

Response of Estonia to the questionnaire on the role of the public service as an essential component of good governance in the promotion and protection of human rights

1. Good practices and your views regarding the organization, training and education of the public service

Estonian public service is decentralized - every ministry and executive agency is responsible for recruitment and development of its officials, guided by the legal framework and centrally set advisory guidelines. Similarly, the planning and implementation of training activities is largely the responsibility of individual institutions. Only minor part of training activities are centrally coordinated and funded.

Estonian public service have updated existing regulations and worked out different kind of measures to ensure the promotion and protection of human rights. In this field we are taking into account the good practices of public service in Estonia and in other countries. The purpose of this is to ensure improved delivery of human rights relevant social welfare services. We have worked out guidelines of public service which should assist local authorities to offer better public welfare services which are relevant to promote and to protect human rights.

Estonian government has delegated some of the public welfare services to the local authorities which should consider and satisfy more accurately the individual needs of people. Satisfying individual needs of people is essential to promote human rights for the persons who need assistance. In decentralization it is important that there exist mechanism of surveillance.

On 13.06.2012 a new Public Service Act (hereinafter PSA) was passed. The Act enters into force on 1.04.2013. The value recurring in the PSA in the protection of human rights is the principle of equal treatment. The PSA provides that administrative agencies shall guarantee the protection of persons wishing to enter into service and of persons in service against discrimination, follow the principle of equal treatment and promote equality (§ 13 of the PSA; an analogous wording can be found in § 3 of the Employment Contracts Act). From the aspect of the principle of equal treatment a provision governing release of an official from the service in breach of the principle of equal treatment has been added to the draft Act. Upon such release from service the maximum limit of compensation does not apply and compensation that seems the most appropriate under the circumstances may be claimed (§ 105 (3) of the PSA).

The role of the Department of Public Administration and Public Service at the Ministry of Finance is to organize central training in support of change on the basis of identified training needs across administration. The objectives in training of public servants are to develop a professional, neutral and accountable public service; to guarantee similar standards across the public service; and to support the implementation of administrative reforms. The department also organizes the "Central Training 2012-2013" program (supported by European Social Fund). The object of which is to ensure a trustworthy, competent and dedicated public service. Among other fields, the program supports horizontal training and development in the field of ethics and common values. The principles of good governance are also stressed in introductory training programs which are provided to new state and local public servants. The participation in centrally provided trainings is not compulsory. Nevertheless, many institutions offer their own introductory courses (that include a module of public service ethics and/or stress the importance of ethical behaviour and lawfulness) to new officials.

Estonia has been implementing a targeted integration policy since the late 1990s. The state programme entitled "Integration in Estonian Society 2000-2007" has been completed and a new development plan "Estonian Integration Strategy 2008-2013" is currently being implemented. A new sectoral development plan "Integrating Estonia 2020" is being prepared, focussing on the social dimension of integration, i.e. social participation, creating a common space of values and reducing social rejection, aside from institutional aspects,

such as citizenship, state language and a single educational system. In order to ensure that a good command of the Estonian language and Estonian citizenship guarantee equal opportunities, success in politics and employability, appropriate measures are to be developed for the human resources, educational and labour market policies of the public sector, including government authorities.

Campaigns to raise awareness about equal treatment and to build up tolerance may be highlighted among supported projects. Employers, including public service agencies, have been introduced to the principles of equal treatment and the experiences of various companies in employing people of diverse ethnic backgrounds; through media projects, people with different native languages and cooperation between people of different ethnic backgrounds living in Estonia have been introduced to the public.

2. Activities developed to assist and support the public service at the national, regional and international levels, in particular where human rights aspects were taken into consideration and improved the public service

In Estonia, public services are mainly used as electronic services. According to a time management survey conducted in 2012 by Statistics Estonia, 60% of men and 55 % of women use the Internet. E-solutions facilitate access to cultural services, including services for people with physical special needs. Various successfully launched and well-functioning e-solutions support the development activities of museums, libraries, national heritage organisations and activities related to digitalisation. Particular attention is paid to the multilingualism of information products.

In 2009, the Ministry of Culture supported the competition "Information materials of local governments" from the state budget and from the European Fund for the integration of third-country nationals; the aim of the competition was to raise the awareness of third-country nationals, including residents of Estonia with undefined citizenship, about public services offered in the territories of municipalities. The competition supported improving the existing websites and publishing written information materials for third-country nationals and persons without citizenship living in Estonia.

To support development, we have established a system of professional in-service training, enhancing increase in the quality of public services. The professional in-service training schedule for example for the public servants of the Ministry of Agriculture is prepared with a view to support the professional development of public servants, creating opportunities to improve their knowledge and skills, and to establish prerequisites for the optimal use of resources and for the improvement of the expediency of training activity. Motivation of public servants, their thirst for knowledge and the perception of the lifelong learning process as a normal part of life are the most important factors influencing the success of development activities.

3. Which categories of services you consider as public services and the rationale for providing human rights relevant services directly or indirectly through delegation to non-State actors or in mixed systems, in particular where human rights considerations were taken into account

The Public Service Act in force in Estonia defines public service as employment in a state or local government administrative agency. Employment in a state office is deemed to be an employment relationship in an elected or appointed office prescribed, pursuant to the Public Service Act or other laws, on the staff of an institution exercising legislative, executive or judicial power, state supervision, control or national defence (§ 1). The public service is divided into state public service and local government public service (§ 3). A public servant is a person who performs remunerative work in a state or local government administrative agency (§ 4). Public servants are divided into: officials, support staff and non-staff public servants (§ 5). "Official" is defined as a person elected or appointed to an office on the staff of an administrative agency. Officials are further divided into state officials and local government officials (§ 6). "Support staff" are clerical staff employed under employment contracts in support staff positions on the staff of an administrative agency (§ 7). A non-staff

public servant is a person who is employed in the service for a specified period of time on the basis of an appointment or an employment contract to perform those functions of an official or member of support staff which are not permanent by their nature (§ 8).

The Ministry of Culture funds citizens' associations through project support, the delegation of services and operating subsidies. The objectives of the Ministry of Culture's development plan include support for human rights and equal treatment related activities, cooperation with international organisations dealing with human rights and the rights of ethnic minorities. The Ministry cooperates with organisations, agencies and government departments that deal with human rights and equal treatment in the field of cultural rights and the integration of ethnic minorities.

4. Any recent privatization in sectors where there is an obligation to ensure access to human rights relevant services, and concomitant regulatory or other measures which helped to ensure human rights compliant service delivery

In Estonia, there have been no recent privatizations, including those where there is an obligation to ensure access to human rights.

5. Good practices in the area of liberalization of trade in services which ensured improved delivery of human rights relevant services

On 1 November 2011, Information Society Development Department was established at the Ministry of Economic Affairs and Communication, in order to clearly appoint a body responsible for the development of public service with a view to standardize services and to develop a physical and virtual service environment, considering public opinion (OECD Operational Programme Administrative Capacity implementation report, approved by the Government on 13 October 2011). The first duty of the new department is to prepare the Green Paper on Public Sector in order to take up a common attitude towards public services - citizens, channels, cooperation with local governments, etc. This year (2012), preparations for the Green Book will continue and all the ministries and other units offering public services will be involved.

In the area of government of the Ministry of Agriculture, the Internet services package e-ARIB has been created to improve public services. Inter alia the package enables the ARIB customers to see, fill in, change and deliver to ARIB the necessary documents electronically.

6. Good practices of public service reform in a post-conflict context or after major transitions which ensured improved delivery of human rights relevant services

The quality of public services is closely related to the whole public service organization. After regaining independence in 1991, Estonia had to start the build-up of the judicial, political and economic structure of the state. Regarding public service, it did not only mean big changes in national judicial framework but also in the composition of officials. Unofficial discussions to prepare the Public Service Act started in 1993 with a view to determine the legal status of officials, the resources necessary for civil servants and the organizational framework. As it was not yet clear which kind of public service would meet the needs of the young state the best, neither clear public service development strategy nor staff policy were elaborated.

The draft Public Service Act drawn up in 1993 set out the objective to achieve the stability, professional competence, political neutrality and incorruptibility of state and local government civil servants and particularly of officials and to value the service in state and local government authorities. The Public Service Act enforced on 1 January 1996 is the most important signpost of Estonian public service development. With the enforcement of this Act the state and local government officials holding office automatically got the status of civil servants. Repeal of patronage system and relating the recruitment and promotion of officials to their knowledge, skills and experience as well as bringing public competitions, wage scales, regular evaluations and

several other regulations in the Public Service Act formed the basis for the development of Estonian public service system, regardless of its several bottlenecks which have become apparent by now.

The Public Service Act in force since 1996 was largely based on open public service or position system, still also including some closed elements characteristic of closed or career system.

The new Public Service Act will update public service, making it more family friendly, and reduce the benefits related to public service, diminishing the gap between public and the private sector. The recent development of public services has been focused on making public services more human, of high quality and available mostly through e-government. The valid government programme also includes the development of the basic infrastructure of e-services, the formation of a common public services portal, and bringing e-services to mobile phones and digi-TV, if possible. In the promotion of state administration, bureaucracy and reporting to holdings will be decreased.

7. The conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal or removal from office as well as the judicial or other review mechanism which apply to these processes

The new Public Service Act reflects values like equal treatment, transparency, openness and professionalism, aiming at effective, flexible, transparent public service and competent, trustworthy, result-oriented and motivated officials. The PSA provides for everyone equal access to public service, vacant positions or positions becoming vacant shall be filled by way of competition. The PSA has also removed age limits, thereby enabling wider and more equal chances for entry into public service.

Pursuant to § 14 of the PSA, a citizen of the Republic of Estonia who has acquired at least secondary education and has full active legal capacity, who is proficient in Estonian to the extent provided by or pursuant to law may be employed in service as an official. A citizen of a Member State of the European Union who conforms to the requirements established by and pursuant to law may also be employed in service as an official. The Act points out cases where unequal treatment of Estonian citizens and citizens of the European Union in employment in service is justified – only a citizen of the Republic of Estonia may be appointed to positions related to directing of an administrative agency, exercise of state supervision, national defence and judicial power, processing of a state secret or classified information of foreign states, representing of public prosecution, representing of diplomatic representation of the Republic of Estonia, or restriction of a person's fundamental rights and freedoms for securing public order and security.

In order to guarantee to everyone equal access to public service, § 16(1) of the PSA provides that a vacant position shall be filled by way of open competition. The regulatory framework of recruitment and selection has been prepared with a view to the principle that it is based on previously published conditions and equal treatment of candidates (§ 18(1) of the PSA). Decisions concerning recruitment and selection shall be made on the basis of a person's education, work experience, knowledge and skills, without being affected by the person's sex, origin, nationality, age, disability, religion or other beliefs, sexual orientation etc. (§ 18(3) of the PSA). The PSA has added a regulatory framework of fixed-term transfer as means to increase and develop know-how and promote cooperation between administrative agencies (§ 16(4) of the PSA).

Appointment: According to the existing Public Service Act, the state and local government official has to be Estonian citizen who has attained 18 years of age, at least secondary education, legal capacity and is proficient in Estonian to the extent provided by or pursuant to law. Regarding the positions of higher and senior officials a person has to be attained 21 years of age. A citizen of an EU Member State who conforms to the requirements established by law may also be appointed to a position (except positions which involve exercise of public authority and protection of public interest). It is prohibited to employ: 1) a person under punishment

for an intentionally committed criminal offence, 2) a person under preliminary investigation for or a person accused of a criminal offence for which the law prescribes imprisonment; 3) a person deprived of the right to work in a particular position or to operate in a particular area of activity by a court judgement; 4) persons who are in a close relationship (including by marriage) with an official or the immediate superior who has direct control over the position; 5) a person who has been punished for an act of corruption under administrative or criminal procedure. It is also possible to establish additional or different requirements by law.

Promotion: an official who has been in the service in his or her current position for at least six months and who is suitable for the position to be promoted by a competition and evaluation committee may be promoted. A reasoned proposal for the promotion may be made by his or her superior, a person or an administrative agency who has appointed the official to office or who has the right to appoint an official to the position to which the official is being promoted, or by the corresponding competition and evaluation committee. An official shall not be promoted during the time of disciplinary punishment is in force.

Suspension: during the suspension period an official shall retain his or her salary together with additional remuneration or shall be paid other compensation in the cases and pursuant to procedure provided by law.

Dismissal: It is possible to dismiss official due to expiry of term of service, due to failure of co-operation between minister and secretary general, on the initiative of official, due to winding-up of administrative agency, due to lay-offs, due to unsuitability for position, for disciplinary offence, due to long term incapacity for work, upon entry into force of conviction by court, for violation of employment rules, in case of officials closely related by blood or marriage are in subordinating positions, etc. Public Service Act prescribes conditions and requirements for all kind of dismissals mentioned above. An official has the right to file a complaint with an administrative court against directives, orders and resolutions issued and acts performed concerning service-related issues, within a period of one month.

8. How the requirement for equal access to public service positions is met, and whether affirmative measures have been introduced and, if so, to what extent

In Estonia, the state and local government authorities must ensure the protection of persons against discrimination and follow the principles of equal treatment according to the Equal Treatment Act and the Gender Equality Act. Discrimination of a public servant or a person who desires entry into the service on grounds of gender, nationality (ethnic origin), race, colour, religion or other beliefs, age, disability, sexual orientation, proficiency in foreign languages, duty to serve in the Defence Forces, marital status, performance of family obligations, social status, representation of public servants or membership in public servants association is prohibited. In case of discrimination on grounds of any mentioned feature either the Equal Treatment Act or the Gender Equality Act shall be applied. Different treatment on grounds of proficiency in foreign languages is not regarded as discrimination, provided that such different treatment is allowed pursuant to the Public Service Act or the Language Act.

According to the PSA, vacant positions have to be filled through open competition. Organising open competitions guarantees equal access to public service positions. Exceptions of not carrying through open competitions are allowed only in predetermined conditions – mainly, internal competition, fixed-term transfer, but also some situations involving organisational restructuring. Administrative agencies have to publish information about open competition at the central public service website. This measure guarantees the availability of information on all open competitions at one website. The PSA also prohibits the discrimination of candidates as well as public servants and obliges to advance the principles of equality and equal treatment in public service. Current Public Service Act prescribes the requirement of open competitions only in terms of higher officials. In practice, organising open competitions is also common in case of the positions of junior and senior officials.