

Equal Opportunities for Women and Men



*Monitoring law and
practice in new member states
and accession countries of the
European Union*

2005

PARTICIPATING COUNTRIES:

Bulgaria
Czech Republic
Estonia
Hungary
Lithuania
Poland
Romania
Slovakia
Turkey

Equal Opportunities for Women and Men

Monitoring law
and practice in

Estonia

by Mari-Liis Sepper, Marika Linntam

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Preface

BRINGING THE EU HOME

“Bringing the EU Home” is a three-year project (2004–2006) conceptualized as a follow up to the Program on Equal Opportunities for Women and Men in the European Accession Process (EOWM), which was a joint initiative of the Open Society Foundation Romania and the Network Women’s Program of the Open Society Institute*. The EOWM projects stemmed from the Open Society Institute project to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and ensured that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anti-corruption. Given the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with, an independent programme, EUMAP, to evaluate the status of accession countries from this perspective was developed.

An assessment of the status of equal opportunities, *de jure* and *de facto*, was carried out in seven of the ten candidate countries: Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland and Romania. The EU Directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions and practices. The Directives related to the principle of equal pay for work of equal value; equal treatment as regards employment; protection of pregnant, and breastfeeding women, and women who recently gave birth; the burden of proof in cases of sex-based discrimination, and non-discrimination against part-time workers were analyzed in 2001. The remaining Directives on self-employed workers, parental leave, and social security schemes were assessed in 2002.

The final report, including an overview and executive summary for each country, was published in November 2002. Each country report and executive summary was translated into the national language and used as an advocacy/research tool. 2002 and 2003 were years of intensive outreach efforts, both nationally and at the EU level. Countries organized roundtables and meetings for NGOs, government officials, lawyers, and media to publicize the findings of the reports. The English version was used for advocacy at the EU level, and sent to members of Parliament from EU and candidate countries. Country information was presented twice at meetings in Brussels, and the final reports were launched at the European Parliament in November 2002.

* Monitoring the EU Accession Process: Equal Opportunities for Women and Men 2002, <www.eonet.ro>

The project “Bringing the EU Home” aims to promote awareness, advocacy and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level mechanisms effectively. In this context, new, updated monitoring was carried out in 2004.

A detailed assessment of the legislative developments, institutional mechanisms, policies, programs and research at the national level was carried out in Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Slovakia* and Turkey.*

Each country report contains key recommendations related to legislation, institutional mechanisms, policies and programs, awareness raising and research initiatives and outlines specific areas of concern. On-going updates will be made to the reports and available online, in order to ensure different groups can access the most current information easily.

The project further aims to help raise the significance of equal opportunities on the European agenda within new member states and within the process of on-going and new accession negotiations, and create a unique platform for new member states and accession countries. It is therefore about “bringing the EU home.”

We would like to thank all individuals who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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1. LEGISLATIVE OVERVIEW

1.1 Amendments to Gender Equality Legislation Since 2002

1.1.1 Act on Gender Equality

The main legislative development since 2002 has been the adoption of the long-debated Act on Gender Equality, which entered into force on May 1, 2004 (hereinafter referred to as Gender Equality Act or GEA). The stated purpose of the act is to ensure respect for the principle of equal treatment and to promote gender equality as a fundamental human right and a general good in all areas of social life. The act prohibits discrimination based on sex in the public as well as the private sector, and obliges state and local government agencies, educational and research institutions and employers to promote gender equality. As a legal remedy, the act provides a right to claim compensation for damage sustained as a result of discriminatory practices and provides for the possibility to refer a case to the Gender Equality Ombudsman for an expert opinion. The GEA establishes several new institutions that will contribute to the existing gender equality mechanisms.

For the first time, Estonian legislation defines terms such as *gender equality*, *equal treatment*, *sexual harassment* and the principle of *shared burden of proof*. Article 3 defines ‘gender equality’ as equal rights, obligations, opportunities and responsibility of men and women in professional life, upon acquisition of education and participation in other areas of social life. ‘Equal treatment for men and women’ in the context of the act in question means that there shall be no discrimination whatsoever based on sex, either directly or indirectly.

The GEA provides different categories of prohibition of gender discrimination: direct and indirect discrimination, discrimination in professional life and discriminative job and training offers. Discrimination at work includes, among other things, discrimination on the basis of a person’s family and marital status, sexual harassment or neglecting the duty to protect one’s employees from sexual harassment, and discrimination of an employee as punishment for relying on her rights as provided in the GEA.

Exceptions to the prohibition of discrimination are as follows:

- special protection of women concerning pregnancy and giving birth;
- obligatory military service established only for male citizens;

- accepting only men or only women as members of a non-profitable union if it is set out so in the statute of the union;
- concerning access to employment including the training leading thereto, a difference of treatment which is based on a characteristic related to sex where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate; and
- application of special measures which promote gender equality and grant advantages for the less-represented gender or reduce gender inequality.

According to the GEA, *direct discrimination* based on sex occurs where one person is treated less favorably on grounds of sex than another person is or would be treated in a comparable situation. Direct discrimination based on sex also means the less favorable treatment of a person in connection with pregnancy and child-birth, parenting, performance of family obligations or other circumstances related to gender, and sexual harassment. Indirect discrimination based on sex occurs where an apparently neutral provision, criterion or action would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. Original draft of law included also “apparently neutral practice” that was eventually eliminated from the final version of the act.

Article 6 of the GEA 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.

The act also 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 GEA may be divided into six elements which all must be present in order to establish that sexual harassment took place. Article 6 of the GEA prohibits sexual harassment and considers it to be discrimination if an employer does not fulfill 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.

1.1.2 Act on the Chancellor of Justice

In 2004 the Act on the Chancellor of Justice was considerably amended. Through the act that entered into force on January 1, 2004, the Chancellor of Justice was granted additional functions as legal mediator in discrimination cases. In discrimination cases, the alleged victim has a right to file a petition to the Chancellor to start a voluntary mediation procedure. In order to successfully fulfill its tasks as mediator, additional powers were granted to the institution of Chancellor of Justice. The Chancellor may demand that an alleged discriminator provide documents and proof that would shed light on the discrimination incident. The procedure is carried out in line with the investigative principles, according to which the Chancellor has powers to initiate an investigation and obligation to find out what really happened. Consequently, no reversal of the burden of proof is needed. The amendment to the act also obliges the Chancellor to promote gender equality and respect the principle of equal treatment.

1.1.3 Act on Parental Benefit

Another important legislative development was the adoption of the Act on Parental Benefit, which entered into force 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 with 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 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 ceiling is presently set at 15,740 Kroons (1,003 Euros) per month. The amount of the payment may not be less than 2,200 Kroons (141 Euros) per month. The benefit shall be granted for a 365-day period beginning with the date on which the right to receive the benefit arises.

1.1.4 Act on Employment Contracts

On May 1, 2004 several amendments to the Act on Employment Contracts (hereinafter Employment Contracts Act or ECA) 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 ECA 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-time*. Article 13(1) of this act stipulates that part-time workers 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 that of the full-time workers who work at the same employer and do the same or equal work. If this is deemed to be impossible, the collective agreement is to define the 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.

1.2 Overview of the Transposition of Gender Equality Directives as of May 1, 2004

The process of transposing the *acquis communautaire* was well advanced by 2002–2003, though Estonia lagged behind on several issues, including gender equality. Currently, the national laws have been in essence harmonized with the *acquis* on gender equality. A more thorough analysis of legal norms and consequent practices reveals, however, several shortcomings and inconsistencies with European standards.

1.2.1 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

Directive 75/117/EEC was in transposed in essence already in 2002 by amendments to the Act on Wages. Presently, the *equal pay principle* is provided for in the Act on Wages, as well as the GEA. The definitions in these two laws are, however, not identical and the content of the respective articles should be harmonized. Moreover, the general principle of equal treatment in labor relationships as provided for in the Article 10(2) of ECA states that an employer may not treat employees unequally in terms of payment on the ground of sex, thereby creating a third legal definition of equal pay.

1.2.2 Council Directive 76/207/EEC of 9 February 1976 on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions

Directive 76/207/EEC is transposed through the ECA and the GEA, and there are clear overlaps between the two acts. A new draft of the ECA has been circulating in government agencies for some years with the hope of adopting a new law by early 2004. The adoption of the act in question should eliminate the problematic articles from the present ECA. The greatest concern about the law in force is that women are prohibited by a government decree¹ 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 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 done so.

¹ The legal ground for this decree is the ECA.

1.2.3 Council Directive 79/7/EEC of 19 December 1978 on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security

Directive 79/7/EEC has been adequately transposed into Estonian law.

1.2.4 Council Directive 86/378/EEC of 24 July 1986 on the Implementation of the Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes, Modified by Council Directive 96/97/EC of 20 December 1996

Directive 86/378/EEC as amended by Directive 96/97/EC has not been transposed because Estonia considers not having occupational pension schemes.

1.2.5 Council Directive 86/613/EEC of 11 December 1986 on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity, Including Agriculture, in a Self-Employed Capacity, and on the Protection of Self-Employed Women during Pregnancy and Motherhood

Directive 86/613/EEC and its norms have not been explicitly introduced into the Estonian legal system. There are no discriminatory provisions in Estonian legislation regarding the establishment, equipment or extension of business or the launching or extension of any other form of self-employed activity. However, there continues to be a legal void regarding special measures or provisions to avoid discrimination of self-employed persons.

1.2.6 Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or Are Breastfeeding

Directive 92/85 has been transposed into Estonian legislation, except for the compulsory two-week maternity leave. Most of the *acquis* concerning the special protection of pregnant women is adequately transposed into national law.

1.2.7 Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on Parental Leave Concluded by UNICE, CEEP and the ETUC

Directive 96/34/EC has been transposed through the Act on Holidays. There is, however, no provision of non-transferable parental leave, except for the additional child care leave of 14 days to be granted only for fathers. All the other articles of the Act on Holidays that contain provisions on parental leave stipulate that it is either the mother or the father of the child who is entitled to the parental leave. In this way, national legislation fails to adequately transpose Article 2(b) of the Directive.

Time-off from work in cases of family emergency as provided in Directive 96/34/EC may be granted under national law only under the Act on Holidays (Articles 30 and 31), unless an employee asks for leave without pay. No mention of family reasons for which an employee may ask for leave exists in Estonian legislation.

1.2.8 Council Directive 97/80/EC of 15 December 1997 on the Burden of Proof in Cases of Discrimination Based on Sex

Directive 97/80/EC on the burden of proof in discrimination cases has been transposed through a number of different acts. The principle of *shared burden of proof* was introduced into Estonian legislation by the GEA, ECA and the Act on Wages. Shared burden of proof in discrimination cases is included in Article 4 of the GEA, which stipulates that if a person discovers that he or she has been discriminated against on the ground specified in Articles 6 or 8 of the GEA and submits an application to a competent body describing facts relating to such discrimination on the basis of which it can be presumed that direct or indirect discrimination based on sex has occurred, the person against whom the application is submitted shall, at the request of the competent body, explain the reasons and motives of his or her behavior or decision. If the person fails to do so or refuses to give explanations, such behavior shall be deemed to be tantamount to acknowledgement of discrimination by the person.

The respective article of the Act on Wages provides that an employer must prove that he or she has respected the principle of equal pay for equal work if the employee so requests. Employees also have a right to demand explanations on how the salary is calculated.

In the conciliation proceedings of Chancellery of Justice no reversed burden of proof applies. However, the Chancellery may establish the facts relevant to the matter and, if necessary, collect evidence on his or her own initiative for such purpose. In the course of proceedings the Chancellor of Justice has unrestricted access to documents, other materials and areas that are in the possession of the agencies under supervision and the

parties to the conciliation proceedings. The Chancellor may demand that agencies under supervision and parties to the conciliation proceedings submit written explanations concerning a petition and take a testimony of the concerned person.

Under the Act on Employment Contracts, a reversal of the burden of proof takes place when there is a reasonable doubt that discrimination has occurred. The act uses the term ‘to explain one’s motives’ and does not mention an obligation to provide proof. Paradoxically, the dispute settlement may take place either before labor dispute committees or the Chancellor of Justice. The latter, however, does not apply the reversed burden of proof.

1.3 Assessment of the Recommendations Made in 2002

In Estonia, gender equality legislation was adopted relatively late and due to great pressure from the European Union. It can be argued now that for different reasons the extensive adoption of international and national norms concerning equal treatment of both sexes has remained somewhat empty in substance. By transposing European Union equality standards into its national laws, Estonia instigated a rather formalistic reform. The radical change in discourse took place without substantial support from most of the people to whom the new norms will apply.² The public debate, although existing, often tended to be superficial and based on stereotypical views, and the decision-makers did not acknowledge a real-life need to bring about the amendments to domestic regulations. In other words, the state established the formal accordance of Estonian laws with their European counterparts, while paying little attention to the real necessities deriving from particular practices and economic conditions of the country. Since the beginning of the nineties, Estonia, similarly to other transition countries, has experienced deteriorating working conditions for the workers, weakening social protection and increasing vulnerability to social exclusion. Labor market practices remain discriminatory towards different social groups; and the gender pay gap is reportedly increasing, not decreasing.³ The changes have sometimes disproportionately

² Several NGOs have held roundtable discussions on the draft GEA. A recent study (from 2003) by the Estonian Open Society Institute on attitudes towards gender equality legislation reveals that 81 percent of people interviewed support the incorporation of the ‘principle of equal pay for work of equal value’ in Estonian law; 75 percent are for legislation that would guarantee women equal opportunities with men to enter any job; and 91 percent are in favor of legal norms that protect pregnant and child-caring women from employers’ arbitrary actions.

³ See for example paper in Conference of European Statisticians (Session on Gender Statistics), Geneva, Switzerland, September 23–25, 2002, *Gender Differences in Changes in the Labor Market in Transition Countries*, available online at <http://www.unece.org/stats/gender/web/pubreps.htm>, accessed on August 28, 2004.

affected women, although the degree to which this is true differs depending on specific questions.

Several vital demographic, economic and social concerns influence the manner in which the questions of gender equality are dealt with. One example of ambiguous policies and laws is the newly instated parental benefit that in the first six months following the birth of a child may be paid only to the mother, making female employees even less desirable in the eyes of the employer and thereby weakening the status of women in the labor market. Persisting negative natural growth in Estonia has led decision-makers to adopt new family policy measures that do not necessarily help to promote gender equality. People are invoking traditional gender roles as determinedly as in the early nineties. It is therefore difficult to forecast what the recently achieved normative changes mean for real-life gender equality.

People from various social groups claim that legislative changes have occurred without their approval. It is also due to this phenomenon that the number of discrimination cases treated before national courts has remained marginal, if not non-existent, showing no considerable change even after passing the first specialized equality act. In this sense, no considerable changes can be noted since 2002. The real-life empowerment of women is almost non-existent, and awareness of existing legal remedies remains very low.

By completing the first essential phase of legal reform in order to achieve real equality – which is to say individual rights, new patterns of behavior, as well as remedies, sanctions to oblige subjects to act in accordance with respective norms – Estonia has only taken the first step. In order to make gender equality a reality, many active measures have still to be taken and new practices introduced. Without these, the deep structures of inequality risk remaining intact for a long time.⁴

One area of concern continues to be legal remedies in sex discrimination cases. Although new legislation grants powers to several existing institutions and creates new bodies of gender equality, effective remedies that are easily available to every citizen are not yet present. The field of gender equality institutions is unsystematic and may include possible overlapping powers possessed by several institutions. Nor are there real means that would prevent employers from continuing discriminatory practices, especially sanctions or fines within the meaning of Directive 2002/73/EC that ought to be transposed by October 2005.

⁴ The paper *Has Legal Reform in Central and Eastern European States Concerning Gender Equality Been Successful?* presented at the EU-China Human Rights Network seminar on Gender and Law in Beijing 2004 was used in writing the present report.

1.3.1 Directive 75/117/EEC

No job classification system has been drawn up, nor has the Labor Inspectorate monitored individual and collective labor contracts from the perspective of the principle of equal pay.

1.3.2 Directive 76/207/EEC

All necessary legal definitions regarding equal treatment have been introduced in Estonian legislation through the Act on Gender Equality, which also includes the possibility to apply positive measures. The equal treatment principle in vocational training is included in the GEA.

Candidates for a work position do not have a possibility for recourse to labor dispute commissions, since the existence of an employment relationship is a precondition for the commission's jurisdiction.

The GEA created a new institution of the Gender Equality Ombudsperson to solve discrimination cases and give expert opinions. Victims of discrimination in employment relations may forward an application to this body and acquire sufficient certainty on whether discrimination has occurred before turning to the court for compensation.

1.3.3 Directive 92/85/EEC

There is still no Estonian translation available of the European Commission's Guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the safety or health of pregnant workers and workers who have recently given birth or are breastfeeding.

1.3.4 Directive 97/80/EC

Several legislative acts stipulate the reversal of the burden of proof in discrimination cases. Article 7 of the GEA imposes a duty on the employer to provide an explanation if a person suspects discriminatory behavior. The employer is required to provide within ten working days a written explanation to the person. In the explanation, the employer must submit the following information concerning the person who was selected: 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.

In the event that a person suspects gender discrimination in remuneration and submits a respective request for an explanation, the employer is required to provide a written explanation concerning alleged discriminatory activities. An employee has the right to demand that the employer explain the basis for calculating salaries and obtain other necessary information on the basis of which it is possible to decide whether discrimination specified in Article 6(2)(3) of the GEA has occurred.

There are no data available on special trainings concerning a shift in the burden of proof. However, in the spring of 2004 judges from first and second instance courts received introductory training on the new GEA.

1.3.5 Directive 97/81/EC

No surveys have been conducted on the situation of part-time workers. The prohibition of discrimination against part time workers and the possibility to transfer part-time workers to full-time work, as well as an obligation to make available information on vacant positions, are provided by the Act on Employment Contracts. Under Estonian legislation, unequal pay for work of equal value regarding part-time workers is not allowed.

There is still no social dialogue on the status of part-time workers, nor is there any debate on whether the working conditions of part-time workers should be improved. Since no respective surveys are available, it is difficult to identify the most important shortcomings.

1.3.6 Directive 86/613/EEC

Estonian law does not define the concept of *self-employed person*. The Estonian 'private one-man entrepreneurship' is a slightly different concept. The situation has not changed since 2002 concerning the legislation and data on the spouses of self-employed persons. In principle, however, equal treatment also applies to private entrepreneurship.

1.3.7 Directive 96/34/EC

Since 2002 many positive changes have taken place regarding more equal child-care between spouses. Awareness and actual behavioral patterns of people have altered considerably. Articles and debates on the equal division of domestic labor often appear in the media. However, surveys on sharing domestic duties and child-care between

spouses, and the question of whether more fathers should take parental leave, remain sporadic. There are no campaigns to raise awareness on these issues. The new Act on Parental Benefits, under which parental benefit is paid for six months after a child's birth only to the mother, only enforces traditional gender roles and behaviors. Part-time work remains a marginal way of working and not many employers encourage their employees to use this type of working regime.

1.3.8 Concrete Recommendations

The Act on Wages and the newly adopted GEA prohibit different treatment in remuneration.

Article 6(1) and (2) of the GEA provide what is to be understood under discriminatory practices in professional life. These comprise of cases in which an employer selects for employment or a position, hires or admits to practical training, 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. Article 6(2)(3) stipulates that if an employer establishes conditions for remuneration or other conditions which are less favorable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same or equivalent work then this is deemed to be discrimination.

Consequently, at present parallel definitions with differences in terms exist in the Act on Wages and the GEA. The Act on Wages prohibits an increase or decrease in wages on the basis of a worker's sex, race, ethnic origin, etc. Under the act it is prohibited to "decrease wage on the ground of worker's marital status or family obligations." The provisions of the two acts need to be harmonized in order to comply with the requirements of Directive 75/117/EEC.

According to the Act on Parental Benefits, before the child attains six months of age, the mother of the child has the right to receive the benefit except if the mother of the child is dead or fails to perform the obligation to raise and care for the child arising from the Act on the Family or if the adoptive parent, guardian or caregiver has the right to receive the benefit. This provision is not in accordance with European Community law and may constitute discrimination against fathers who would wish to take parental leave before the child reaches six months.

2. INSTITUTIONAL MECHANISMS

2.1 Coordination of Gender Equality Policy-Making

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 on Gender Equality.⁵ The functions of the Department include the elaboration of gender equality policies and coordination of implementing and elaborating gender mainstreaming measures. Article 9 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 fulfillment 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 gender equality principle into all governmental and municipal politics. By the end of 2004, the Estonian National Gender Equality Strategy must be concluded. The Strategy is being elaborated under the coordination of the Department on Gender Equality. In addition, the Department may counsel anyone on questions of equal treatment or help victims of discrimination.

In order to fulfill 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 of amending legal norms or signing treaties.

The Government Order of November 27, 2003 created an inter-ministerial Commission for the Promotion of Gender Equality. 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

⁵ *State Gazette* I 2004, 62, 1043.

into plans of actions, projects and programs for all public authority bodies. 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 into its work specialists of specific fields or ministries. The financing of the commission is provided by the Ministry of Social Affairs.

Another body aimed at modeling 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 programs presented by the ministries.

2.2 Ministry of Social Affairs as the Supervisor of Implementation of Gender Equality Legislation

The general functions of the Ministry of Social Affairs in the field of gender equality were specified by the GEA, creating more detailed rights and obligations in order to supervise the implementation of the GEA. 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 labor dispute committees.

2.3 Gender Equality Ombudsperson

The GEA created a new institution that aims to combat discrimination and to promote gender equality. The Gender Equality Ombudsperson⁶ (*Soolise Võrdõiguslikkuse Volinik*) is an independent and impartial expert who acts independently and monitors the

⁶ Also translated as ‘Commissioner’.

implementation of the GEA. The Ombudsperson is appointed to the office by the Minister of Social Affairs for five years and its activities are financed from the state budget.

The most important new regulation grants the Ombudsperson 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 Ombudsperson analyses the effect of legislation on the situation of women and men in society, and makes proposals to the Government for amendments to legislation.

Although the GEA entered into force in May 1, 2004, the Gender Equality Ombudsperson has not been appointed by the time of writing this report.

2.4 Chancellery of Justice

The recent amendment to the Act on the Chancellery of Justice provides a function of promoting gender equality and applying the equal treatment principle. The Chancellery is therefore competent to:

- analyze the effect of the implementation of legislation to the condition of different social groups;
- inform the *Riigikogu* (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 *Riigikogu*, 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;
- 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 gendered difference in pay) or publishing a discriminatory offer of employment or training provided for in Articles 6 and 8 of the GEA,⁷ 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 labor 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.

2.5 Conciliation Procedure of the Chancellor of Justice

With regard to legal remedies available for victims of discrimination, important legislative change took place on February 25, 1999 when the Act on the Chancellor of Justice⁸ 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 state agency, local government agency or other persons performing any public function adheres to the principles of observance of the fundamental rights. 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

⁷ According to Article 8 of the GEA, offers of employment and training which are directed at persons of one sex only are prohibited and are considered gender discrimination.

⁸ *State Gazette*, I 1999, 29, 406; 2003, 23, 142.

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; color; 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.

The Chancellor of Justice exercises supervision over the activities of both public and private entities and conducts conciliatory proceedings based on petitions filed by persons who find that they are discriminated on the basis of the attribute named above. Similarly to GEA petitions concerning professing and practicing of faith or working as a minister of a religion in religious associations, relations in family or private life and performance of the inheritance rights do not fall within the competence of the Chancellor of Justice.

After accepting a petition, the Chancellor of Justice sends a copy of the petition to the respondent whose activities are contested and sets a term for submission of a written response. A petition filed may be reviewed in a session in the presence of the petitioner and respondent or their representatives. The Chancellor of Justice may obligate the parties to appear in person. In session both parties will have a chance to put forward their position. Conciliation proceedings will be concluded if: proceedings are terminated, the parties fail to reach an agreement or the Chancellor of Justice approves the agreement. Conciliation proceedings are terminated in cases where the petitioner withdraws the petition filed, the respondent fails to submit the written response within the term, communicates refusal to participate in the conciliation proceedings or if the petitioner or respondent fails to perform procedural acts without good reason or refuses to perform the acts or obstructs the organization of the conciliation proceedings in any other manner. In other words, the respondent may easily ignore the conciliation procedure. In this case, the only way to put pressure on the discriminator is the possibility to disclose the content of a petition proceeded in the media or through other channels. However, the act foresees that it is not allowed to disclose any information which would allow the persons involved to be identified.

The Chancellor makes a proposal to resolve the dispute and reach an agreement. The proposal shall contain substantiated opinion on the discrimination allegations formed by the petitioner in the course of the proceedings based on obtained evidence and established facts. In the proposal, the Chancellor may suggest that the respondent

perform appropriate acts, and take measures for payment of compensation and restitution of the petitioner's rights. Each party has a right to consent or object within ten working days.

If the petitioner or the respondent fails to consent to the proposal, the Chancellor will state the failure to reach an agreement. Yet, performance of an agreement approved by the Chancellor is mandatory to the parties to the proceedings. An agreement shall be performed within thirty days and if it is not done so, the petitioner or respondent may submit the agreement approved to a bailiff for enforcement pursuant to the procedure provided by the Code of Enforcement Procedure.

If conciliation proceedings are terminated or the failure to reach an agreement is stated, the petitioner has within thirty days the right of recourse to a court or to an authority conducting pre-trial proceedings as provided by law. An agreement approved is final and cannot be contested in court, except if the Chancellor of Justice has materially violated a provision of conciliation procedure and such violation affects or may affect the content of the agreement. In latter case an action may be filed with an administrative court.

A recent activity report of the Chancellery of Justice indicates that in 2003 no application was filed and no initiatives were taken to deal with gender discrimination issues. As of July 2004, no petition had been filed to Chancellor of Justice claiming gender discrimination.

A main development in the role of NGOs as promoters of gender equality that could be significant in the near future is the amendment to the Article 26 of the Act on the Chancellery of Justice 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.

3. POLICIES, PROGRAMS AND AWARENESS-RAISING

3.1 Policies and Programs

Article 11 of the GEA establishes employers as persons promoting gender equality. They must act in a manner that persons of both sexes are employed to fill vacant positions. Employers must also ensure that the number of men and women hired to different positions is as equal as possible and ensure equal treatment for them upon promotion. Working conditions are to be suitable for both women and men and

support the combination of work and family life. Employers should ensure that employees are protected from sexual harassment in the working environment; they must inform employees of the rights ensured by the GEA and regularly provide relevant information to employees and/or their representatives concerning equal treatment for men and women in the organization and measures taken in order to promote equality.

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 main goals of population policy are increasing the number of births and raising the average life-expectancy and average active life-time of both women and men to at least the average European level. The means for reaching these objectives include the adoption of 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 distress, and by developing new options for childcare (for example, daycare). In other words, a favorable environment for the flexible reconciliation of work and family life is to be designed.

3.1.1 Active Employment Policies of the Government

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 labor 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.⁹ Although several development plans emphasize active employment measures, public expenditure on these measures is relatively small when compared with other European states. The number of participants in these measures has in fact decreased since 1995. The state mostly provides training; wage subsidies are not common at all.

⁹ Reelika Leetmaa, Andres Võrk, Raul Eamets, Kaja Sõstra, *An Evaluation of Active Labor Market Policies in Estonia*, Working Paper No. 9/2003 (Tallinn: PRAXIS Center for Policy Studies, 2003).

The wage subsidy for the employer for recruiting less competitive persons has been the least widespread active measure, both in terms of expenditure and number of participants (annually only between 120 and 350 unemployed since 1995). Under the Act on Employment Service,¹⁰ the following registered unemployed persons are considered less competitive in the labor market: disabled persons; pregnant women and women who are raising children under six years of age; young people aged 15–24;¹¹ 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.

The Estonian National Action Plan on Employment foresees the development of flexible working hours in order to promote women's employment and to help reconcile work and family life. There are also plans to promote small entrepreneurship among unemployed women and to direct special attention to young women who enter the labor market for the first time, and women who want to return to work and who are willing to create their own working position. The Government has agreed to increase the budgetary resources for children day care establishments.¹² More precise measures to help reconcile family and work life will be developed in the Estonian National Strategy on Gender Equality, expected at the end of 2004.

3.1.2 Impact Assessment of Retraining the Unemployed and Other Active Employment Measures

According to the *Evaluation of Active Labor Market Policies in Estonia*, one year after the completion of training, participants had a seven percent greater probability of working than those who did not participate in the training (after two years this increased to about 15 percent). Those who received start up support for business activity had a 24 percent greater probability to work two years later. The estimated impact of wage compensation or subsidies paid for the employed persons belonging to the risk group (who are less competitive in the labor market) is 20 percent. Some aspects of impact assessment demonstrate that the training had a more significant

¹⁰ *State Gazette* I 2000, 57, 370; 2003, 88, 591

¹¹ In 2003, among young (15–24 year-old) people, the unemployment rate was 20.6 percent and was two times higher than the average unemployment rate. There are especially many young women among the unemployed. In 2003, the unemployment rate among young women increased to as high as 26 percent, which was 9.1 percent higher than that of men in the same age group (16.9 percent).

¹² Strategy on Implementing the Fundamentals of Population Policy, 2005–2008.

impact on Estonian women, non-Estonian men and employees with only elementary or high school education.¹³

The office of the Minister of Population Affairs conducted a survey on childcare in Estonian families at the beginning of 2004. The survey revealed that it is most complicated to reconcile work and family life for parents with children aged 2–3. One reason for this is that there are not enough kindergarten places available and almost no possibilities to work part-time.

The Confederation of Estonian Trade Unions' Action Guidelines for 2004–2007¹⁴ in 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. The Confederation of Estonian Employees Unions' Action Guidelines for 2001–2005¹⁵ promises to abide by the principle of equal pay for work of equal value.

3.2 Awareness-Raising

According to the Estonian Constitution, every citizen has a right to information. The main legislative measure to ensure access to information is the Act on Public Information, passed on November 15, 2000. The purpose of this act is to ensure that the general public and every person has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society, and to create opportunities for the public to monitor the performance of public duties.

The Chancellery of the *Riigikogu*, the Office of the President of the Republic, the Office of the Chancellor of Justice, the State Audit Office, the courts, the General Staff of the Defense Forces, government agencies and legal persons in public law are required to maintain web sites for the disclosure of information.

A city or rural municipality government is to organize the maintenance of a web site in order to provide details of the activities of the bodies and agencies of the city or rural municipality and to disclose information in their possession. On the basis of a contract, city and rural municipality governments may organize the maintenance of a joint web site.

¹³ Reelika Leetmaa, *et al.*, *op.cit.*

¹⁴ Available online at <http://www.eakl.ee/org/tegevus.html>, accessed on October 3, 2004.

¹⁵ Available online at <http://www.talo.ee/>, accessed on October 3, 2004.

The Act on Databases, passed on March 12, 1997, provides for the procedure for possession, use and disposal of state and local government databases, for the general principles of maintenance of databases belonging to the state, local governments and persons in private law, and for release and use of their data.

Data maintained in state and local government databases are public and every Estonian citizen has the right to access such data and receive copies thereof pursuant to the procedure provided by law, except if access to or release of data is prohibited by law or if the data are intended for internal use only.

At the request of a person, the authorized processor of a state or local government database is required to release information within five working days as of receipt of a corresponding request unless another term is provided by law.

On March 9, 2004, the Estonian Employer's Confederation held a seminar entitled "Employers as promoters of Equality: Locomotive Power or Obstacle?" Although the purpose of the seminar was to introduce employers to the new obligations deriving from the GEA, the discussions held in the seminar and the conclusions¹⁶ of this event were mostly about the very basics of the non-discrimination principle, and tended to tackle questions on the differences between the two sexes, rather than to offer explanations about employers' obligations.

There are no specific public campaigns related to sexual harassment, nor are there any campaigns on sharing family responsibilities.

4. RESEARCH AND STATISTICS

4.1 Gender Pay Gap

Women employees continue to earn almost 25 percent less than their male counterparts. The gender pay gap has remained the same throughout the decade and is visible in all fields of professional life. According to the Estonian Social Insurance Board, in the capital city area the gender pay gap is as high as 30 percent.¹⁷ Recently, a new survey on the gender pay gap in Estonian labor market was published. It analyzed the main features and patterns of paying wages to employees of the different sexes and the overall status of female workers, as well as reasons for gender inequality.

¹⁶ Available at <http://www.ettk.ee/et/koolitus/2004/03/item18462>.

¹⁷ A. Reinap, "Naised teenivad meestest neljandiku võrra vähem," *Postimees*, April 8, 2004.

Differences in pay are not only apparent when comparing the average pay of female workers with that of male workers. Segregation in the labor market has brought about a situation where poverty is gendered: it affects women and their children. According to data from the Estonian Statistical Office, there is difference in the disposable income per household member in a year depending on the sex of the head of the household. The difference in income is visible in total income and income from wage labor.

4.2 Employment and Unemployment Statistics

According to the Estonian National Action Plan on Employment 2004, unemployment affects more men than women (10.2 and 9.9 percent respectively), in contrast to the general trend observable in EU countries. The employment of both women and men has decreased, although men have remained more active than women. In 2003, 66.7 percent of men and 58.8 percent of women were active in the labor market. Although the difference is large, 7.9 percent, women's labor market participation is higher than the objective set by the EU for 2005 (57 percent).

Women are more likely to leave the labor market and become economically inactive. This is also the main reason why women's employment has been lower than that of men for the last decade. The reasons for becoming inactive are also different. In 2003, for women, the main reasons were, in order of importance: reaching retirement age; pregnancy; maternity or parental leave; engaging in education; illness or disability; and the need to take care of children or other members of the family. The reasons of inactivity for men in 2003 were: engaging in education, reaching the retirement age; and illness or disability. Parental leave or taking care of children were not mentioned in the statistical survey as reasons for the men's inactivity. Men are, however, more likely to experience long-term unemployment. In 2003, out of all long-term unemployment 53.3 percent were men. There are also more men than women who are inactive because they have lost hope to find work (so called 'discouraged workers').

Those with the highest risk of unemployment are young people, especially young women and non-Estonians. Unemployment among the young is seven percent higher than the overall unemployment rate. The unemployment rate of women aged 15–24 was 22.5 percent in 2002 and 26 percent in 2003. The same indicators for men aged 15–24 were 14.3 percent in 2002 and 16.9 percent in 2003.

There are also different patterns of behavior for men and women in the labor market. Unlike in many other European countries, in Estonia both men and women generally work full-time. However, out of all part-time workers, women make up more than two thirds (69 percent). In 2003, 11.5 percent of active women and five percent of active men worked part-time. Women are still unlikely to reach high and responsible

positions. In 2003, 15 percent of all men worked as decision-makers, senior officials and managers; the corresponding figure for women was 8.3 percent. Women made up a considerable majority among professionals, technicians and associate professionals, clerks, service workers and shop and market sales workers. Men are in the majority among workers of lower levels of job classifications. In 2002, among the active employers there were 11,000 men and 5,100 women, while in 2003, the respective numbers were 11,900 and 4,900 – showing that an increase in the number of employers meant a decline for women. In 2002, 19,200 men and 8,800 women were active as workers ‘on their own account’; in 2003 the respective numbers were 22,800 and 10,900. Surprisingly, there is almost no gap between the number of male and female unpaid family workers.

A study by the Estonian Open Society Institute researchers Iris Pettai and Ivi Proos in 2003 concludes that based on the analysis of 1,006 interviews, an estimated 22,000 women and 9,000 men were not employed because of their sex. An employment relationship was not initiated with 18,000 women because there was a risk of taking parental leave. An estimated 22,000 women did not reveal to their employer the fact that they have children.

The above statistics indicate vertical and horizontal segregation in the labor market. Jobs considered characteristically female pay less than those traditionally viewed as male. A recent survey on the pay gap also shows that educational level has a greater impact on the wage of male workers than on the wage of female workers. For non-Estonians, a proficiency in Estonian increases the wage only in the case of male workers. Moreover, the number of children does not impact the salary of male workers. The wage gap between women with no children and women with children is 3.6 percent. Women’s wages are also not influenced by the hours worked, whereas men receive an additional 0.23 percent salary for every extra hour. Men working in the private sector receive nine percent higher wages than men working for public institutions. Women experience no such difference. Most importantly, the salaries of male workers do not depend on whether the male worker works in a job traditionally male or female, his salary is in any case higher than his female counterparts. Women working in ‘male jobs’ receive considerably higher salaries than women working in ‘female jobs’.

In terms of working conditions, 43 percent of waged workers experience painful working positions at least during one fourth of their working time. Women experience physical risks less often than men, except for painful and difficult working positions.

According to the Estonian Labor Inspection, ten percent of the Estonian enterprises do not respect the rules set for working conditions. Cases as extreme as 24-hour working shifts, with no sufficient lunch break, restrooms and dark, noisy and smelly work rooms have been reported. The situation tends to be especially grave in enterprises with

foreign owners. The majority of workers employed in these enterprises are often women. However, the victims of work accidents are disproportionately more often men than women. In 2003, out of the reported 1,776 accidents, women were the victims in 741 cases.

4.3 Women in Decision-Making Positions

The number of women in the *Riigikogu* (Parliament) has grown in the past ten years. However, the majority of MP's are still men. At the last parliamentary elections, 21 percent of the candidates were women and currently 19 of the 101 members of the *Riigikogu* are women. Another indication of the improving representation of women in politics is the fact that 28.4 percent of the local government members are female (in 1996, the percentage of women in local assemblies was 26.6 percent).

4.4 Research on Sharing Family and Professional Responsibilities

According to the Estonian Social Insurance Board, as of September 30, 2004 the parental benefit (100 percent of previous monthly wage) was paid to the mother in 98.3 percent of the cases and to the father in 1.5 percent of the cases. The same benefit in the maximum amount (15,741 Kroons) was paid to the mother in 95.1 percent of the cases, and to the father in 4.9 percent of the cases. It is still very rare that fathers take parental leave, although they have been granted this right in legislation for many years.

Estonian women spend on average twice as much time doing housework than men. Women do housework up to four hours per day, compared with 2.2 hours for men. At the same time, men have longer working days at their paid job.¹⁸

4.5 Violence against Women

Estonian workers, especially in the service sector, experience more violence from customers and clients than from colleagues and co-workers (figures for the previous 12 months were 3.1 percent and 0.2 percent of the total number of workers, respectively). Surveys conducted in the Eastern and Central European countries demonstrate that women are more often victims of sexual harassment than men, especially younger women. The victims are primarily employees and especially those working under a fixed term labor contract. Sexual harassment is more common in hotels and restaurants

¹⁸ Ü. Mattheus, "Naised teevad mehestest poole rohkem kodutöid," *Postimees*, July 29, 2004.

(seven percent) and in mining (five percent), and least common in the construction business and in transportation (one percent in both).

4.6 Gender Stereotypes in Education

There are practically no studies available on the enhancing of gender stereotypes in primary and secondary schools, with the exception of research on representations of gender roles in textbooks.¹⁹ In the national report on the development of education, the Estonian Ministry of Education and Research emphasizes the drop-out of boys from secondary schools as a main gender equality issue in education.²⁰ The feminization of teaching staff and lack of role models for boys are also mentioned. It is said in the report that the teaching curricula does not include any direct component on gender equality. There is no specific gender-based policy in education and training. The syllabus for courses on domestic activities therefore continues to be separated into handicraft learned by girls, and manual training and technology by boys. Under the chapter *Special measures for youth to promote gender equality in access and quality of education and training* one finds the assertion that gender-based peculiarities of pupils are taken into account by the authors of study materials and also by teachers in their every-day work. No more specific data is provided.

Data on the perception and realizing of gender roles amongst the youth is contained in the *Candidate Countries Eurobarometer 2003.1 on Culture. Youth in new Europe*.²¹ According to this study, in the socio-demographic level gender stereotypes are found to be relevant for the candidate countries' young population. Compared with boys from candidate countries, 15–24 year old girls were more likely to go shopping (45% compared to 27%), more likely to read (56% compared to 37%), to go dancing (29% compared to 14%) and to help out around the house (62% compare to 40%). Whereas more boys than girls from candidate countries do some sports (61% compared to 29%), use computers (44% compared to 27%) and work for money (30% compared to 16%). Looking at those who are doing some sports, 15–19 year olds (53%) and students (56%) practice this activity in the highest rate – most likely at school.²²

¹⁹ Research on the Gender Roles in Textbooks (Department of Pedagogy, University of Tartu, 2002), the group was lead by Dr Jaan Mikk.

²⁰ The Development of Education. National Report of Estonia by Ministry of Education and Research, August 2004, available online at www.hm.ee.

²¹ The Development of Education. National Report, online at: www.ibe.unesco.org/International/ICE47/English/Natreprs/reports/estonia.pdf, accessed on November 12, 2004.

²² Available at <http://www.hm.ee>.

4.7 Quality and Affordability of Childcare Services

A survey on childcare in Estonian families ordered by the State Chancellery of the Estonian Republic and the office of the Minister of Population Affairs²³ reveals that childcare is mainly provided by the parents. Out of 501 parents of children aged 0.5–3 years (i.e., target group identified from amongst 1,200 questioned) 70 percent take care of the child primary by herself or himself, 17 percent take the child to a kindergarten, and 10 percent leave the child with a relative. Regarding childcare preference, 47 percent of the target group would like to use the services of a kindergarten and 53 percent would opt for other means (for example, nanny, private childcare institution, etc.). The survey also revealed the main obstacles in reconciling work and family life: not enough kindergarten places, private childcare is expensive and no possibility to work part-time.

In the target group, 25 percent spent more than 1,201 Kroons (76 Euros) monthly, 25 percent spent 501–1,200 Kroons (32–76 Euros), 25 percent spent 351–500 Kroons (22–32 Euros) and 25 percent spent less than 350 Kroons (22 Euros) on childcare. In Tallinn, the average sum spent on childcare was 1,453 Kroons (93 Euros) and elsewhere in Estonia it was 619 Kroons (39 Euros). According to the Statistical Office of Estonia, the average gross salary in the third quarter of 2004 was 7,021 Kroons (450 Euros).

4.8 Case Law of Labor Dispute Committees

The legal provisions on labor dispute committees' procedure under the Act on Employment Contracts remain in force. It should be emphasized that the committees have not yet decided a case on the ground of discrimination legislation. Despite relevant training, there are no case law or statistics indicating that labor dispute committees are gender sensitive in solving cases before them. Labor dispute committee statistics from the first half of 2004 show that out of 1,851 applications presented, 423 were based on the claim that employment relation was terminated illegally. From these 423 cases, 28 were presented by an employee who was pregnant or caring for a child under the age of three and whose labor contract had been terminated. According to the ECA, this is deemed to be an illegal practice. However, committees do not define it as gender discrimination and they fail to see it as a gender-specific unequal treatment. More specifically, no cases are reported regarding discriminatory remuneration. This may be because no applications with gender discrimination claims are put forward or

²³ Available at http://www.rahvastikuminister.ee/cms/doc/uuring/LastehoidEestiPeredes2004_aug10.ppt#2, accessed on November 29, 2004.

because committees are failing to recognize that illegal pay disparity exists based on the worker's sex.²⁴

5. KEY AREAS OF CONCERN AND RECOMMENDATIONS

5.1 Key Areas of Concern

Estonian law has been essentially harmonized with the *acquis* on gender equality, but several shortcomings and inconsistencies with European standards remain.

The definitions of the equal pay principle as contained in the Act on Wages and the GEA are not identical and the content of the respective articles should be harmonized. Moreover, the general principle of equal treatment in labor relationships as provided for in Article 10(2) of the Act on Employment Contracts states that an employer may not treat employees unequally in terms of payment on the ground of sex, thereby creating a third legal definition of equal pay.

The compulsory two-week maternity leave has not been transposed into Estonian law. There is no provision on non-transferable parental leave, except for the additional child-care leave of 14 days to be granted only to fathers. All the other articles of the Act on Holidays that contain provisions on parental leave stipulate that it is either the mother or the father of the child who is entitled to the parental leave. In this way, Estonian legislation fails to transpose Article 2(b) of the Parental Leave Directive adequately.

The field of gender equality institutions is unsystematic and some authority powers are overlapping, possessed by several institutions. There are also no real means that would prevent employers from continuing discriminatory practices, especially sanctions or fines within the meaning of the Amended Equal Treatment Directive 2002/73/EC that ought to be transposed by October 2005.

No job classification system has been drawn up, nor has the Labor Inspectorate monitored individual and collective labor contracts from the perspective of the principle of equal pay.

There is still no official Estonian translation available of the European Commission's Guidelines on the assessment of the chemical, physical and biological agents and

²⁴ However, several articles in daily newspapers have shown that people who believe to have experienced gender discrimination do not receive help from labour dispute committees. See, for example, Tarmo Michelson, "Vajame müüjat... tegelikult meest" ("Salesperson needed... in fact salesman"), *Slõhtuleht*, July 3, 2003.

industrial processes considered hazardous for the safety or health of pregnant workers and workers who have recently given birth or are breastfeeding.

The status of part-time workers is not discussed in social dialogue, nor there is any debate on whether the working conditions of part-time workers should be improved. Since no respective surveys are available, it is difficult to identify the most important shortcomings.

There continues to be a legal void regarding special measures or provisions to prevent discrimination of self-employed persons. Estonian law does not define the concept of 'self-employed person'; the Estonian 'private one-man entrepreneurship' is a slightly different concept. The situation has not changed since 2002 concerning the legislation and data on the spouses of self-employed persons. In principle, however, equal treatment also applies to private entrepreneurship.

5.2 Recommendations

5.2.1 Legislative Measures

- The concept of 'equal pay for work of equal value' should be harmonized between the Act on Wages, the Act on Gender Equality, and the Act on Employment Contracts.
- Legislation on parental leave should be amended by introducing the *two-week compulsory maternity leave*.
- *Non-transferable parental leave* should be created under the Act on Holidays.
- The Act on Holidays should be amended to incorporate the right for a *leave in case of family emergencies*.
- The principle of the 'reversed burden of proof' should be harmonized between the Act on Wages and the Act on Gender Equality.
- Overlaps concerning equal treatment in employment relationships in the Act on Employment Contracts and the Act on Gender Equality should be eliminated.
- An analysis of the 1992 Government Decree on Work Prohibited for Women should be prepared and, if necessary, the Decree should be annulled.
- In order to encourage men to take parental leave, the discriminatory general provision foreseeing the right to receive parental benefits only for the mother until the child reaches six months of age should be amended to allow parents to choose who will care for the child and receive the benefit.

- Despite the inclusion of the right to equal access to employment, there remains a lot to be done for effective implementation of the rights of job applicants. For example, they should be given a right to bring an action before a Labor Dispute Committee under the Act on Individual Labor Dispute Resolution. Their rights should also be stipulated in the Code of Civil Procedure.
- Labor Inspections should monitor respect of the principle of equal pay.
- A job classification system should be elaborated.

5.2.2 Institutional Mechanisms

- The process of setting up new institutional bodies foreseen in the GEA should be finalized. In particular, the rapid appointment of the Gender Equality Commissioner is critical.
- In the future, the position of the Commissioner should be strengthened in order to provide the post with decision-making powers in specific cases, taking the powers of the Legal Chancellor as a role model (currently it may only issue opinions). The institution of the Commissioner should develop into a real specialized out-of-court institution for settling disputes relating to discrimination on grounds of gender.
- In practice, the Commissioner should also have an office with advisers in order to support her or his work.

5.2.3 Policies and Programs

- A National Strategy on Gender Equality should be adopted.
- Concrete measures should be adopted in order to help employees reconcile their work and family life.
- In order to expand *gender mainstreaming*, the issue should be included in various programs at different levels of the educational system.
- Judges and lawyers should be trained on gender equality issues, including the principle of *reversing the burden of proof*.

5.2.4 Awareness-Raising

- Following the adoption of the GEA, more attention should be paid to raising awareness of its contents among the citizens. This should include an obligation

for the employers to inform their employees of their rights enshrined in the Act (this obligation is also set forth in the GEA).

- The awareness-raising campaigns in the media on equal treatment should be actively continued and promoted.
- The establishment of new strategies for awareness-raising by institutional bodies foreseen by the GEA (for example, the Gender Equality Council and Commissioner) is necessary, as the adoption of the Act is an important message that must be conveyed to every citizen.
- Employers should become more active, and their contribution to promoting equal treatment should be systematically monitored by the relevant bodies set up by the GEA. A regulation of the Government of the Republic should be adopted establishing a procedure for collecting and listing statistical data.
- Awareness should be raised on the possibility of receiving consultations by an official of the Ministry of Social Affairs on matters related to the implementation of the principle of equal treatment for men and women. The office hours of the consultant should be published on the website of the Ministry of Social Affairs, as foreseen by the GEA.
- The role of trade unions should be stronger. They should have important tasks in the process of awareness-raising and information distribution. In addition, effort should be made to enhance effective cooperation between trade unions and the relevant government offices.

5.2.5 Research and Statistics

- The existence of occupation social security schemes and the adoption of relevant provisions on the prohibition of gender discrimination in these schemes should be analyzed.
- The concept of the 'self-employed worker' and the social security of the contributing family members of self-employed persons should be further analyzed.
- Research should be conducted on why people do not seek help from legal institutions in cases of discrimination and why relevant awareness-raising campaigns are inefficient concerning these legal rights and remedies.

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WHAT IS THE SITUATION IN ESTONIA?

National laws in Estonia have essentially been harmonized with the *acquis communautaire*, but as the legal provisions in the area of gender equality were only adopted relatively recently, it is difficult to make far-reaching conclusions about their application at this stage.

The long awaited Gender Equality Act entered into force in May 2004. The purpose of the act is to ensure gender equality and to promote equal treatment for men and women as a fundamental human right and for the public good in all areas of social life. The government has adopted relevant regulations and is in the process of setting up new institutional bodies called for in the Gender Equality Act.

The gender equality bureau at the Ministry of Social Affairs was reorganized into the Gender Equality Department in December 2003. The functions of the department include planning and coordinating the implementation of gender equality policies. To raise awareness about matters related to the implementation of the principle of equal treatment of men and women, the Ministry on its website encourages people to contact officials for consultation.

WHAT DO THE FACTS SAY*?

- Women employees continue to earn almost 25 percent less than their male counterparts. The gender gap has remained constant throughout the decade and is visible in all fields of professional life;
- In the capital city of Tallinn, the gender pay gap is as high as 30 percent;
- During 2004, women accounted for 99.1 percent of persons who were paid the newly introduced parental benefit, one of whose aims is to support the reconciliation of work and family life.

* Sources of data: *Estonian Country Report* (prepared as part of the report: *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries*, available at www.oef.org.ee); and the Estonian Social Insurance Board (www.ensib.ee).

DISCRIMINATION AGAINST WOMEN

“Discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

(Convention on the Elimination of All Forms of Discrimination Against Women, Article 1.)

THE EU'S COMMITMENT TO GENDER EQUALITY

“The EU has a long-standing commitment to promoting gender equality, enshrined in the Treaty since 1957.

The Community legal framework ensures that women and men are equal before the law. [...] Moreover, equal treatment legislation is a firmly established integral part of the *acquis communautaire* that countries applying for EU membership have to respect.”

(Community Framework Strategy on Gender Equality (2001-2005), Introduction; http://europa.eu.int/comm/employment_social/equ_opp/index_en.htm)

THE ACQUIS COMMUNAUTAIRE

“The *acquis communautaire* is the body of common rights and obligations which binds all Member States within the European Union. It comprises Community law, all acts adopted under the second and third pillars of the European Union and the common objectives laid down in the Treaties.”

(http://www.eu2005.lu/en/savoir_ue/glossaire/glossaire_a/index.html#Acquis%20communautaire)

WHAT DO THE EXPERTS SAY?

- There is a general lack of awareness about gender equality issues in Estonian society;
- A big challenge before Estonia at the moment is the effective implementation of the Gender Equality Act;
- The low participation of men in the promotion of gender equality alienates them from the issue. Achieving gender equality requires the involvement and participation of men.

WHAT NEEDS TO BE DONE?

- The new institutional bodies laid out in the Gender Equality Act must be established and granted enough authority and finances to be effective;
- Gender issues should be included in programs at different levels of the education system;
- Awareness raising about gender equality and relevant legislation should be actively continued and promoted through media channels and seminars;
- Men should become more involved in the promotion of equal treatment of men and women and achieving gender equality;
- Judges and lawyers should be trained on gender equality issues.

DID YOU KNOW:

Estonian women spend an average of four hours per day doing housework – twice as much as men! At the same time, men have longer working days in paid employment. It is still very rare for fathers to take parental leave, although they have been legally allowed to do so for many years.

MORE INFO:

www.oef.org.ee