

# ESTONIA

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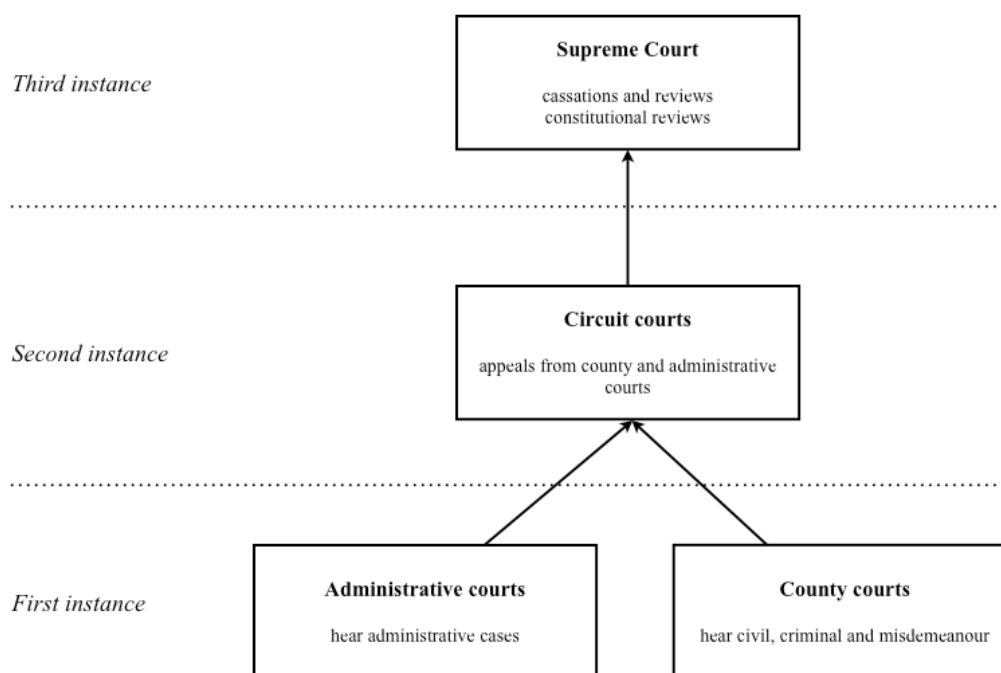
## 1. National court system

The court system in Estonia has three instances (Figure 1 below).<sup>1</sup> The first instance consists of county courts, which hear civil, criminal and misdemeanour matters, and administrative courts, which hear only administrative cases. Judgments from the first instance courts can be appealed to the circuit courts. The *Riigikohus* (Supreme Court) is the highest court and gives judgments on cassation appeals. The Supreme Court also acts as a constitutional review court.

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<sup>1</sup> The Constitution, §148-149. See *Justiitsministeerium* (2008) 'Estonian Court System', available at: <http://www.kohus.ee/6908> (3.09.2009), and *Riigikohus* (2009) 'Estonian Court System', available at: <http://www.nc.ee/?id=188> (3.09.2009).

Figure 1: Court system in Estonia



There is a constitutional right to appeal. According to §149 of the Constitution. The appeals to the circuits courts (Court of Appeals) can be made on the grounds that the court of first instance breached a legal norm or the circumstances and evidence heard should have resulted in a different decision (§631 of the Code of Civil Procedure, CCP). The Court of Appeals can dismiss the appeal, annul the previous decision partially or in whole and make a new decision or send it back to the court of first instance, change the reasoning of the court of first instance but not the resolution, stop proceedings and dismiss the case (§657 of the CCP). The cassation proceedings can be initiated only on the basis of a breach of procedural or substantial law by the Court of Appeal (§668 CCP). The Supreme Court can dismiss the appeal and leave the decision unchanged, annul fully or partially the decision of the court of second instance and send the case back to the same or different Court of Appeal, annul all previous decision in the case partially or as a whole and end proceedings, modify the decision of the Court of Appeal and make a new decision or leave the decision of the court of first instance standing (§691 of the CCP).

## 2. Restrictions regarding access to justice

There are the following restrictions to the right of access to a judicial body:

- *Locus standi* – Only a person whose rights or freedoms have been violated has the right to turn to a court (*tsiviilkohtumenetluse seadus* (the Code of Civil Procedure – CCP)<sup>2</sup> §3(1) and *halduskohtumenetluse seadustik* (the Code of Administrative Court Procedure – CACP)<sup>3</sup> §7(1)). In limited instances a claim can be filed for the protection of a presumed right or interest protected by law of another person or the public (CCP §3(2)). The court has taken a very restricted view on it. It allows only such claims when this has been prescribed by law – e.g. a parent can file a claim on behalf of their child, or the administrator of the property of a missing person can file a claim concerning the property on behalf of that missing person.<sup>4</sup> Organisations created by persons with a same interest to protect that interest collectively can also file claims, e.g. an apartment co-operative.<sup>5</sup>
- Mandatory pre-trial procedure – Courts will refuse a complaint if a person has not satisfied the mandatory pre-trial procedure requirement (CCP §371(1) 3), §423(1) 1), §428 (1) 1), and §23(1) 1)). However, if the person is not satisfied with the result, he/she must have the subsequent right to turn to the courts.<sup>6</sup> The mandatory pre-trial procedure must also not result in an unreasonably prolonged procedure.<sup>7</sup>
- Mandatory representation in court – Persons with restricted active legal capacity (those under 18 years of age and those with a mental illness, mental disability or other mental disorder) have no active procedural legal capacity (*tsiviilseadustiku üldosa seadus* (the General Part of the Civil Code Act)<sup>8</sup> §8(2), CCP §202(2)). These persons can generally exercise their procedural rights only through a legal guardian. However, the Supreme Court has stated that deriving from the particularities of administrative court procedures persons with restricted legal capacity must be able to defend his/her rights and freedoms in administrative courts in their own right.<sup>9</sup> Even if the person is determined to have restricted active legal capacity in general, if there is a legal dispute in court concerning the rights of that person, a separate determination on his/her capacity to participate in that particular court proceeding must be done.

<sup>2</sup> Estonia/Riigikantselei (19.05.2005) Riigi Teataja I, 26, 197, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X90041&keel=en&pg=1&ptyyp=RT&tyyp=X&query=Tsiviilkohtumenetluse+seadus> (15.09.2009).

<sup>3</sup> Estonia/Riigikantselei (22.03.1999) Riigi Teataja I, 31, 425, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30054K9&keel=en&pg=1&ptyyp=RT&tyyp=X&query=halduskohtumenetluse+seadustik> (15.09.2009).

<sup>4</sup> Estonia/Riigikohus/3-2-1-73-05 (15.06.2005), paras 10-11.

<sup>5</sup> Estonia/Riigikohus/3-2-1-83-04 (16.09.2004), para 17.

<sup>6</sup> Estonia/Riigikohus/3-3-1-2-02 (21.02.2002), para 1.

<sup>7</sup> Estonia/Riigikohus/3-4-1-5-04 (03.03.2004), para 22.

<sup>8</sup> Estonia/Riigikantselei (24.04.2002) Riigi Teataja I, 35, 216, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30082K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=tsiviilseadustiku+%FCIdosa+seadus> (15.09.2009).

<sup>9</sup> Estonia/Riigikohus/3-3-1-42-06 (30.11.2006), para 21.

- Formal requirements – Complaints to courts must fulfil certain formal conditions, i.e. the complaint must be in typewritten format (CCP §334(1) and CACP §10(1)). However, the Supreme Court has, on several occasions, stated that the non-adherence to these conditions cannot be the sole purpose for rejecting a complaint.<sup>10</sup>
- Legal aid - There are some problems in regard to state legal aid. This has made it somewhat difficult for persons with insufficient funds to have adequate access to court. In some cases, the Supreme Court has also criticised lower courts for not doing enough to ensure that the persons are present at proceedings.
- Legal costs – The person filing the complaint must also pay a state fee proportionate to the cost of the matter. The person may also have to bear the legal costs of the respondent. In administrative cases this can be a particularly serious restriction. For that reason, the court must refuse to order the payment of unnecessary and unfounded costs taking into account the content and complexity of the dispute, the actions of the applicant, the financial situation of the applicant and the institution's ability to protect its actions through its own officials.<sup>11</sup> He/she can be released from the fee if the court finds that he/she is insolvent (CACP §91(1)). In civil as well as administrative matters, the person may also receive other procedural assistance from state, such as a complete or partial release from certain legal costs (CCP §181(1) and CACP §91) (see in more detail paragraph **Error! Reference source not found.**).
- Immunity – According to § 62 of the Constitution, a member of the *Riigikogu* [Parliament] is immune from legal liability for votes cast or political statements made in the parliament or in any of its bodies. In addition, diplomatic immunity applies in national courts.
- Statute of limitations – The Supreme Court has stated that, even though the legislator has a wide discretion in deciding over the length of time limitations to complaints, these limitations cannot be disproportionately short.<sup>12</sup>
- Decisions or ongoing proceedings in arbitration courts – Courts will refuse a complaint if proceedings are ongoing in an arbitration court, a valid decision was made in an arbitration court or an agreement includes a clause about an arbitration court (CCP §371 (1) 7) and 8), §423(1) 5) and 6), §428 (1) 2), CACP §1(3<sup>1</sup>) 4), and §23(1) 4)).

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<sup>10</sup> Estonia/Riigikohus/3-3-1-66-00 (13.02.2001), para 3; Estonia/Riigikohus/3-2-1-164-04 (24.01.2005), para 14.

<sup>11</sup> Estonia/Riigikohus/3-3-1-19-01 (24.04.2001), para 3; Estonia/Riigikohus/3-3-1-11-01 (10.05.2001), para 2.

<sup>12</sup> Estonia/Riigikohus/3-3-1-66-04 (11.11.2004), para 10.

- Ongoing procedures and decisions made previously during other procedures – If there is an ongoing procedure in other courts or out-of-court procedures (e.g. labour dispute committee or mediation agreement mediated by the Chancellor of Justice) previous court decision in the same subject between the same parties, the courts will refuse the complaint (CCP §371 (1) 5) and 6), §423(1) 3) and 4), §428 (1) 2), CACP §1(3<sup>1</sup>) 4), and §23(1) 2) and 3)).

### 3. Length of judicial proceedings

Cases examined ranged from 7 months to 35 months. Proceedings varied in length depending upon the number of appeals made. There is no compensation available for non-timely resolution of disputes.

### 4. Are procedures concluded within a reasonable time?

Broadly speaking there did not appear to be excessive delays. Most cases examined concluded in cca two years, which would seem reasonable.

### 5. Does provision exist for speedy resolution of particular cases?

There are no provisions for speeding up the procedure for vulnerable groups or on grounds of sensitivity.

### 6. Is it possible to waive the right of access to a judicial body?

It is possible to waive access to a judicial body to surrender the dispute to an arbitration court. However, the Equal Treatment Act provides that discrimination cases can only be heard in courts or labour dispute committees.

The Code of Civil Procedure (CCP) allows the waiver of the right of access to the courts by an agreement between the parties to surrender the dispute to an arbitration court (§9(2)). Civil and administrative courts must refuse the complaint and are obliged to terminate proceedings if the matter was already resolved in arbitration courts (CCP §371 (1) 7) and 8), §423(1) 5) and 6), §428 (1) 2), the Code of Administrative Court Procedure, CACP §1(3<sup>1</sup>) 4), and §23(1) 4)). However, the decision by arbitration is not completely out of the control of civil and administrative courts. In certain cases, these courts may annul the decision made by the arbitration court (CCP §751) if:

- the active legal capacity of a person who entered in the arbitral agreement was restricted;
- the arbitral agreement is null and void pursuant to the law of Estonia or another state, and based on that law the parties agreed to evaluate the validity of the arbitral agreement;
- a party was not notified of the appointment of an arbitrator or of the arbitration proceeding in conformity with the requirements, or a party was unable to present or protect the positions thereof due to another reason;
- the decision of the arbitral tribunal concerns a dispute which was not set out by the arbitral agreement or which exceeds the limits determined by the arbitral agreement;
- the formation of the arbitral tribunal or the arbitration proceeding did not conform to the requirements set out in the CCP or to the permitted agreement of the parties, and such fact can be presumed to have significantly influenced the decision of the arbitral tribunal;
- pursuant to Estonian law, the dispute should not have been adjudicated by an arbitral tribunal; or
- the decision of the arbitral tribunal is contrary to Estonian public order or good morals.

## 7. Access to non-judicial procedures

Non-judicial dispute resolution in Estonia can take many forms.

According to the *võrdse kohtlemise seadus* (Equal Treatment Act),<sup>13</sup> disputes concerning discrimination can only be solved by either special labour dispute committees or through the courts. Labour dispute committees, and their procedures, are regulated by the *individuaalse töövaidluse lahendamise seadus* (Individual Labour Dispute Resolution Act, ILDR).<sup>14</sup> The Supreme Court has stipulated that, since the committees are administrative bodies and not courts then the procedure in the committees, in parts not regulated by the ILDR, is governed by the *haldusmenetluse seadus* (Administrative Procedure Act, APA)<sup>15</sup>.<sup>16</sup>

The ILDR specifically states that the employment dispute is reviewed and solved in the presence of the parties or their representatives (§18(1)). Therefore, the person is allowed to represent oneself and not use the help of qualified legal expert. This is further affirmed by the fact that the cost of the disputes that the committees can discuss cannot exceed 150 000 *kroons* (ca 9 600 EUR), eliminating thus the possibility that the dispute carries great weight (§4(1<sup>1</sup>)). However, if the person should need a legal representative then insufficient funds should not, in principle, be an obstacle in the obtainment of a qualified legal representative. The State Legal Aid Act (SLAA) foresees financial aid also in administrative proceedings, which the proceedings in labour dispute committees essentially are.<sup>17</sup> For more detailed discussion on the possibilities and limitations of SLAA, see paragraphs 0-**Error! Reference source not found.**

The parties are summoned to the meeting (ILDR §17(2)). The summons and other documents are delivered to the parties according to §25-32 of the APA. The Supreme Court has stated that there is no requirement for a signature of receipt for delivery..<sup>18</sup> The rest of the procedure in the committees is similar to the one in the courts – the explanations of persons concerned and witnesses must be heard, and documents and other evidence inspected and assessed at the meeting (ILDR §20(4)). There is no express mention of the equality of parties in the ILDR but the general stipulation of equality before law in the Constitution must be applied in these proceedings as well. The adversarial nature of the proceedings is also mostly implied and can be detected in the combination of several provisions that stipulate the right of both the applicant as well as the respondent to put forward their arguments and

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<sup>13</sup> Estonia/Riigikantselei (23.12.2008) Riigi Teataja I, 56, 315, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXX006&keel=en&pg=1&ptyyp=RT&tyyp=X&query=v%F5rdse+kohtlemise+seadus> (3.09.2009).

<sup>14</sup> Estonia/Riigikantselei (01.09.1996) Riigi Teataja I, 3, 57, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1040K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=individuaalse+%F6%F6vaidluse+lahendamise+seadus> (15.09.2009).

<sup>15</sup> Estonia/Riigikantselei (02.07.2001) Riigi Teataja I, 58, 354, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40071K3&keel=en&pg=1&ptyyp=RT&tyyp=X&query=haldusmenetluse+seadus> (15.09.2009).

<sup>16</sup> Estonia/Riigikohus/3-2-1-127-07 (11.01.2008), para 12.

<sup>17</sup> Estonia/Riigikohus/3-2-1-127-07 (11.01.2008), para 12.

<sup>18</sup> Estonia/Riigikohus/3-2-1-127-07 (11.01.2008), para 13.

counter-arguments (§20). As in court proceedings, the burden of proof is shifted in discrimination cases (see above paragraph **Error! Reference source not found.**).

Similar to the court decision, the decisions made by the labour dispute committees must be reasoned and based on law (ILDRA §22(2)).

The independence of the labour dispute committees is ensured through the appointment of the members. The committees are created by local labour inspectorates, which come under the umbrella of the central Labour Inspectorate. The membership consists of one official of the inspectorate (acting as the head of the committee), one representative of a trade union and one of the employers' union (ILDRA § 11). The Labour Inspectorate covers all the costs of the proceedings.

Moreover, a national equality body exists to deal with claims of discrimination. *Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik* (the Gender Equality and Equal Treatment Commissioner)<sup>19</sup> was created by law on 1 January 2009. Prior to that, such an office did not exist regarding discrimination, except on the grounds of gender. The body has sufficient statutory powers, including the promotion of equal treatment; providing assistance to victims; conducting independent surveys, and publishing reports.

With regard to gender discrimination, the Commissioner covers all areas of life, whether in the public or the private sector (except family and private life and certain aspects of the work organisation in religious institutions).<sup>20</sup> The mandate with regard to discrimination on grounds of nationality (ethnic origin), race or colour is restricted to:

- conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, including promotion (corresponds fully to Art 3(1)(a) of the Racial Equality Directive);
- conclusion of employment or services contract or appointment or election for position, working conditions, issuance of orders, pay, termination or cancellation of employment or services contract, and dismissal (corresponds to Art 3(1)(c) of the Racial Equality Directive, thus going somewhat beyond its requirements, as discussed in para **Error! Reference source not found.** above);

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<sup>19</sup> Institution is assigned to deal with discrimination on grounds of gender, nationality (ethnic origin), race, colour, religion or religious beliefs, age, disability, or sexual orientation.

<sup>20</sup> Estonia/*Riigikantselei* (21.04.2004) *Soolise võrdõiguslikkuse seadus* [Gender Equality Act]. *Riigi Teataja* I, 27, 181, §1, §2.



- access to vocational training; vocational guidance; and advanced vocational training and retraining, including practical work experience (corresponds fully to Art 3(1)(b) of the Racial Equality Directive);
- membership of an organisation of workers or employers, including any organisation whose members remain in a particular profession, and receiving benefits provided for by such organisations (corresponds fully to Art 3(1)(d) of the Racial Equality Directive);
- access to social welfare, healthcare and social security services, including social benefits (corresponds fully to Art 3(1)(e-f) of the Racial Equality Directive);
- education (corresponds fully to Art 3(1)(g) of the Racial Equality Directive);
- access to goods and services which are available to the public, including housing (corresponds fully to Art 3(1)(h) of the Racial Equality Directive).

The most restricted is the Commissioner's mandate in regard to religion or religious beliefs, age, disability, or sexual orientation, leaving the last three points of the previous paragraph out of its scope. This is exactly the line that Directive 2000/78/EC has taken.<sup>21</sup>

The competence of the Commissioner is provided for in the Equal Treatment Act (§16). This corresponds to the minimum requirements laid down in Art 13 of the Racial Equality Directive. For implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the following competences are attributed to the Commissioner:

- 'promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin' (Art 13(1) of the Racial Equality Directive) – The Commissioner is competent to take measures to promote equality and the equal treatment principle (§16(9));
- 'providing independent assistance to victims of discrimination in pursuing their complaints about discrimination' (first point in Art 13(2) of the Racial Equality Directive) – The Commissioner is competent to consult and assist persons in pursuing their complaints about discrimination (the previous Commissioner did not have that competence). Her competence to receive applications from individuals and to provide an opinion as to the possible existence of discrimination is also a form of assistance.

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<sup>21</sup> Estonia/Riigikantselei (23.12.2008) *Võrdse kohtlemise seadus* [Equal Treatment Act], *Riigi Teataja* I 56, 315, §2.

On that basis, the person can determine whether to continue with a complaint to any dispute settlement organ (§16 p 2, 3);

- ‘conducting independent surveys concerning discrimination’ (second point in Art 13(2) of the Racial Equality Directive) – There is no express mention of the Commissioner’s competence to conduct surveys on the subject. However, the list of competences does include two sufficiently wide points, which allows independent surveys to be made – the Commissioner must supervise the implementation of the Equal Treatment Act and the Gender Equality Act and is competent to take measures to promote equality and the equal treatment principle (§16 p 1, 9);
- ‘publishing independent reports and making recommendations on any issue relating to such discrimination’ (third point in Art 13(2) of the Racial Equality Directive) – The Commissioner is competent to provide advice as to any possible incident of discrimination. She also analyses the legislation and its effect and provides advice to state and local government authorities as to whether acts should be amended. She also publishes reports on the implementation of the equality principle (the previous Commissioner did not have that competence) (§16 p 3-7).

It is not obligatory to proceed to an equality body before going to court, and the proceedings in front of the equality body are not binding.

The Chancellor of Justice similarly accepts applications from individuals, however in contrast to the Commissioner, the Chancellor can only deal with possible infringements by a public authority.<sup>22</sup> Both institutions give opinions on the matter, which are not legally binding. In contrast, the labour dispute committees that deal with disputes emanating from employment relationships can give a legally binding decision.<sup>23</sup> Persons also have the opportunity to resort to mediation proceedings, where a dispute concerning discrimination is between private persons. This is carried out by the Chancellor of Justice if both the parties agree to the proceedings.<sup>24</sup> The Chancellor of Justice has the power to conduct mediation proceedings in discrimination cases since the 2004 Chancellor of Justice Act § 19 (2). However, there is no established legal practice of using this possibility.

The mediation procedure between private parties that the Chancellor of Justice has responsibility to engage in is completely voluntary.<sup>25</sup> Both parties can participate in person or through representation, while the Chancellor has the responsibility to order personal

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<sup>22</sup> Chancellor of Justice Act, §19(1).

<sup>23</sup> Individual Labour Dispute Resolution Act, §25.

<sup>24</sup> Chancellor of Justice Act, §19(2).

<sup>25</sup> Chancellor of Justice Act, §35<sup>5</sup>(1) and 35<sup>7</sup>(3).

participation (35<sup>9</sup>(1)). Both parties can inspect evidence and evaluate them (35<sup>9</sup>(4)). The Chancellor proposes a solution to the dispute and the reaching of an agreement. The proposition must be reasoned and based on the evidence and circumstances identified (35<sup>12</sup>). If the parties agree with the proposition, the Chancellor confirms the agreement (35<sup>13</sup>).

Regarding the Gender Equality and Equal Treatment Commissioner and the Chancellor of Justice, the person's role in the review of his/her application is relatively small. Both the Commissioner and Chancellor derive in their procedures from the principle of inquiry and clarify the circumstances for themselves and gather information.<sup>26</sup> This also means that the applicant has no procedural costs to cover. Both give their reasoned opinions as to whether a violation has taken place, the Commissioner in regard to discrimination only and the Chancellor in regard to any constitutional right.<sup>27</sup>

All of these non-judicial procedures are complementary to the judicial ones, since all of them allow the person to turn to the court if he/she is not satisfied with the result.

In contrast to all the other non-judicial procedures, arbitration, as another way to resolve disputes out of court, is exclusive. Procedures for arbitration are stipulated in the Code of Civil Procedure (CCP), while conciliation procedures in civil matters are yet to be adopted. The new *lepitusseadus* (Conciliation Act) is currently under discussion in the Parliament,<sup>28</sup> although it has already been referred to in the *notariaadiseadus* (Notaries Act) in regard to the newly extended competence of notaries and the Chamber of Notaries.<sup>29</sup> Persons allowed to conduct arbitral procedures are notaries<sup>30</sup> and sworn advocates.<sup>31</sup> Arbitration can also be conducted in the *Notarite Koja lepitus- ja vahekohus* (Conciliation and Arbitration Court of the Chamber of Notaries).<sup>32</sup>

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<sup>26</sup> Respectively Equal Treatment Act, §17, and Chancellor of Justice Act, §27-30.

<sup>27</sup> Respectively Equal Treatment Act, §17(1), and Chancellor of Justice Act, §27-30.

<sup>28</sup> See on the stages of procedure:

[http://www.riigikogu.ee/?page=en\\_vaade&op=ems&eid=624582&u=20090913032747](http://www.riigikogu.ee/?page=en_vaade&op=ems&eid=624582&u=20090913032747) (15.09.2009).

<sup>29</sup> Estonia/Riigikantselei (29.12.2000) Riigi Teataja I, 104, 684, unofficial and incomplete translation available at:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X50001K6&keel=en&pg=1&ptyyp=RT&tyyp=X&query=Notaries+Act> (15.09.2009).

<sup>30</sup> Estonia/Riigikantselei (29.12.2000) *Notariaadiseadus* [Notaries Act], Riigi Teataja I, 104, 684, unofficial and incomplete translation available at:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X50001K6&keel=en&pg=1&ptyyp=RT&tyyp=X&query=Notaries+Act> (15.09.2009), §32(3) 4).

<sup>31</sup> Estonia/Riigikantselei (09.04.2001) *Advokatuuriseadus* [Bar Association Act], Riigi Teataja I, 36, 201, unofficial and incomplete translation available at:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30070K4&keel=en&pg=1&ptyyp=RT&tyyp=X&query=Advokatuuriseadus> (15.09.2009), §41(1) 6).

<sup>32</sup> Notaries Act, §52<sup>1</sup>.

The decision reached in arbitration cannot be appealed to the court (CCP §746) and there are only limited possibilities to apply for an annulment of the arbitration decision (CCP §751, see a more detailed discussion above in paragraph 0).

## 8. Legal aid

The Supreme Court has stated that if the person does not have sufficient financial means, the state might be under the obligation to provide him/her with a legal representation.<sup>33</sup> Such an obligation arises, however, only when the person is not able to represent him-/herself because of the complexity of the case or because the legal representation is obligatory.<sup>34</sup> In principle, what is decisive, in addition to the person's financial situation, is the potential success of the case (the Code of Civil Procedure, CCP §181(1) and the Code of Administrative Court Procedure, CACP §91) as well as the nature of the violated right. Additionally, the person must either be a resident or citizen of Estonia or other Member State of the European Union (CCP §182(1)).

Procedural assistance is not granted to the person if (CCP §181(3) and 182):

- the procedural assistance is not given because the person's participation in legal proceedings is unreasonable and the intended result could be achieved in a less complicated, faster or cheaper manner;
- the procedural expenses are not presumed to exceed twice the average monthly income of the person requesting procedural assistance;
- the person requesting procedural assistance is able to cover the procedural expenses out of existing assets, which can be sold without any major difficulties and against which a claim for payment may be made pursuant to law;
- the proceeding concerns the economic or professional activity of the person requesting procedural assistance and does not damage his or her rights, which are not connected to his or her economic or professional activity.

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<sup>33</sup> Estonia/Riigikohus/3-3-1-2-02 (21.02.2002), para 2.

<sup>34</sup> T.Annus (2006) *Riigiõigus*, Tallinn: Juura, p 400.

Another possibility is to get apply for legal services at the expense of the state under the *riigi õigusabi seadus* (State Legal Aid Act, SLAA).<sup>35</sup> Similar to procedural assistance from the state, state legal aid can be granted to a person who is unable to pay for competent legal services due to his/her financial situation at the time the person is in need of legal aid or is able to pay for legal services only partially or in instalments or whose financial situation does not meet basic subsistence needs after paying for legal services (SLAA §5(1)). Again, the person must be either a resident or citizen of Estonia or one of the Member States of the European Union (§5(2)).

State legal aid is not granted to the person if (SLAA §7):

- the applicant is able to protect his/her rights himself/herself;
- the applicant cannot have the right for the protection of which he/she is applying for state legal aid;
- the applicant could bear the costs of legal services out of his or her existing property which can be sold without any major difficulties;
- the costs of legal services do not, presumably, exceed twice the applicant's average monthly income;
- the possibility of the applicant to protect his/her rights is clearly unlikely due to the circumstances;
- state legal aid is applied for in order to file a claim for compensation for non-proprietary damage and there is no predominant public interest regarding the matter;
- the dispute is related to the business activities of the applicant and does not damage his/her rights which are unrelated to his/her business activities;
- state legal aid is applied for to protect a trade mark, patent, utility model, industrial design or a layout-design of integrated circuits or another form of intellectual property, except rights arising from *autoriõiguse seadus* (the Copyright Act);<sup>36</sup>

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<sup>35</sup> Estonia/Riigikantselei (15.07.2004) Riigi Teataja I, 56, 403, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30066K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=State+Legal+Aid+Act> (15.09.2009).

<sup>36</sup> Estonia/Riigikantselei (02.12.1992) Riigi Teataja I, 49, 615, unofficial and incomplete translation available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40022K7&keel=en&pg=1&ptyyp=RT&tyyp=X&query=autori%F5iguse+seadus> (15.09.2009).

- state legal aid is applied for in a matter in which the applicant clearly has joint interests with a person who is not entitled to receive state legal aid;
- state legal aid is applied for to protect a right transferred to the applicant and there is reason to believe that the right was transferred to the applicant in order to receive state legal aid;
- the provision of legal services is guaranteed for the applicant by a legal expenses insurance contract or on the basis of compulsory insurance;
- the profit possibly received by the applicant upon adjudication of the matter is unreasonably small in comparison to the estimated cost of legal aid borne by the state.

State legal aid for representation has proved to be somewhat controversial. According to the SLAA, only the members of the Bar Association can provide such aid (§5). However, in certain regions in Estonia, the number of sworn advocates is limited. If the cooperation between the person in need of legal aid and the advocate is not successful or the quality of work done by that advocate is unsatisfactory, the only choice is to seek assistance from another region, which can be costly considering frequent travelling. Due to the restriction of the right to provide state legal aid, no other lawyer but a member of the Bar Association can fill that gap.

The rates for the fees to the sworn advocates are regulated by a decree of the Ministry of Justice. These rates are considerably lower than the average fees that sworn advocates charge in their work. Providing state legal aid is voluntary for the advocates (§18 SLAA). *Inimõiguste Instituut* (the Estonian Institute of Human Rights) in its practice comes across persons who complain about the quality of the work the advocates have put in under state legal aid. However, no official complaint has ever been filed. The SLAA does provide for the possibility to change representation (§20) but in regions where sworn advocates are scarce, the choice is limited.

There is also the possibility to obtain some assistance from NGOs. It is relatively easy for the victims of discrimination to gain access to NGOs. The specific area of racial or ethnic discrimination is covered by only three NGOs and only one of them has provided support to a victim by providing representation for him/her in legal proceedings.<sup>37</sup> All these NGOs are easily accessible through phone, e-mail or by appointment. Moreover, there are no groups of

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<sup>37</sup> They are Legal Information Centre for Human Rights, Estonian Institute for Human Rights, Ida-Virumaa Integration Centre.

people who are not covered by any of the relevant NGOs as these three organisations are ready to accept every person who complains over alleged discrimination.

Nevertheless, the procedural assistance provided by NGOs is limited.<sup>38</sup> It is due to both the lack of funding for such activities and the lack of skilled personnel and institutions offering such assistance. The Estonian procedural rules also make it difficult for the NGOs to participate in the proceedings. NGOs are eligible to file complaints to the Commissioner if they “have a legitimate interest in monitoring compliance with the requirements for equal treatment”.<sup>39</sup> However, when it comes to court procedures, the procedural role of NGOs is considerably more limited.

*Actio popularis* as a possibility is not recognised in the Estonian courts. According to the Code of Civil Procedure, a person may participate in court disputes personally, through a contractual representative (§217) or with the support of an advisor (§ 228). According to §217, a contractual representative must essentially be someone with certified with knowledge in law or a plaintiff/defendant (if there are multiple plaintiffs/defendants) or an ascendant, descendant or a spouse. In *Riigikohus* (Supreme Court) a contractual representative must be a sworn attorney. In practice, NGOs could offer their own lawyers for help or approach a lawyer from outside and support the victim by paying the legal costs.

The relevant NGOs are approached by individuals relatively frequently.

There are no NGOs that receive public funds for the specific purpose of providing legal assistance and/or representation in discrimination cases. The state does finance some NGOs but the financing is very limited and subject to the discretion of the particular state authority. The legal costs and financial risks of discrimination cases are generally borne by the person who files the complaint. NGOs are prepared to provide legal assistance, consultation and representation for free depending on their own resources or project-based financing but all the state fees and other actual costs are usually the responsibility of the applicant.<sup>40</sup> Only recently have organisations gained access to the financial support to represent individuals in court or to act as representatives. So far, only *Eesti Juristide Liit* [Estonian Union of Lawyers]<sup>41</sup> and *SA Õigusteenuste Büroo* (Foundation Office of Legal Services)<sup>42</sup> have received such aid but neither is specifically orientated to discrimination victims. The former provides legal

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<sup>38</sup> Estonia/LIHCR (17.02.2009) *RE: FRALEX teemauuring* [RE: FRALEX Thematic Study]; Estonia/*Inimõiguste Instituut* [Estonian Institute of Human Rights - EIHR] (13.03.2009) *FRALEX teemauuring* [FRALEX Thematic Study].

<sup>39</sup> Equal Treatment Act, §17(1).

<sup>40</sup> Estonia/LICHR (17.02.2009) *RE: FRALEX teemauuring* [RE: FRALEX Thematic Study].

<sup>41</sup> <http://www.juristideliit.ee/est/tegevus/tasuta-F5igusabi.php> (02.03.2009).

<sup>42</sup> <https://www.otb.ee/> (02.03.2009).

assistance from law students who have no authorisation to represent clients in court and the latter provides assistance to low-income individuals.

The procedural role of trade unions is similar to that of NGOs. There have been no concrete actions taken by the social partners in the area of victim support to provide assistance to the victims of discrimination on the ground of either race or ethnic origin. Neither has there been any dialogue between industry and trade unions within the field of anti-discrimination.

## 9. Forms of satisfaction available to a vindicated party

There is a basic constitutional guarantee in the form of the discrimination prohibition embodied in §12 of the Constitution that states that:

“Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable.”

The Constitution can, in principle, be used in courts in order to claim compensation of moral and material damages. However, the constitutional provision is too general and does not provide a clear and effective mechanism for obtaining compensation or creating sanctions.

Compensation for damages is available in cases of discrimination according to §24 of the Equal Treatment Act. This provision provides for a specific compensation procedure, and the right to require another person to stop discrimination, and the right to claim damages, both pecuniary and non-pecuniary. The mechanism of the Equal Treatment Act is still relatively new, untested, as it has become effective only from 1 January 2009. It is an open question as to whether courts in Estonia (where the scope of damages which can be claimed in court have traditionally been limited) are willing to afford such damages. Prior to 1 January 2009 discrimination cases could only be claimed generally under the constitutional guarantee in § 12.



The Employment Contracts Act of the Republic of Estonia (§ 103 (1))<sup>43</sup> includes the right to claim compensation for pecuniary and non-pecuniary damages to employees and job-seekers who have been treated unequally due to gender; race; age; nationality; language ability; disability; sexual orientation; compulsory military service; marital status; fulfilment of marital obligations; social status; representation of the rights of employees or belonging to a union of employees; political views or belonging to a political party, religious or other convictions. There is no limit to the amount of compensation and this will be a matter for each individual case. More generally, until 1 January 2009 compensation was available only in employment-related cases and in those cases where damage was done to an individual's life or health or to his or her property.

## 10. Adequacy of compensation

It is not possible to analyse the adequacy of the compensation due to lack of cases where compensations has been afforded.

## 11. Rules relating to the payment of legal costs

There is a general principle in civil and administrative proceedings that the legal costs are paid by the party who lost. When there is partial satisfaction of the claim, the court can either divide the costs proportionally or fully or partially to each party to bear. The court can also leave the costs up to the parties in case it would be unfair or unreasonable to be paid by the losing party.

## 12. Rules on burden of proof

There is a shared burden of proof in cases where a claim has been made under the Equal Treatment Act. § 8 of the Act states that it is for the claimant to establish the factual circumstances on which the alleged discrimination is based (there is also an obligation to provide information to the claimant). However, the person against whom the claim has been made must prove that the principle of equal treatment has not been breached. In the event that he/she/it refuses to do so, this is equivalent to an admission of discrimination.

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<sup>43</sup> Estonia/Riigikantselei (30.04.2004) *Riigi Teataja* I, 37, 256.

In administrative and criminal proceedings the shared burden of proof does not apply. In administrative proceedings, the inquisitive principle applies, which means that the court should determine the circumstances itself, which puts the burden on the court, not to the parties. There is no case law in this respect, but the shift represents a significant exception to the current Estonian legal tradition.