in English: http://www.just.ee/orb.aw/class=file/action=preview/id=28999/Development+Plan+2007+_2_.pdf

commissions of the Parliament. According to EWAR, the film portrays prostitution as just like any other job and tries to normalize it. The Estonian Parents' Association also protested against it.

Secondary Sources:

Kalamees, Kai. 2004. Riigi tellitud õppefilm näitab prostitutsiooni vaba valikuna (Study film commissioned by the state shows prostitution as a free choice). *Postimees*, June 19; <http://www.postimees.ee/200607/esileht/siseuudised/267262.php>; 2 p., E-text.

CONCLUSIONS

Generic gender equality policies

Estonia is a relative newcomer to the scene of European gender equality policy development. The early 1990s was the prime time of discovery or introduction of gender issues and represented the start of the process towards greater gender awareness. As a newly established sovereign country on the European map, Estonia had to set off from scratch in many areas and do the “learning” with great speed in order to catch up with others and be accepted to the European community. Rapid introduction of new ideas and the need for restructuring and development of equality policy mechanisms and its content was naturally met and is still met by a certain rigidity of the society in its response; awkward, nationalistic, conservative and deeply rooted traditionalist views, outcomes of the system that inhibited a normal course of the society’s development for half a century, often prevail when equality matters are at stake. Nevertheless, civil society in Estonia is becoming more mature and also the policy making environment has been changing. Transposition of several important EU directives has taken place (culminating with the adoption of the Gender Equality Act in 2004), the society in general has become much more gender aware than a decade ago, more debates on equality matters take place and there are various ongoing developments which could possibly find a positive legislative outcome in the near future.

In implementing generic gender equality policies, the impact of the EU has probably been the greatest as adopting the EU acquis was a necessary prerequisite to the accession process. Eventually the voice of the civil society was also heard (e.g. during the proceedings leading to the Gender Equality Act), but it still lacks essential power and authority and is often ignored by policy makers.

Non- employment

The formative and most significant period in the non-employment issue history in Estonia started with the new millennium (and the first serious battle of the wider society and non-governmental organizations with the Parliament to enforce certain crucial articles of the European Social Charter) and continued to the accession of the state to the European Union and adoption of the Gender Equality Act in the same year. These years were marked with the harmonization of the Estonian legislation with the EU acquis, which involved instituting provisions of equal treatment and anti-discrimination.

The key developments during the period took place in the sphere of reconciliation of work and family life, tax and benefit policies, equal pay and the gender pay gap. The gender pay gap in Estonia still tends to be one of the greatest among the EU members and despite the adopted laws on paper to eliminate it, in practice it persists and obviously needs deeper changes in society’s attitudes. With regard to reconciliation of work and family life there has been a row of policy documents, which have reckoned with its importance, such as the Holidays Act, the State Family Benefits Act, Labour Market Service Act, and Act on Parental Benefit etc. These laws were amended repeatedly to decrease the cleavage created by mismatch of employment and family life. The most significant motion in tax-benefit policies, which also stirred up considerable public interest, was the adoption of the Parental Benefit Act, the so-called “parental salary”, which was adopted in 2003. The Act, besides having

relevance also to reconciliation policies, is seen also as a saviour in the population policy. Testimony to this is the increasing birth rate during recent years. Also Estonia's pension system was significantly reformed in 2000 when the retirement age of women and men were set to equalize in the next decade.

In implementing policies related to non-employment and labour issues, the voice of civil society actors applying pressure to achieve isolated objectives (e.g. adoption of certain articles in the European Social Charter) was occasionally heard. The impact of the EU on non-employment legislation was definitely strong during Estonia's pre-EU accession period when harmonizing with the EU *acquis* was high on the agenda.

Intimate citizenship

The towering task of every consecutive government since the middle of 1990s has been to assure and to proclaim that the survival of the nation (with the threatening negative natural growth) into the third millennium is of utmost importance. Thus, the governments have been trying to facilitate and create the situation where families would start to feel that having children would not be such a burdensome task and that there are measures to provide social and financial security when children have been born. Regulative mechanisms of reproductive rights and behaviour are mostly found in national population policy and reproductive behaviour plans. They tend to consist of several interrelated components such as the improvement of family benefit systems, reconciliation of work and family life and better and more accessible infertility treatment. Another relatively important sub-issue concerns civil partnerships, partnering and gay marriages. Firstly, there is a divide between reality (e.g. a large share of cohabiting partners) and legislation that tackles the issue (referring mostly to traditional, married couples). Regulating new types of families, including same-sex couples, has only recently gained more public concentration (new draft of the Family Law and possible law on civil partnerships in 2008). The sub-issue of divorce, separation and marriage revolves mostly around providing more attention to single parents, mostly to single-mothers.

In the development of the policy process, domestic influences and actors have been most active; and largely they count for governmental actors as many issues coincide with official pursuits. However, as in the case with the public debate over civil partnership and same-sex unions' legislation, local NGOs representing sexual minorities have voiced their concerns.

Gender-based violence

Focal points of societal concern in gender-based violence are, on the one hand, mainly around prostitution and trafficking, and, on the other hand, around the domestic or family violence issue. Prostitution and trafficking, due to its cross-border and trans-national characteristics and Estonia's position between East and West, has over the years moved far beyond being an issue of only domestic relevance. Various governmental action plans and programmes, international cooperation among police administrations (especially with Nordic countries) testifies to the seriousness of the problem. The fight against trafficking and prostitution has become one of the key priorities of the Estonian Police. Domestic violence, according to surveys, research and the data from women's shelters, is another vital issue

that Estonia has to face. The issue has agitated public debates and concern throughout the years. However, legislation that explicitly recognizes and mentions family and domestic violence is absent. Also, there is a shortage of expertise and data collection mechanisms on the side of the police. Furthermore, Estonia is currently a society where the state's emphasis is placed primarily upon dealing with the offender and punishment, while the position of the victim is often neglected. Therefore it is important to mention, for example, the amendment made to the Code of Criminal Procedure in 2006 that established effective barring orders on offenders and was partly a victory of NGOs who applied pressure towards this objective.

Since prostitution and trafficking tends to affect many countries simultaneously, there has been considerable international pressure on Estonia to fight ever more effectively against such forms of violence. Also local civil society actors have shown noticeable interest to change the effective legislation into more a victim-friendly system but it definitely takes much more effort. Full credit, however, should be given to NGOs which have established a functioning network of women's shelters across Estonia.