

Estonia

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<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Estonia/EST-CbC-V-2015-036-ENG.pdf>

- **Context information from ECRI**

p.9: Estonia does not suffer from a specific problem of hate speech but the following issues continue to give rise to concern: the prevalence of racist remarks on Internet news portals and the failure to take action in response to homo/transphobic speech by politicians. The under-reporting of cases of racial or homo/transphobic hatred or violence urgently raises the question of the lack of training activities for the police and members of the judiciary.

37. ECRI notes that the political classes are not exempt from hostile attitudes towards LGBT persons. For example, at a government weekly press conference in 2010, a former Minister of Education and Research said that homosexuality would not be promoted in Estonian schools, in response to news that the Netherlands had introduced the topic of same-sex marriage into its school education. In March 2013, Erki Nool, the former athlete and then member of parliament, made a number of homophobic statements, calling on gays to turn to psychotherapy and religion and avoid the company of “practising homosexuals”. ECRI also notes that in November 2012, the Foundation for the Protection of the Family and Traditions launched a campaign in Estonia in reaction to the plans to draw up a code on cohabitation (see § 93). This campaign was centred on a petition which, it was claimed, contained several homophobic statements.

46. The information forwarded to ECRI by the Estonian authorities (see § 33) refer solely to incidents of incitement to hatred (or racial discrimination); accordingly, it is necessary to turn to information gathered by civil society organisations which undertake monitoring activities in order to have some insight into the scale of the problem of racist and homo/transphobic violence. In the light of this information, as will be seen below, ECRI believes that contrary to what might be suggested by the data provided by the authorities, Estonia is not exempt from this problem.

ECRI notes, moreover, that according to representatives of civil society, neither of these instances of homo/transphobic speech received sufficient condemnation from the authorities.

The Criminal Code does not contain any provisions stipulating that sexual orientation or gender identity constitutes an aggravating circumstance to hate crimes and speeches. ECRI understands that the addition of such an aggravating circumstance may have been discussed in the Ministry of Justice’s proposed amendment, but that there is no assurance that it will ultimately be included. ECRI believes that this addition is essential to ensure an appropriate level of protection for LGBT persons.

- **Legislative issues**

99. In the health field, the situation of transgender persons is complicated by the lack of legislation. Issues related to gender reassignment are governed by a “regulation on common requirements of medical acts of gender reassignment” adopted by the Ministry of Social Affairs. This regulation relates

only to the medical requirements and the activities of the committee of medical experts which decides on the admissibility of gender reassignment requests. However, according to certain LGBT NGOs, there are cases where individuals who have requested gender reassignment surgery have been refused on the ground that their application was motivated by aesthetic considerations. Lastly, according to the procedures in force, the change of name takes place only at the very end of the gender transition period, raising numerous administrative and social problems for the persons concerned.

100. ECRI recommends that the Estonian authorities review the legislation or regulations in force so as to clarify the administrative situation of persons undergoing gender reassignment.

102. ECRI recommends that the Estonian authorities carry out a detailed study of the situation of LGBT persons in the employment field, and in particular the discrimination they suffer in this area, and identify and implement remedial measures.

- **List of recommendations from ECRI**

12. (§ 39) ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts. (see § 51).

13. (§ 44) ECRI recommends that the authorities organise an extensive campaign to inform and raise awareness among all sections of Estonian society about racist and homo/transphobic hate speech, the legal provisions and rights existing in this field, and procedures for reporting or filing complaints against instances of such speech.

14. (§ 51) ECRI recommends that the Estonian authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech brought to the attention of the police and/or being pursued through the courts. ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence (see § 39).

17. (§ 56) ECRI further recommends that the authorities take steps to encourage victims and witnesses of homo/transphobic incidents to report such occurrences, provide training and awareness-raising for representatives of the law-enforcement agencies in the recognition of the homo/transphobic motivation of an ordinary crime and ensure that the police thoroughly investigate homo/transphobic offences.

29. ECRI recommends that the authorities take decisions to enhance the independence of, and increase the resources available to, the institution of the Gender Equality and Equal Treatment Commissioner, in order for it to function properly.

30. Should this be the case, ECRI recommends that the authorities amend the Equal Treatment Act so as to confer on the Gender Equality and Equal Treatment Commissioner the authority to bring cases before the courts and to contribute to the training of certain key groups.

32. ECRI recommends that gender identity be specifically added to the prohibited grounds in Articles 151 and 152 of the Criminal Code and that a provision be added to that Code explicitly stipulating that sexual orientation and gender identity constitute an aggravating circumstance in any ordinary offence.

39. ECRI recommends that the Estonian authorities introduce without delay in parliamentary proceedings a draft amendment to Article 151 of the Criminal Code, removing the restriction whereby an offence cannot be deemed to have taken place unless it is proven that it entails a risk to the health, life or property of the victim. At the same time, ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts. (see § 51).

43. Concerning homo/transphobic speech, ECRI notes that the statements of the former Minister of Education and Research in 2010 do not appear to have been retracted nor did they give rise to any reactions from other members of the government.

44. ECRI recommends that the authorities organise an extensive campaign to inform and raise awareness among all sections of Estonian society about racist and homo/transphobic hate speech, the legal provisions and rights existing in this field, and procedures for reporting or filing complaints against instances of such speech.

ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence.

51. ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech and violence brought to the attention of the police and/or being pursued through the courts.

53. ECRI strongly recommends that the authorities implement its 4th cycle recommendations regarding awareness-raising measures for the general public on the criminal-law provisions concerning racist crimes and that they extend this awareness-raising to cover homo/transphobic crime.

56. ECRI further recommends that the authorities take steps to encourage victims and witnesses of homo/transphobic incidents to report such occurrences, provide training and awareness-raising for

representatives of the law-enforcement agencies in the recognition of the homo/transphobic motivation of an ordinary crime and ensure that the police thoroughly investigate homo/transphobic offences.

91. ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in Estonia and on the discrimination and intolerance of which they are the victims.

92. ECRI also notes that there have been few studies or research on the nature and causes of hostile and negative attitudes towards LGBT persons. Nonetheless, reference can be made here to the Eurobarometer surveys, a survey carried out in 2012 by the Tallinn University of Technology,⁵⁶ and the 2012 FRA survey on Lesbian, Gay, Bisexual and Transgender persons in the European Union. Lastly, the Law Faculty of the Tallinn University of Technology carried out a survey of LGBT persons in June 2014 as part of its “Diversity enriches” project. According to the results⁵⁷ of this survey, 34% of the respondents find homosexuality acceptable while 59% do not, acceptance of same-sex cohabitation has fallen by 6% as compared to 2012 (from 46% to 40 %), and 64 % of respondents believe that gays and lesbians should be legally protected against discrimination also outside the labour sphere.