



Responding to racism in Estonia



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OVERVIEW OF RACISM IN THE NATIONAL CONTEXT

Estonia can be considered a country with a rather young statehood. Its independence record can be tracked back to 1920, when the Tartu Peace Treaty with the Soviet Russia was signed. From 1940 till 1991 it has, however, been under Soviet regime.

Nowadays Estonia is a multiethnic society where most of the ethnic groups reside on its territory permanently and due to the historical background of the state. As of January 2004 ethnic non-Estonians made up 32% of the total population of Estonia. The majority of them, approximately 80% (or 26% of the total population) were of Russian ethnic origin. In some areas ethnic non-Estonians constituted the absolute majority (in Ida-Virumaa county some 80% of the total population). Most have settled in Estonia after World War II due to the natural and sometimes forced migration system of the Soviet time, with their descendants. In many cases the representatives of ethnic minorities have been residing in Estonia for several generations and in a few cases for several centuries.

In 2000 80% of the total population are Estonian citizens, 12,4% are stateless former Soviet citizens, who due to a number of reasons did not want or could not obtain the Estonian or any other citizenship and 6,3% are Russian citizens. In 2005 the percentage of stateless decreased to approximately 10%.

Estonian society is rather indifferent towards religion and faiths; ethnic non-Estonians are significantly more religious than Estonians. The majority of believers are of Lutheran belief, the second biggest group being Orthodox.

Before the accession of Estonia to the EU there was no detailed anti-discrimination legislation. Lately (in 2003 – 2004) rather positive changes have taken place, although initiated by the need to harmonize the national legislation with EU law.

NATIONAL COORDINATION. STRUCTURES, KEY ACTIVITIES AND MEMBERSHIP

The ENAR Estonian National Coordination was launched on 21st November 2005 in Tallinn. Nowadays it consists of 6 non-governmental organizations and 1 observer actively involved in activities against racism and discrimination on the basis of ethnic origin. At present ENAR-Estonia secretariat work is being carried out by the Legal Information Centre for Human Rights, which is the leading NGO protecting minority rights.

Membership of ENAR-Estonia is open to all NGOs and research institutes that are active in promoting non-discrimination and non-racism or providing research and supporting the principles of ENAR.

The main activities of the National Coordination are the provision of legal aid to the victims of discrimination, court representation included, strategic litigation, hotline for the victims of discrimination, lobbying, training activities for various target groups, work with media, legal analysis and research.

OVERVIEW OF ENAR – EUROPEAN NETWORK AGAINST RACISM

ENAR promotes the cause of anti-racism and equal treatment for ethnic minorities and non-EU nationals residing in the European Union.

ENAR is a network of European NGOs working to combat racism in all EU Member States. The NGOs have formed National Coordinations (NCs), which constitute the membership of ENAR and include ethnic minorities, immigrants' associations, information centres, advocacy groups, trade unions, faith based organisations and many others. Democratically elected representatives of each NC attend the Network's meetings where they are consulted on policy and statutory issues. One of the representatives of each NC should belong to an ethnic minority.

ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.

THE NATIONAL SITUATION: WHO IS EXPERIENCING RACISM?

In the course of the 2005 sociological study in Tallinn 17,1 % of ethnic non-Estonians alleged that they had experienced limitations to their rights or degrading treatment in the workplace during the past 3 years because of their ethnic origin.

They also claimed to be unequally treated due to their ethnicity in educational institutions – 11.2%, by service providers – 28.8%, by restaurants – 9.9%, in housing – 12.5% and public transport – 21.3%.

There is limited information about instances of discrimination or relevant court cases. Thus in 1999 – 2005, the National Labour Inspectorate did not uncover any violations of the non-discrimination principle at work on the grounds of ethnic origin and in 2005 claimed that they do not gather such statistics. Also, to the best of our knowledge, no such cases have been identified by the Labour dispute commissions (pre-judicial body). Nor has the Office of Chancellor of Justice, who has jurisdiction to deal with discrimination cases, decided any case between private parties. In 2005 they reported one complaint on ethnic discrimination in access to services, which had to be stopped because the second party to the conflict refused to continue.

This tendency can however be explained by a rather low level of awareness about discrimination within the society and poor knowledge of mechanisms to protect the violated rights. Moreover most of the cases fall within the scope of the labour law, which often scares and prevents the victim from complaining.

In 2005 there have been at least two cases started under the provisions of Penal Code articles prohibiting public incitement to hatred or violence on the basis of ethnic origin. Also at least two final court decisions were made, both related to incitement.

POLITICAL REALITY: NATIONAL LAWS AGAINST RACISM

The main legal provision against discrimination is Art. 12 of the Estonian Constitution, applicable to public and private legal and natural persons. However the principle is of a very general scope and applies equally to all grounds of discrimination. This principle is repeated in several other laws (the Law of Cultural Autonomy of National Minorities, the Law on Wages, the Law on Advertising).

The Penal Code in several articles considers the most severe violation of the principle of equal treatment to be a crime and protects from the most violent acts of harassment. There is no special law on equal treatment. However, relevant amendments to the Law on Employment Contracts (LEC) are enforced since 2004. They apply in cases of employment and application for a position. Unfortunately no such provisions are introduced in the public service and self-employment. The amended LEC provides a definition of direct and indirect discrimination, allows a suitable regime of working and rest time to fulfill the religious requirements of employee. A definition of harassment, although applying only in cases of subordination, is introduced as well.

Although these amendments demonstrate some willingness to address the issue of discrimination, there are still no related provisions in education, social protection and benefits, access to publicly available goods and services, and housing. The concept of victimization as such is still lacking. A step to fight religious discrimination might be recognised in the new regulation on headgear, which constitutes a possibility for the Muslims and others to have an ID photo with headgear.

Estonia is a party to the main international conventions against discrimination. And cases where the national law is breached the international conventions should prevail.

IMPORTANCE OF CIVIL SOCIETY INFRASTRUCTURE

Civil society indeed plays an important role in combating racism at national level in Estonia. Although there are just a few NGOs working with the issue they actively and rather successfully serve various aims. One of the key roles is to raise awareness among the public about the issue in general but also about the causes and results of racism, to initiate dialogues within society but even more significantly between the society and state, vulnerable groups and key actors. Several NGOs in Estonia are actively supporting victims of discrimination in their access to justice, by providing free legal aid and representation in the courts, but also through strategic litigation and testing, often playing the role of a mediator between the victim and the offender.

Another very important role played by NGOs is monitoring the situation in Estonia with regards to racism and often reporting to international bodies as well as consultation and exchanging expert opinion with the officials and in many cases influencing the decision making. NGO experts are often invited to various consultation meetings and work-groups initiated by the ministries as well as being invited to comment on state reports submitted to various international bodies.

RESPONDING TO RACISM STRATEGIC LITIGATION

Many anti-racist NGOs have not traditionally engaged in legal processes, often this is for the simple reason that there was little law for them to refer to. However the adoption of the EU Race Directive (see section 'EU and anti-racism') and the development of national law, means that now more than ever litigation has the potential to lead to real change for those who are vulnerable to racism and discrimination.

As anti-discrimination is a relatively new field of law, NGOs have a role to play in raising awareness regarding its potential. Consequently the strategic litigation has come to the fore as a useful advocacy technique. NGOs can both directly engage in strategic litigation and support others to do so by gathering data, assessing victims and engaging in advocacy.

“Strategic or impact litigation uses the court system to attempt to create broad social change”

The primary focus of strategic litigation is law or policy change rather than redress for an individual, though these two objectives are not mutually exclusive. Strategic litigation intends to reach beyond an individual case or victim, to create a context of enhanced protection for everyone who is vulnerable to discrimination. By changing law or setting precedents an individual case can have a ripple effect leading to change on a much broader level.

The concept of strategic litigation encompasses the selection of cases, case planning and management, as well as ensuring that favourable outcomes are implemented.

Not every NGO has the mandate or skills to engage in litigation, nor will litigation necessarily be the right strategy in many cases. Nonetheless, it is essential for all anti-racism actors to recognise the importance of strategic litigation as a tool for generating change.

RESPONDING TO RACISM: SERVICES AVAILABLE FOR THE VICTIMS OF RACIAL DISCRIMINATION

There are no special services available under the Estonian legislation to the victims of racial discrimination. However since 2004 the Victim Support Law is enforced. Its provisions are of a general scope and apply to any case of violence. Under the provisions of this act the person that suffered from moral or physical violence is considered to be a victim and therefore is entitled to free counseling and aid. There is also a clause leading to compensation in the case of very severe damage to the health or the death of the victim.

A legal aid service for the victims of discrimination is available from some NGOs where professional lawyers are involved. Moreover starting from January 1st 2004 the jurisdiction to deal with the cases of discrimination in the private and public domain has been given to the Chancellor of Justice who acts as a pre-judicial body as well as promoter of equality. Everyone (individuals and organisations) enjoys the right to apply with complaints regarding discrimination. However in cases where individuals and organisations are involved the Chancellor of Justice should solve the problem only in the frame of the special conciliation procedure, the aim of which is to reach an agreement between two parties. In case one of the parties (the offender) refuses to participate the procedure should be stopped by the chancellor and can be decided only in the court.

WHY A EUROPEAN PERSPECTIVE IS CRUCIAL EU AND ANTI-RACISM.

National NGOs working on anti-racism are already seriously overburdened in their work to confront racism and discrimination. Why then should they also be concerned with what is going on in other European countries, and in the institutions of the European Union itself?

Developing an understanding of racism in Europe is essential for two key reasons. Firstly, to promote learning and knowledge about what racism is and how to combat it and secondly to generate common tools across the European Union to combat racism. Experience over the last ten years has demonstrated that national governments can be convinced to take action at a European level, where they may not have been prepared to move forward alone.

Racism has a distinctly European dynamic. Europe's colonial history underlines its role in fostering both historical and contemporary forms of racism; and the 20th century does not cast a positive light on the European legacy. Despite this long history Europe began to take racism seriously relatively recently. Europe has a responsibility both to the people living within its borders, as well as internationally to take a leading role in promoting a vision of a world free from racism.

In 1997, Article 13 of the Amsterdam Treaty gave the European Union a legal base on which to develop 'appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Using these powers the European Union adopted the Race Equality Directive in June 2000 (and later that year the Employment Equality Directive).

While the Race Directive was due to be fully implemented by July 2003, at the beginning of 2006 some Member States have failed to implement it. This reality raises questions about the continuing com-



mitment of EU Member States to combat racism and discrimination. However the Directive does have direct effect, which means that individuals can assert it before national courts, even where it has not been implemented.

The Race Directive gives protection against discrimination in employment and access to a range of good and services. It puts forward a number of important definitions including: direct and indirect discrimination, harassment, and victimisation. Other significant aspects of the Directive are that it allows for positive action measures, the sharing of the burden of proof, and the establishment of equality bodies.

The principles enshrined in the Race Directive need to become core elements of anti-discrimination law and practice across the European Union. Strategic litigation is a tool to ensure that this happens. To this end, it expressly allows for NGOs to engage in proceedings in support of or on behalf of victims.

While Article 13 of the Amsterdam Treaty provided the context for developments in the field of anti-discrimination, Article 29 included reference to preventing and combating racism. While the European Commission proposed a Framework Decision on racism as a crime in 2001, developments in this policy area have been disappointing; the Council has failed to adopt the Framework Decision. In addition the European Union has competence in other policy areas that either directly or indirectly impact on the fight against racism, including: migration and asylum, criminal law, and education.

The European Union is also involved in a range of other activities, including awareness raising (through the 'For Diversity. Against Discrimination' campaign) and funding of anti-racism projects. In 1997 the EU Monitoring Centre on Racism and Xenophobia (EUMC) was established. While the Centre is likely to be expanded to become a Fundamental Rights Agency in 2007, it will continue to focus on the problem of racism in Europe.

KEY LINKS AND SOURCES OF FURTHER INFORMATION AT NATIONAL LEVEL

State bodies: www.riik.ee

European Commission in Estonia: www.euroopaliit.ee

Chancellor of Justice: www.oiguskantsler.ee

Legislation: www.riigiteataja.ee ; www.legaltext.ee

Estonian reports on the fulfillment of international obligations: www.vm.ee

Trade Unions: www.eakl.ee; www.talo.ee

Other NGOs: www.ngonet.ee; www.emu.ee; www.emsl.ee

Estonian Law Centre Foundation: www.lc.ee

ENAR – ESTONIA

Legal Information Centre for Human Rights: www.lichr.ee

Contact person: J. Kovalenko, Julia@lichr.ee , (372) 64 64 270

Nunne 2, 10133 Tallinn

Tallinn Centre for Legal Information on Human Rights

Contact person: A. Arjupin, Andrew@lichr.ee

Institute of International and Social Studies: www.iiss.ee

Contact person: K. Hallik, hallik@iiss.ee

Russian Institute: www.hot.ee/russconference

Contact person: S. Seredenko: s.seredenko@mail.ru

Integration Centre of Ida-Virumaa County

Contact person: A. Dusman: dusman@estpak.ee

Belorussian Cultural Society BEZ

Contact person: Z. Klyga: zklyga@hot.ee

Estonian Human Rights Institute (observer): www.eihr.ee

KEY LINKS AND SOURCES OF FURTHER INFORMATION AT EUROPEAN LEVEL

EU Monitoring Centre on Racism and Xenophobia: www.eumc.eu.int

European Commission - anti-discrimination and relations with civil society:

www.europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm

European Network Against Racism (ENAR): www.enar-eu.org

European Roma Information Office: www.erionet.org

European Union: www.europa.eu.int

'For Diversity. Against Discrimination': www.stop-discrimination.info

Strategic Litigation of Race Discrimination in Europe: from Principles to Practice:

www.migpolgroup.com/documents/2498.html

Strategies on Litigation Tackling Discrimination in EU Countries: www.solid-eu.org

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This leaflet was prepared on behalf of ENAR in Estonia and by the ENAR European secretariat. Download this leaflet: http://www.enar-eu.org/en/publication/national_leaflets/

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This leaflet is funded by the European Commission,
DG Employment and Social Affairs.