

Compliance Report

**on the implementation of Committee of
Ministers' Recommendation CM/Rec(2010)5
on measures to combat discrimination on
grounds of sexual orientation or gender
identity**

in ESTONIA

Kelly Grossthal

Liina Laanpere (refugee related topics)

Marianne Meiorg

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Executive Summary

This report is the second extensive analysis of the national law and practice in Estonia in the light of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. The first report was published in 2013.¹

The report is divided into thirteen specific topics in addition to the general legal, political and institutional framework. In many aspects there have been no changes, progress or otherwise in different aspects of LGBTI² persons' situation. However, some important changes need to be brought out.

The current report demonstrates many positive developments and initiatives since 2013. Unfortunately, nearly all of them have turned out to be half-solutions - developments have been followed by a standstill. For example, the Registered Partnership Act was adopted, allowing same-sex couple as well as different-sex couples to register their partnership and make legal claims based on that. However, it does not include implementation provisions, which makes it difficult to implement in everyday life. This forces same-sex couples to go to court to fight for the rights that the Act gives them but the public officials have not granted because they have not been given clear mandate and specific instructions.

Similarly, many issues that transgender people previously faced have been resolved, one such example being the amendment of the law to establish the unambiguous requirement to issue modified diplomas reflecting the self-identified gender that has also been legally recognised. But, at the same time, even though these minor issues do make their lives a bit easier, the whole gender affirming procedure is still complicated, arbitrary in nature and not based on self-determination.

Finally, although the Ministry of Social Affairs has prepared a draft law to widen the scope of protection from discrimination for LGB persons, in particular, beyond employment, including housing, health, social services, education and service, the draft act lacks the support of the conservative political parties and is therefore currently stalled in the parliament.

Yet, in several important areas there have been no development. The amendment of the Penal Code, to lower the threshold for the incitement to hatred and to add hate motivation as an aggravating circumstance is still stalled and has not moved forward from the Ministry of Justice. Similarly, there is a continuing need for regular data collection on the situation of LGBTI persons in all areas of life, in particular in education and health, where no data is available at all. And finally, although law enforcement officials have now received training on LGBTI persons and their particular vulnerabilities, there have still not been

¹ Grossthal, K., & Meior, M. (2013). *Implementation of the Council of Europe Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Estonia*. Estonian Human Rights Centre. Retrieved from https://issuu.com/inimoigustekeskus/docs/full_lgbt_report.

² LGBT - lesbian, gay, bisexual, transgender and intersex.



any state initiatives to provide regular training on the subject to border guard officials, teachers or medical staff.

Recommendations to the Government

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation (listed thematically, not hierarchically, in the order of appearance in the report):

in regard to the general legal and political framework and remedies

- to adopt the draft law that has already been prepared and is amending the Equal Treatment Act as prepared by the Ministry of Social Affairs extending the scope of protection on grounds of sexual orientation beyond employment sector and, thus, eliminating the current hierarchy of protections depending on the ground for discrimination;
- to start collecting and analysing data on LGBTI discrimination in different areas of life;
- to develop a comprehensive strategy of education and awareness raising of the general public on the issues of discrimination, including on grounds of sexual orientation, gender identity, gender expression as well as sex characteristics, and to encourage greater reporting to relevant authorities.

in regard to the right to life, security and protection

- to regulate LGBTI persons' protection from incitement to hatred, more specifically, to change the wording of §151 of the Estonian Penal Code so that it would allow effectively combat with incitement to hatred irrespective of threat to life, health or property of another person.
- adopt legal measures, including in regard to sexual orientation and gender identity, that would make hate motivation an aggravating circumstance.
- analyze the situation of LGBT detainees and take appropriate measures.
- conduct trainings to prison staff and judiciary on hate crimes and hate speech, including based on person's sexual orientation or gender identity.
- continue with the training to law enforcement and successfully implement community officers piloting project.
- have in place policies to discourage public officials from hate speech, including based on sexual orientation and gender identity.

in regard to freedom of association

- to encourage better implementation of the Good Practice of Inclusion in order to ensure that persons and organisations representing them who are affected by the policy or legislative act in development, such as LGBTI organisations, would indeed be consulted in the process;
- to create a checks-and-balances system for policy and funding decisions in regard to LGBTI persons and organisations representing them in order to save them from going to court to ensure the correct implementation of the right to non-discrimination.

in regard to the right to respect for private and family life (excluding specific transgender issues)

- to adopt the implementing provisions for the Registered Partnership Act, which guarantee implementation of the Act in its full extent.

- amend the Aliens Act so as to grant residence permits to the same-sex partners of Estonian citizens.

in regard to health (excluding specific transgender issues)

- to study the situation and treatment of children born intersex and ensure that their human rights are not violated through irreversible, medically unnecessary, and coerced medical practises and provide up-to-date training of medical staff on the subject;
- to make LGBTI related health issues a compulsory part of any medical profession curriculum.

in regard to the right to respect for private and family life and access to health care - specific transgender issues

- to abolish the present insufficient regulation on the procedure of gender reassignment, to separate medical and legal gender reassignment procedures, to ensure that legal recognition of gender is based self-determination and amend the current legislation accordingly;
- to change the policy of the Estonian Health Insurance Board in seeing the medical procedures for the reassignment of person's gender as plastic surgery and ensure full coverage for all the medical procedures the person has decided to undergo to reassign their gender.

in regard to education

- to assemble a working group of education officials, school representatives and advocacy organisations in order to make clear suggestions to the curricula and school programmes on the topic of LGBTI.

in regard to housing

- to adopt the draft law amending the Equal Treatment Act as prepared by the Ministry of Social Affairs extending the scope of protection on grounds of sexual orientation beyond employment sector and, thus, eliminating the current hierarchy of protections depending on the ground for discrimination.

in regard to sports

- collect and analyse data on LGBTI-related issues in sports and addressing them by specific measures.

in regard to right to seek asylum

- amend the Aliens Act so it would allow granting of residence permits to the same-sex partners of Estonian citizens;
- introduce formal guidelines for the Police and Border Guard Board to protect LGBTI asylum-seekers from any discriminatory practices;
- expressly forbid asking asylum-seekers to provide detailed account of their sexual practices or to produce “evidence” to prove their sexual orientation or gender identity in asylum claims;

- 
- expressly forbid the use of psychological testing to determine the sexual orientation or gender identity of asylum-seekers.

Introduction

1. Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat".

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBTI persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBTI persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBTI persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

2. Purpose of Report

The purpose of this report is to assess what progress has been made by the Estonian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not, been completed. It provides a baseline against which to measure further progress in implementing the Recommendation in the coming years. The current report is an update of the first report published in 2013.³

The report has two main target audiences. First, the political leaders and civil servants at national level who are responsible for implementing the Recommendation. Secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

3. Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and other state authorities to letters from the experts listing the relevant questions, and asking for comments on actions taken to implement the related measures (see Table 1 on the list of state authorities that were contacted).
- Information from published sources, such as the published statistics, annual reports of state institutions, reports on Estonia by international organisations (e.g. OSCE) and so on.
- Research and documentation assembled by the experts and non-governmental organisations, such as the Estonian Human Rights Centre and the Estonian LGBT Association.

Table 1. List on state authorities contacted, topic of the questions and the date of response.

State authority	Topic	Date of response
Ministry of Social Affairs	Transgender and intersex persons, health, awareness-raising for general public and public officials	29 June 2018
Ministry of Justice	LGBT prisoners, courts	29 June 2018
Office of the Chancellor of	Communications on LGBTI topics to the Chancellor	5 July 2018

³ Grossthal, K., & Meior, M. (2013). *Implementation of the Council of Europe Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Estonia*. Estonian Human Rights Centre. Retrieved from https://issuu.com/inimoigustekeskus/docs/full_lgbt_report.

Justice		
Police and Border Guard Board	Safe countries of origin	25 May 2018
Police and Border Guard Board	Hate crimes statistics	21 June 2018
Labour Inspectorate	Statistics of cases in the labour dispute committees	4 June 2018

Implementation of the Recommendation

The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

1. Legal and policy framework

As in 2013, there have been no meaningful and comprehensive **review** carried out of existing legislative and other measures which could result directly or indirectly in discrimination on grounds of sexual orientation or gender identity. The Ministry of Social Affairs reviewed the existing legislative and other matters in the course of the development of the Welfare Development Plan 2016–2023,⁴ compiling a detailed analysis that formed the basis of the Plan.⁵ The Plan also includes objectives and measures in regard to achieving equal treatment. Among others, sexual orientation was one of the grounds of discrimination that was examined. The Plan addresses several shortcomings of the current legislative measures and the low degree of people’s awareness. The Plan also addresses gender discrimination and

⁴ Ministry of Social Affairs. (2016). Welfare Development Plan 2016–2023. Retrieved from http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/welfare_development_plan_2016-2023.pdf, pp 31-32.

⁵ Ministry of Social Affairs. (2015). *Sotsiaalse turvalisuse, kaasatuse ja võrdsete võimaluste arengukava 2016-2023. Arengukava aluseks oleva hetkeolukorra ülevaade*. Retrieved from http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalse_turvalisuse_kaatuse_ja_vordsete_voimaluste_arengukava_2016_2023/heaolu_arengukava_hetkeolukorra_ulevaade_2015.pdf, pp 101-112.

gender identity but not from transgender perspective but rather from the perspective of how gender stereotypes lead to inequality between genders.⁶

There are no LGBTI-specific action plans or strategies in place but the Welfare Development Plan 2016–2023 foresees several measures to address the current shortcomings in regard to the non-discrimination and equal opportunities of LGB persons.⁷ The Plan foresees increased scope for redressing discrimination on the ground of sexual orientation among other grounds. The current **legislation** protects persons from discrimination on grounds of sexual orientation only in employment sector (discrimination on grounds of gender is covered in all sectors of life)⁸. The Ministry of Social Affairs is currently processing a draft law that would increase the scope of application of the Equal Treatment Act, unifying the protection against discrimination on grounds of religion or beliefs, age, disability, or sexual orientation with that of nationality (ethnic origin), race, skin colour.⁹ Similar draft law was initiated by five members of the parliament in 2016 but the processing of the draft stalled.¹⁰ The Ministry's draft was presented to the Government for approval in May 2018.¹¹ At the time of compiling the current report, the draft law is yet to be discussed and approved by the Government, which is a prerequisite for parliamentary proceedings.

The amendment proposed in the above draft law would provide protection from discrimination on those grounds beyond employment sector. As such it would give LGB community the possibility to turn to the Gender Equality and Equal Treatment Commissioner for initial determination in cases beyond employment sector. It also makes it easier to turn to a court with a case and apply for compensation of damages.

It is yet to be seen if the draft law will be approved by the government and adopted by the parliament in the wake of 2019 general elections. Based on the table of comments from non-governmental organisations attached to the draft law, the religious conservatives who have influence also in the parliament are vehemently against the amendment exactly due to the widening of the scope of protection of sexual minorities.

⁶ Ministry of Social Affairs. (2015). *Sotsiaalse turvalisuse, kaasatuse ja võrdsete võimaluste arengukava 2016–2023. Arengukava aluseks oleva hetkeolukorra ülevaade*. Retrieved from http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalse_turvalisuse_kaatuse_ja_vordsete_voimaluste_arengukava_2016_2023/heaolu_arengukava_hetkeolukorra_ulevaade_2015.pdf, pp 37-38.

⁷ Intersex and transgender persons are completely out of the scope of that Plan.

⁸ This has been the interpretation of the Gender Equality and Equal Treatment Commissioner, who is accepting communications on transgender issues under the Gender Equality Act. See e.g. Gender Equality and Equal Treatment Commissioner. Arvamus nr 43 (18 January 2016). Retrieved from http://www.volnik.ee/wp-content/uploads/2018/02/Arvamus-nr-43_Taastava-Kirurgia-Kliinik-AS.pdf.

⁹ See the Compliance Documentation Report on Estonia: Grossthal, K., & Meior, M. (2013). *Implementation of the Council of Europe Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Estonia*. Estonian Human Rights Centre. Retrieved from https://issuu.com/inimoigustekeskus/docs/full_lgbt_report, pp 10-11.

¹⁰ Parliament. (2016). *Võrdse kohtlemise seaduse muutmise seadus 196 SE [homepage]*. Retrieved 7 July 2018, from <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/64ae9c3f-5192-44b7-9496-de257be81db7/Vordse%20kohtlemise%20seaduse%20muutmise%20seadus>.

¹¹ Ministry of Social Affairs. (2018). *Võrdse kohtlemise seaduse muutmise seadus*. Eelnõu toimiku number: 17-0909. Retrieved from <https://eelnoud.valitsus.ee/main/mount/docList/129bfd72-fc25-4674-bf1a-ed79a390ed44>.

Another development worth mentioning is the Registered Partnership Act.¹² This Act entered into force in 2016, aiming to address the discriminative treatment of LGB people as their same-sex partnerships could not be legally recognised. However, this act was adopted without implementing provisions, which means that there have been no corresponding amendments made in other acts, such as the Family Act, Vital Statistics Registration Act or Aliens Act. Amendments to more than 80 legal acts are required. Please see Section on the [right to respect for private and family life \(excluding specific transgender issues\)](#) (page 26) for further discussion.

There are no LGBTI-specific action plans or strategies in place. However, the Welfare Development Plan 2016–2023 (see Question 1) also includes measures aimed to combating discrimination but they are not LGBTI specific, mentioning sexual minorities only in passing and ignoring trans or inter-gender issues completely.

There have been no measures that would ensure **regular collection and analysis of data** on discrimination on grounds of sexual orientation or gender equality. The Ministry of Social Affairs commissions and publishes regular Gender Equality Monitoring survey every four years that has included questions on attitude towards sexual minorities. However, the inclusion of these questions depends on the interest of the Ministry and the only time these questions were included was on 2013 report.¹³

The Ministry of Social Affairs mediates financing of projects from the returns of the gambling tax. Although the rules do not foresee regular studies on the topic of LGBTI or other topics, it is possible to get funding for such activity. Estonian Human Rights Centre has received funding for three surveys on attitudes towards LGBT people on 2012, 2014 and 2017.¹⁴ However, one can hardly consider it a regular certainty, as it is most and foremost an NGO initiative.

2. Remedies

As discussed in above, the legal remedies available to the victims of discrimination based on sexual orientation or gender identity are limited due to the limitations in the anti-discrimination legislation. Currently, discrimination of LGB persons and the corresponding legal remedies are only covered in employment sector. However, gender identity related discrimination is covered in all aspects of life, as it falls under the Gender Equality Act. Please see the 2013 report for detailed discussion on the differences of protection and effectiveness of remedies.¹⁵ However, as explained above, the Ministry of Social Affairs has drafted an amendment to the Equal Treatment Act, as per recommendation by the Chancellor of

¹² Registered Partnership Act, RT I, 16.10.2014, 1. Retrieved from <https://www.riigiteataja.ee/en/eli/527112014001/consolide>.

¹³ Roosalu, T. (2014). *Soolise võrdõiguslikkuse monitooring 2013. Artiklite kogumik* (Sotsiaalministeeriumi toimetised No. 3/2014). Ministry of Social Affairs. Retrieved from http://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/sooline_vo_monitooring_2013_veeb.pdf.

¹⁴ Rünne, E. (2018). Attitudes towards LGBT topics in Estonia [homepage]. Retrieved 7 July 2018, from <https://humanrights.ee/en/topics-main/vordne-kohtlemine/attitudes-towards-lgbt-topics-estonia/>.

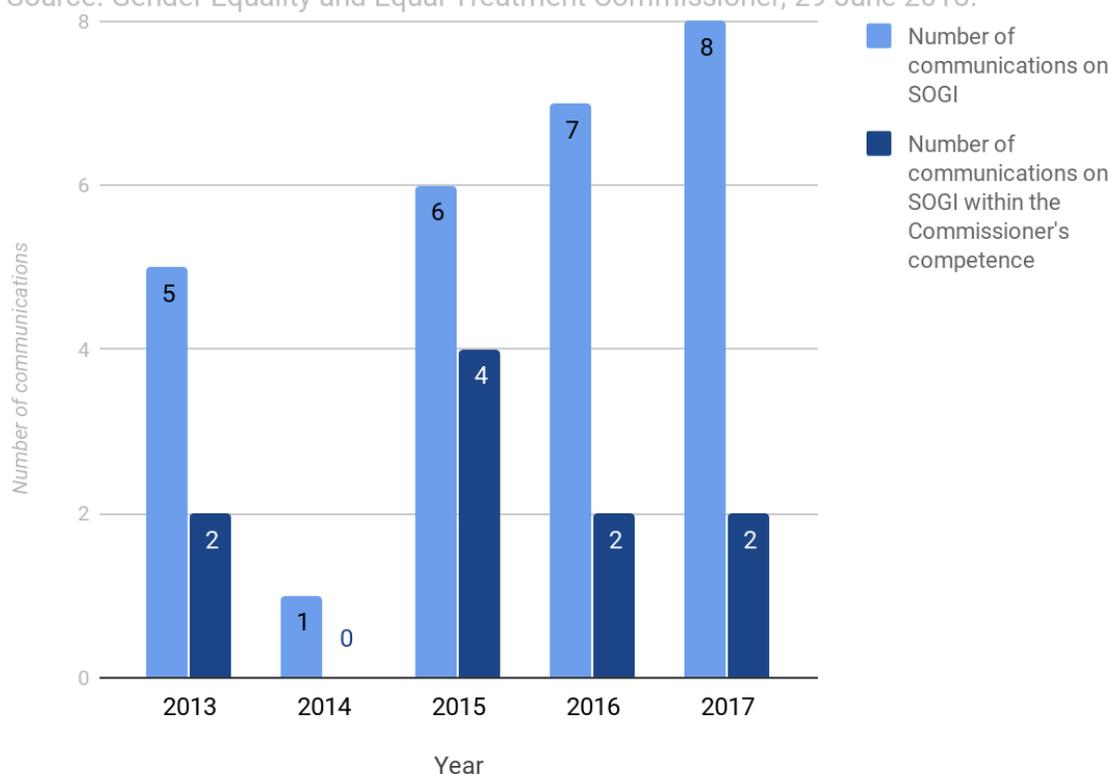
¹⁵ Grossthal, K., & Meior, M. (2013). *Implementation of the Council of Europe Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Estonia*. Estonian Human Rights Centre. Retrieved from https://issuu.com/inimoigustekeskus/docs/full_lgbt_report, pp 13-20.

Justice since 2008,¹⁶ which raises the protection of LGB persons, among others, from discrimination beyond the level required by the EU law. Currently it is awaiting to be discussed by the Government before it can be sent to the parliament.

The remedies that are in place, fulfil the legal requirements of the EU law, as well as Council of Europe's Recommendations. In practice, the effectiveness of the remedies have rarely been put to test. While in the 2013 report it was possible to demonstrate a "steady rise in the number of communications" on SOGI¹⁷ to the Commissioner, reaching 15 in 2012, then in 2013 it dropped and has since risen only by three.

Communications to the Commissioner (2013-2017).

Source: Gender Equality and Equal Treatment Commissioner, 29 June 2018.



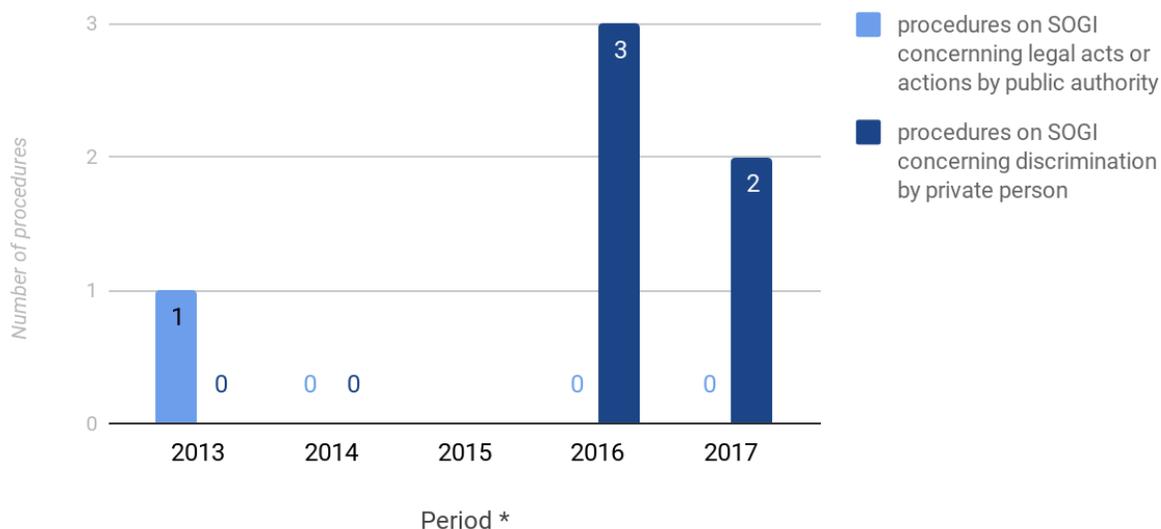
The number procedures by the Chancellor of Justice has largely remained as low as it was presented in the 2013 report. In 2016 and 2017 the numbers are higher due to the adoption of the Registered Partnership Act. Firstly, it raised the awareness of same-sex partners in regard to their rights. Secondly, politicians have refused to work on the implementation act, which would solve the practical difficulties of implementing the Registered Partnership Act.

¹⁶ Chancellor of Justice. (2009). *Õiguskantsleri 2008. aasta tegevuse ülevaade* (annual report). Tallinn. Retrieved from http://www.oiguskantsler.ee/sites/default/files/6iguskantsleri_2008._aasta_tegevuse_ylevaade.pdf, p 18.

¹⁷ SOGI - sexual orientation and gender identity.

Procedures on the right of equal treatment on grounds of SOGI by the Chancellor of Justice (2013-2017)

Sources: Annual Reports of the Chancellor of Justice



* The periods for presenting statistics in the Annual Reports changed in 2015: in 2013 and 2014 the viewed period is 1.01-31.12, in 2015 it is 1.01-31.08, the subsequent periods are 1.09-31.08. There is no information on the period of 1.01.-31.08.2015.

There have been no changes in the number of court cases either. Based on the search of the database of court cases, no cases on discrimination on grounds of sexual orientation have reached the court, either civil, administrative or criminal during the period of 2013-2017. Admittedly there have been several cases involving same-sex partnerships. These are discussed in more detail below in the section on [right to respect for private and family life \(excluding specific transgender issues\)](#) (page 26).

The labour dispute committees have not had any cases on discrimination based on sexual orientation or gender identity since the previous report in 2013.¹⁸

The state has not adopted any measures to raise awareness of the victims, on remedies. NGOs have undertaken to train vulnerable groups but the activities have been sporadic. Along with the adoption of the Civil Partnership Act, the awareness of LGB people has increased in regard to their equal right to family life. The Estonian Human Rights Centre and the Association for the Protection of Sexual Minorities have pursued several strategic cases in the court to gain access to the rights foreseen in the Partnership Act but not implemented due to the absence of the implementation act (see section on [right to respect for private and family life \(excluding specific transgender issues\)](#) on page 26).

¹⁸ Vaikmets, K. (2018, April 7). Töövaidluskomisjoni menetlusstatistika. Labour Inspectorate.



There has been little development since 2013. The legislative and institutional framework is still limited. The little development that has taken place has been actively blocked by conservative political forces. The draft law increasing to the protection of LGB persons from discrimination beyond employment is stalled in the parliament. The effect of the Registered Partnership Act, a major progress in itself when it was adopted, has been minimal due to the blocking of the implementation provisions by the conservative parties. Similarly, there is still no political will to collect and analyse data on the situation of LGBTI people in different sectors of life in order to understand their needs and gaps in legislation or practice.

The available remedies are continuously under-used by LGBTI persons. The number of complaints to the Gender Equality and Equal Treatment Commissioner, labour dispute committees and the Chancellor of Justice has actually decreased since 2013, even though it was very low even then. There is a great need to raise the awareness of the general public on discrimination in general and to encourage victims, including LGBTI persons to report.

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to adopt the draft law amending the Equal Treatment Act as prepared by the Ministry of Social Affairs extending the scope of protection on grounds of sexual orientation beyond employment sector and, thus, eliminating the current hierarchy of protections depending on the ground for discrimination;**
- **to start collecting and analysing data on LGBTI discrimination in different areas of life;**
- **to develop a comprehensive strategy of education and awareness raising of the general public on the issues of discrimination, including on grounds of sexual orientation and gender identity, and to encourage greater reporting to relevant authorities.**

Right to life, security and protection from violence

1. “Hate crimes” and other hate-motivated incidents

The key recommendations in section I.A of the Recommendations’ Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

There is no specific law prohibiting hate crimes in Estonia. Hate-motivated criminal incidents are investigated and prosecuted under the general provisions of the Penal Code.¹⁹ The Code does include a provision prohibiting incitement of hatred (§151), among other grounds based on sexual orientation, gender identity is not included. This prohibition does not work in practice – it has been applied on only a few occasions.²⁰ The problem lies in the wording of the provision, according to which only such incitement of hatred is punishable, which poses an immediate danger to life, health or property of a person. Such requirement of immediate danger has been deemed a significant drawback in international appraisals, as it poses hindrances to application of the provision and means it conflicts with international standards.²¹

In addition, Estonia has no legislation regarding enhanced penalties or aggravating factors for crimes against LGBTI people or any other group. Estonia has remained practically the only country in European legal sphere, where incitement of hatred stands apart from more serious consequences and is not punishable as a crime, and where the motive of hatred of the offence is not considered an aggravating circumstance.²²

During the last monitoring cycle the Ministry of Justice had acknowledged the lack of proper legislative framework being problematic and amendments to the Penal Code were drafted. Nonetheless, there has been no process during the past five years, the law has not been changed and the draft Act has been stuck in the Ministry of Justice ever since.

At the same time, there have been some promising developments, for example interviews with hate crime victims indicate that investigation of the cases is mostly professional and victims had very few complaints

¹⁹ Penal Code. RT I, 29.06.2018, 66. Retrieved from <https://www.riigiteataja.ee/en/eli/509072018004/consolide>.

²⁰ Ministry of Justice. (2017). *Kuritegevus Eestis 2016* (Kriminaalpoliitika uuringud No. 23). Tallinn. Retrieved from

http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus_eestis_est_web_0.pdf

²¹ European Commission against Racism and Intolerance. (2015). *ECRI report on Estonia (fifth monitoring cycle)*. Retrieved from <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Estonia/EST-CbC-V-2015-036-ENG.pdf>.

²² Ministry of Justice. (2014, December 5). Kuritegevusevastased prioriteedid. Teiste riikide praktika [homepage]. Retrieved 7 July 2018, from <https://www.just.ee/et/eesmargid-tegevused/kriminaalpoliitika/vaenu-ohutamise-vastane-eelnou/teiste-riikide-praktika>.

with the procedure or officials handling the case.²³ In addition, the Estonian LGBT Association has established contact with the the online police constables. Web-constables are police officers working in Internet, including social media. They respond to notifications and letters submitted by people via internet and they also deal with hate-speech on social media and online bullying. The Association had a meeting with constable Maarja Punak in May 2018 and the parties agreed to stay in permanent contact with each other to tackle the topic of anti-LGBTI hate speech, and also to address concrete cases.²⁴

Estonian Police and Border Guard is part of pan-European project PROXIMITY (“Proximity Policing against Racism, Xenophobia and Other Forms of Intolerance”) that aims to contribute to the prevention and fight against racism, xenophobia and other forms of intolerance, including hate crimes at local level, by increasing the capacities of local authorities and especially municipal police to identify and face these phenomena.²⁵ Currently the project is implemented North Prefecture of the Police and Border Guard Board were assigned police officers act as liaison between communities and the police department. The police is in contact with the Estonian Human Rights Centre and Estonian LGBT Association.²⁶ That kind of cooperation should contribute to mutual trust and encourage reporting yet currently the project is implemented only in one part of the country and there is no country wide system to tackle the underreporting.

In 2016, the Estonian Academy for Security Sciences in cooperation with OSCE/ODIHR formed a national implementation working group to discuss hate-crime related police training in Estonia and also carry out Training Against Hate Crimes for Law Enforcement (TACHLE). The working group included next to the Academy, representatives of different ministries, Police and Border Guard, Prosecutor Office and Estonian Human Rights Centre. It was agreed from the beginning that during the training it is important to stress why victims of hate crimes are different from other victims, what is the impact of hate crimes on victims, their families and communities and the whole society, what are the needs of victims. Two training-of-trainers sessions took place in October and November 2017 with the total of 20 participants. By the end of 2018, there will be 4 cascading training sessions taken place, one training session in each prefecture.²⁷

Data collection on hate crime and hate-motivated incidents

Despite missing specific law prohibiting hate crimes, in 2016 the state added possibility for police officers to register reported hate crime cases. Also, the guiding instruction has been developed to assist police officers in recording the crime as a hate crime. This kind of proactive approach has been step forward in tackling hate crimes and hate speech.

²³ Anonymous. (2017). UNI-Form project interviews for the Estonian Human Rights Centre.

²⁴ Kala, A. (2018, June 18). Interview with the Member of the Board of the Estonian LGBT Association.

²⁵ General Secretariat for Immigration and Emigration, OBERAXE. (n.d.). The project PROXIMITY [homepage]. Retrieved 7 July 2018, from <http://www.proximitypolicing.eu/The-project>.

²⁶ Police and Border Guard Board. (2018, June 21). Reply to query.

²⁷ Estonian Academy for Security Sciences. (2017, June 28). Minutes of the Meeting of the National Implementation Working Group.

According to the Ministry of Justice:

“The police registration system enables police officers to tick a special box, marking a case as a hate crime. This “hate crime flag” is not restricted to hate crimes only, but is used to also mark other cases, such as hate speech incidents. To flag hate crime or not, is not mandatory. Three boxes are currently available to police officers for flagging hate crimes on the basis of the three hate crime types:

1. race, religion, origin;
2. sexual orientation and identity; and
3. other group identity (disability and other social groups).

The three categories create an open-ended list, aggregating distinct strands of hate crime (e.g. religion-race-origin) and at the same time, does not enable further disaggregation of bias motivations at the time of recording. Only after the crime suspect is identified, can the police record the crime motive, by selecting the type of motive in the database, including a hate motive. This suggests a duality in “recording motive”: hate crime flags and the motive box.

The system police uses to record crimes does not provide for capturing and applying bias indicators. The recording officers can include bias indicators in the case description field. The police registration system does not prompt officers to list bias indicators or identify in detail the motivation of the perpetrator. Indicators can be added in the open text field, where the incident is described by the recording police officer.

Data entered in the Police Information System (MIS) is simultaneously accessible by a prosecutor in the prosecutors’ Register (Criminal Case Management Register); the information can be further used and changed by the prosecutor in the prosecutors’ Register and sent if necessary to the courts information system (KIS); later, the procedural information and the court decision entered into the force, could be delivered to the Information System of Prisons (VangIS). The Ministry of Justice when preparing the Crime in Estonia yearbook conducts keyword searches in the crime description field across the whole registration system to verify the number and type of crimes that have been recorded as hate crimes, and to identify such cases that should have been recorded as hate crimes but were not.”²⁸

Since 2016 data on hate crimes is published in annual report on crime in Estonia and data is also shared with OSCE.²⁹ In 2016 there were 15 hate crimes recorded by police, out of which 4 took place because of

²⁸ Ministry of Justice. (2018, June 29). Reply to query.

²⁹ OSCE Office for Democratic Institutions and Human Rights Tolerance and Non-Discrimination Department. (2017). OSCE ODIHR Hate Crime Reporting. Estonia. Retrieved from <http://hatecrime.osce.org/estonia>.

sexual orientation or gender identity.³⁰ In 2017 the total number of recorded hate crimes was 4, all related to victims' race or ethnicity.³¹

Safety and dignity of lesbian, gay, bisexual and transgender people deprived of their liberty

The situation of LGBT detainees continues to be overlooked and there is very little information on the topic. Ministry of Interior Justice confirmed that no special training has been organised on LGBT topic to the prison staff nor are there any programs, strategies or other relevant measures that concern LGBT prisoners. At the same time, all prison officers receive general training about decency and vulnerability of detainees (not specific to LGBTI detainees). Prisoners are allocated to male or female facility only based on their legal gender.³²

According to the Estonian LGBT Association the association have had little or no information about the situation of LGBTI detainees. In 2015 one detainee turned to the organisation for advice. Allegedly some fellow detainees had had problems with a gay man who delivered food in one Estonian prison. The information about the case was incomplete and the Association turned to the prison to get further information but did not receive it and the contact with the detainee was lost as well.³³

2. "Hate speech"

Section I.B. of the Recommendations' Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBTI people.

Estonia's Penal Code contains an offense provision relating to incitement to hatred (§151) and among listed grounds sexual orientation is included.³⁴ The provision covers also hate speech on the internet. At same time necessary elements of the offence require severe damage made to life, health or property of the victim in order to be prosecuted, which is too high of a threshold and therefore the provision is rarely used. During the past 12 years (not including 2018, data is not yet available) there have been only two convictions based on §151, one in 2006 and the other one in 2015.³⁵

³⁰ Ministry of Justice. (2017). Kuritegevus Eestis 2016 (Kriminaalpoliitika uuringud No. 23). Tallinn. Retrieved from

http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus_eestis_est_web_0.pdf.

³¹ Ministry of Justice. (2017). Kuritegevus Eestis 2017 (Kriminaalpoliitika uuringud No. 26). Tallinn. Retrieved from

http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus_eestis_est_web_0.pdf.

³² Ministry of Justice. (2018, June 29). Reply to query.

³³ Kala, A. (2018, June 18). Interview with the Member of the Board of the Estonian LGBT Association.

³⁴ Penal Code. RT I, 29.06.2018, 66. Retrieved from <https://www.riigiteataja.ee/en/eli/509072018004/consolide>.

³⁵ Ministry of Justice. (2018, June 29). Reply to query.

There are no measures developed to raise awareness of public authorities/ institutions of their responsibility to refrain from negative statements towards LGBT persons. In addition, there have been no trainings, awareness raising activities or any other form of guidance provided to public officials and state representatives to promote tolerance towards LGBTI community. At the same time, the Ministry of Social Affairs – the ministry responsible for equal treatment issues – has repeatedly urged the public institutions to sign the Diversity Charter which is a value-based document where companies and public sector organizations pledge to uphold the principles of diversity and equal treatment among employees, customers and cooperation partners.³⁶

Although many issues regarding hate crime reporting and data collection reported in the previous 2013 report have been resolved, the lack of proper legislative framework continues to be problematic. Estonia is missing the hate crime regulation. The Penal Code contains an offense provision relating to incitement to hatred (§151) and among listed grounds sexual orientation is included but at same time necessary elements of the offence require severe damage made to life, health or property of the victim in order to be prosecuted, which is too high of a threshold and therefore the provision is rarely used.

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to regulate LGBTI persons’ protection from incitement to hatred, more specifically, to change the wording of §151 of the Estonian Penal Code so that it would allow effectively combat with incitement to hatred irrespective of threat to life, health or property of another person.**
- **adopt legal measures, including in regard to sexual orientation and gender identity, that would make hate motivation an aggravating circumstance.**
- **analyze the situation of LGBTI detainees and take appropriate measures.**
- **conduct trainings to prison staff and judiciary on hate crimes and hate speech, including based on person’s sexual orientation or gender identity.**
- **continue with the training to law enforcement and successfully implement community officers piloting project.**
- **have in place policies to discourage public officials from hate speech, including based on sexual orientation and gender identity.**

³⁶ Ministry of Justice. (2018, June 29). Reply to query.

Freedom of association

Section III of the Recommendations' Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

In general, there are no obstacles set by state on the freedom of association of LGBTI human right organisations. Such organisations can obtain official registration on equal footing with other NGOs and there are no obstacles to such registration based on public health, morality and public order. They are also able to freely work with any other NGO, state institution or media and take part in training sessions or conferences.

There are no specific measures in place to ensure consultations with LGBTI-organisations. All the ministries are encouraged to follow the Good Practice of Inclusion in any policy-making decisions. However, consulting any relevant NGO is very much dependent on the particular public servant and their willingness and skills. The Ministry of Social Affairs has involved the LGBT organisations: they took part in the public consultations on drafting the Welfare Development Plan 2016-2023.³⁷ The Estonian LGBT Association has also been involved in the plans of updating the current gender affirming system³⁸ but is not included in the process of drafting the new Strategy of the Health of Population.³⁹ Thus, they are consulted but are in a similar situation with other NGOs - their inclusion in the policy-making process is dependent on the public servant responsible.

Public **funding** is available for non-governmental organisations the purpose of which is, or includes, the protection of the rights of LGBTI persons. For example, the Estonian LGBT Association has received finances for its projects from several state-run funds, such as the Council of the Gambling Tax and the National Foundation of Civil Society.⁴⁰ They also participated in a project funded from the EEA Financial Mechanism 2009-2014 Programme "Children and Youth At Risk", which was administered by three different ministries. The Association of Gay Christians also has applied once for funding from the Council of the Gambling Tax and received all what they asked.⁴¹ Thus, there does not seem to be noticeable problems with funding from state-administered sources.

³⁷ Ministry of Social Affairs. (n.d.). Heaolu arengukava 2016-2023 juhtkomitee. Retrieved from http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalse_turvalisuse_kaasatuse_ja_vordsete_voimaluste_arengukava_2016_2023/heaolu_2016-2023_juhtkomitee.pdf.

³⁸ Kala, A. (2018, May 7). Seadusemuudatuste ettepanek, in attachment to e-mail communication from A. Kala: "transteema info."

³⁹ Ministry of Social Affairs. Ministri käskkiri nr 54 'Rahvastiku tervise arengukava 2020-2030' (2018). Retrieved from http://www.sm.ee/sites/default/files/content-editors/sisekomm/rahvastiku_tervise_arengukava_juhtkomitee_kk_04.06.2018.pdf.

⁴⁰ Estonian LGBT Association. (n.d.). Projektid [homepage]. Retrieved from <http://lgbt.ee/projektid/>.

⁴¹ Nurk, H. (2018, April 7). Re: kiire ja lühike küsimus.

However, there is one worrying example from local level.

There has been a case brought before the court where NGO SevenBow, the main organizer of LGBT film festival Festheart, sued Rakvere city council for a violation of its funding rules for cultural events.⁴² According to the rules, the cultural commission shall consider each application and submit them to the city council. Two applications of SevenBow were considered to deserve the maximum amount and submitted to the city council. The council reduced the grant for one application, which requested support for the LGBT film festival, five times without any justification, having fully accepted all the other decisions of the cultural committee. The council members who belong to the Conservative People's Party of Estonia have confirmed in the media that the decision was taken on their initiative, because they believe that the film festival and the concert series are so-called "gay propaganda", not cultural events.

There are no specific measures in place to protect defenders of human rights of lesbian, gay, bisexual, transgender and intergender people. General measure apply: complaint can be lodged to the police (see the section on [right to life, security and protection from violence](#) on page 16), to the Chancellor of Justice if the perpetrator is a public official or directly to the court.

In general, there are no major obstacles for LGBTI human right organisations to register or act and advocate on behalf of LGBTI persons. However, what is lacking is a more consistent practice in involving these organisations in the development of policies and legislative initiative relating to LGBTI persons. On local level, there is also a greater need for check-and-balances, since anti-LGBTI sentiments have greater influence and can turn the local policies against LGBTI organisations.

Thus, there are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to encourage better implementation of the Good Practice of Inclusion in order to ensure that persons and organisations representing them who are affected by the policy or legislative act in development, such as LGBTI organisations, would indeed be consulted in the process;**
- **to create a checks-and-balances system for policy and funding decisions in regard to LGBTI persons and organisations representing them in order to save them from going to court to ensure the correct implementation of the right to non-discrimination.**

⁴² Estonian Human Rights Centre. (2018, April 16). Rakvere linnavolikogu kaevati seaduserikkumise pärast kohtusse [homepage]. Retrieved 7 July 2018, from <https://humanrights.ee/2018/04/rakvere-linnavolikogu-kaevati-seaduserikkumise-parast-kohtusse/>.

Freedom of expression and peaceful assembly

Section IV of the Recommendations' Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination

Freedom of expression and right for peaceful assembly in Estonia have generally been in a good state for a long time, and there have been no significant amendments to legislation during the period of concern. Regarding political and institutional developments, there has been no tangible regression in Estonia. The interviews with the LGBTI and human rights organizations demonstrate that it is easy to register public events, publish materials and there had been no problems to get the media attention or disseminate information yourself.⁴³

In general, the freedom of peaceful assembly is secured by law. The Estonian legal environment has remained relatively favourable for more than twenty years and only cosmetic changes have been made. For the first time in more than 10 years, an LGBTI marching, Tallinn Pride, took place in Tallinn on July 8, 2017. Tallinn Pride events were held in Tallinn in 2004-2007, during which several clashes between the participants and protesters took place, that was not the case this time. According to the Estonian LGBT Association the organisers did not face difficulties when registering the event, also the cooperation with the Estonian Police and Border Guard was constructive and proactive from the police side. During the preparations for Tallinn Pride, the organizers met with the police beforehand and discussed the safety of participants. During the marching police was present, one violent and drunk protester was detained and taken to the police station. Yet there is no systematic approach to the LGBTI topic from the law enforcement authorities, ad hoc approach prevails.⁴⁴

Although the authors of the present report have no information about any unlawful interference with the exercise of freedom of expression and peaceful assembly, there are also no measures in place that would urge the public authorities to take a proactive and pro human rights stand.

⁴³ Kala, A. (2018, June 18). Interview with the Member of the Board of the Estonian LGBT Association and Soomelt, K. (2018, June 15). Interview with the Member of the Board of NGO Sevenbow.

⁴⁴ Kala, A. (2018, June 18). Interview with the Member of the Board of the Estonian LGBT Association.

Right to respect for private and family life (excluding specific transgender issues)

Paragraphs 18-19 and 23-27 of section IV of the Recommendations' Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Criminal law does not treat same-sex sexual acts and heterosexual acts differently. At the same time there are also no specific measures to ensure that criminal law provisions in general are not applied discriminately.

There measures in place to ensure that personal data are not collected, stored or otherwise used when referring to sexual orientation or gender identity. The collection and processing of personal data in any way must follow the Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), which entered into force on 25 May 2018.⁴⁵ In addition, the previous Personal Data Protection Act, is still in force alongside the Regulation.⁴⁶ Both the Act and the Regulation stipulate detailed requirements for the processing of personal data and special categories of personal data (former “sensitive personal data”).

Article 9 of the Regulation allows the processing of special categories of personal data, which includes data concerning health and person's sex life or sexual orientation, only when specific requirements are fulfilled. There are ten possibilities, including explicit consent, for giving appropriate safeguards in employment etc (Art 9(2)). The list is exhaustive and the processing of such data must fulfil one of the ten justifications in the Article. Please see the Report of 2013 for further details on the system of personal data protection.⁴⁷

On January 1, 2016, the Registered Partnership Act⁴⁸, which had been passed by the Estonian Parliament in 2014, entered into force. The Law allows heterosexual and same-sex couples to register their relationships and enter into civil unions if they do not want to get married, or cannot do so. Under the Estonian Family Law Act, same-sex couples cannot get married because the Act defines a marriage as a

⁴⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1–88. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC.

⁴⁶ Personal Data Protection Act, RT I, 06.01.2016, 10. Retrieved from <https://www.riigiteataja.ee/en/eli/ee/507032016001/consolide/current>.

⁴⁷ Grossthal, K., & Meior, M. (2013). *Implementation of the Council of Europe Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Estonia*. Estonian Human Rights Centre. Retrieved from https://issuu.com/inimoigustekeskus/docs/full_lgbt_report, pp 44-45.

⁴⁸ Registered Partnership Act, RT I, 16.10.2014, 1. Retrieved from <https://www.riigiteataja.ee/en/eli/527112014001/consolide>.

union between a man and a woman.⁴⁹ There is still a need to pass implementing regulations and amend existing legislation. Amendments to more than 80 legal acts are required, and about 350 amendments have been proposed, but there isn't sufficient support in the Parliament to pass these implementing regulations.

Since the law's implementing provisions still haven't been adopted, many problems have occurred in connection to civil partnership agreements. For instance, the agreements cannot be entered into registers, which means that in the registers people remain single. In addition, according to the Estonian LGBT Association at least half of the notaries refuse to authenticate the contracts due to missing implementation acts.⁵⁰

The Chancellor of Justice has analyzed the situation and stated in her Annual Report of 2016 that absence of legal norms guiding register entries and other practical activities does not prevent making of decisions and entries that reflect them in practice. In the opinion of the Chancellor of Justice the gaps in legislation and lack of legal clarity can be overcome with the aid of the Constitution and other existing acts of law.⁵¹

The situation obtaining residence permit based on same-sex marriage or partnership continues to be complex in Estonia. In 2016, the parliament supported the Chancellor Justice proposal to amend the Aliens Act so as to grant residence permits to the same-sex partners of Estonian citizens.⁵² 42 members of the parliament were in favour of the proposal, 19 against and 3 abstained from the vote. The draft for the amendment is stuck in the parliament's Committee of Constitutional Affairs.⁵³

For three years the case of Kristiina and Sarah Raud has been making headlines. Estonian, Kristiina Raud, and American, Sarah Raud, got married in the United States in 2015 and decided to move to Estonia. Since a foreigner can apply for a residence permit upon marrying an Estonian citizen, Sarah Raud applied for it last year at the Police and Border Guard Board. The Board, however, refused to issue a residence permit, as their interpretation of the Aliens Act does not foresee issuing residence permits to spouses of the same sex. On April 16, 2018 the Supreme Court of Estonia announced their decision to not process Sarah's appeal, which meant that the district court's ruling, according to which the state of Estonia does not recognize Sarah and Kristiina's

⁴⁹ Family Law Act, RT I, 09.05.2017, 29. Retrieved from <https://www.riigiteataja.ee/en/eli/507022018005/consolide>, §1.

⁵⁰ Kala, A. (2018, June 18). Interview with the Member of the Board of the Estonian LGBT Association.

⁵¹ Chancellor of Justice. (2016). *Õiguskantsleri aastaülevaade 2015/2016* (annual report). Tallinn. Retrieved from <http://www.oiguskantsler.ee/ylevaade2016/oigusloomest>.

⁵² Parliament. (2016). *Õiguskantsleri ettepanek välismaalaste seaduse Eesti Vabariigi põhiseadusega kooskõlla viimiseks* [homepage]. Retrieved from <https://www.riigikogu.ee/tegevus/dokumendiregister/dokument/6360f57d-c3c5-4e8f-8ab0-c978f08503e8>.

⁵³ Parliament. (2016, May 4). Hääletustulemused 05.04.2016 11:21. Täiskogu korraline istung teisipäev, 5.04.2016 10:00 [homepage]. Retrieved 7 July 2018, from <https://www.riigikogu.ee/tegevus/toouleavaade/haaletused/haaletustulemused-kohalolekukontroll/4e2dac0f-0ed5-4de6-bbe1-1463db116f25/>.

*marriage as grounds for issuing a permanent residence permit, will remain in force. The litigation will continue in the European Court of Human Rights.*⁵⁴

Since the last reporting, Estonia has taken its first, yet very limited, step regarding same sex partners adoptions rights. The Registered Partnership Act §15(3) allows adoption of a natural child of his or her registered cohabitating partner, or a child to whom another registered partner was a parent before entering into the partnership. Pursuant to §147 of the Family Law Act, adoption is permitted if it is in the best interests of the child and there is reason to believe that a parent-child relationship will be created between the adoptive parent and the child.⁵⁵ The partners are not allowed, however, to jointly adopt a child who had no relationship with the couple. Due to the missing implementing provisions the adoptions the families were refused of entry into the Population Register, and therefore the only proof of adoption is the court decision on the adoption.

*In February 2017, Tallinn Administrative Court made a judgement with which it obliged the Ministry of the Interior to enter the adoption of a child by a registered partnership family in the population register.*⁵⁶ *The ministry did not appeal the decision. A lesbian couple and their mutually adopted children turned to the court. The story of the family was similar to that of several other registered partnership families: a registered partnership contract was entered into with a beloved person, the adoption of each other's children was applied for, which was approved by the court, but after which it was discovered that the vital statistics office refused to enter the fact of adoption in the population register. The failure by the State to make an entry was substantiated by the lack of implementing legislation of the Registered Partnership Act and the fact that the population register does not contain any cells that would permit making an entry on two mothers or two fathers therein. The court held that a situation where a family has to certify filiation relationship with a court ruling that should not reach any unauthorised persons at all, considering the confidentiality of adoption, is not an alternative to an entry in the population register.*⁵⁷

There are some fields where things have remained unchanged since the last reporting period. There have been no legal changes regarding the rights and obligations of unmarried couples since the last report in 2012⁵⁸. The rights and obligations of unmarried couples remain largely unregulated under Estonian legislation with the exception of a few isolated references, which essentially amount to a marginal regulation. Such regulation might also exist on local level, eg granting the right to social benefits from

⁵⁴ Estonian Human Rights Centre. (2018, April 17). Maksumaksjad, välja! [homepage]. Retrieved 7 July 2018, from <https://humanrights.ee/2018/04/maksumaksjad-valja/>.

⁵⁵ Family Law Act, RT I, 09.05.2017, 29. Retrieved from <https://www.riigiteataja.ee/en/eli/507022018005/consolide>.

⁵⁶ Pursuant to a confidentiality agreement, the Estonian Human Rights Centre cannot provide the exact date or number of the case.

⁵⁷ Estonian Human Rights Centre. (2017, February 21). Kohtuotsus: riik peab kandma kooselupere lapsendamise rahvastikuregistrisse [homepage]. Retrieved 7 July 2018, from <https://humanrights.ee/2017/02/kohtuotsus-riik-peab-kandma-kooselupere-lapsendamise-rahvastikuregistrisse/>.

⁵⁸ Grossthal, K., & Meior, M. (2013). Implementation of the Council of Europe Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Estonia. Estonian Human Rights Centre. Retrieved from https://issuu.com/inimoigustekeskus/docs/full_lgbt_report.

local municipality. State social assistance in Estonia is provided based on the household and not the legal status of the relationship, and rights and obligations towards children also depend on the filiation with the child and not the legal status of the relationship between parents.

As before, The Family Law Act allows adoption by a single person of at least 25 years of age (§148 and §150) or married opposite-sex partners (§148).⁵⁹ In addition, artificial insemination is available for single women and unmarried different sex couples.⁶⁰ There are no specific measures in place for unmarried lesbian couples, but at same time artificial insemination is accessible to all single women. According to the Estonian LGBT Union there have been no complaints or cases about ill-treatment or discrimination based on sexual orientation regarding assisted reproductive treatment.⁶¹

Although with the adoption of the Registered Partnership Act, Estonia took a huge step forward. However, it remained a half-measure because without implementing provisions it is difficult to put into practice by public officials. The refusal of the politicians to complete that step by adopting the necessary implementing measure, is a worrying sign.

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to adopt the implementing provisions for the Registered Partnership Act, which guarantee implementation of the Act in its full extent.**
- **amend the Aliens Act so as to grant residence permits to the same-sex partners of Estonian citizens.**

⁵⁹ Family Law Act, RT I, 09.05.2017, 29. Retrieved from <https://www.riigiteataja.ee/en/eli/507022018005/consolide>.

⁶⁰ Artificial Insemination and Embryo Protection Act, RT I, 28.12.2017, 35. Retrieved from <https://www.riigiteataja.ee/en/eli/504012018005/consolide>, §17, §21, and §22.

⁶¹ Kala, A. (2018, June 18). Interview with the Member of the Board of the Estonian LGBT Association.

Health (excluding specific transgender issues)

Paragraphs 33-34 of Section VII of the Recommendations' Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their “next of kin” without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

There have been no changes since the Report 2013. Both the legislative protection and the training of individuals in the area of sexual and reproductive health has remained the same.

The Equal Treatment Act does not provide protection from discrimination on the ground of sexual orientation.⁶² The Gender Equality Act does provide such protection on the ground of gender identity.⁶³ The Ministry of Social Affairs is attempting to increase the protection provided by the Equal Treatment Act by widening its scope. Please see section on the [legal and policy framework](#) on that (page 9).

The special needs of LGBTI persons are still not paid much attention in any of the **health policy plans** referred to above. Currently the next Strategy of the Health of Population is being drafted and no LGBTI organisations have been invited to take part in the process (see section on [freedom of association](#), page 22, on that). However, the representative of the Ministry of Social Affairs informed that vulnerable groups (without specifying whom that term includes) will be covered with the measure “Inequality in health care”.⁶⁴ The information available so far on the future Strategy does not clarify this aspect.⁶⁵ The current National Health Plan 2009–2020 does state that equal opportunities is the prerequisite and the Plan aims to achieve “those ideals, helping to decrease the systematic differences in health indicators of the nation based on inequity, supporting the most vulnerable groups of the society by cooperation between various sectors and levels”.⁶⁶ Subsequently, the term “vulnerable groups” is only referred to cover women, children (and adolescents), elderly, people with chronic diseases and families with a single parent. It remains to be seen whether the new Strategy would also mention sexual minorities, intersex or transgender people as vulnerable groups.

⁶² Equal Treatment Act, RT I, 26.04.2017, 9. Retrieved from <https://www.riigiteataja.ee/en/eli/503052017002/consolide>.

⁶³ Gender Equality Act, RT I, 07.07.2015, 11.. Retrieved from <https://www.riigiteataja.ee/en/eli/521012016001/consolide>.

⁶⁴ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitusel Rec(2010)5.

⁶⁵ Ministry of Social Affairs. (2018, June 18). Rahvastiku tervise arengukava 2020-2030 [homepage]. Retrieved 7 July 2018, from <http://www.sm.ee/et/rahvastiku-tervise-arengukava-aastani-2030>.

⁶⁶ Ministry of Social Affairs. (2008, amended 2012). National Health Plan 2009–2020. Retrieved from http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Tervis/Aruanded/rta_2009-2020_2012_eng.pdf, p 5.

The Law of Obligations Act stipulates that “**next of kin**” are “the spouse, parents, children, sisters and brothers of the patient” and “[o]ther persons who are close to the patient” if “the way of life of the patient” dictates so.⁶⁷ It is therefore somewhat within the discretion of the doctor. The Health Services Organisation Act §4¹(2) refers to people “closest to him or her”, thus, not specifying the general rule of the Law of Obligations Act.⁶⁸ Person can determine the next of kin in the Patient Portal (www.digilugu.ee/), which presumably will be the basis for determining the person close to the patient in the patient’s chosen “way of life”. The representative of the Ministry of Social Affairs states that if the person has determined the next of kin in the Patient Portal then the doctor cannot disregard it.⁶⁹

The legislative measure that are in place to ensure that no person is subjected to medical procedures without their **informed consent** is insufficient. The Law of Obligations does state that “a patient may be examined and health care services may be provided to him or her only with his or her consent” (§766(2)).⁷⁰ The same provision also requires the patient to be informed “of the results of the examination of the patient and the state of his or her health, any possible illnesses and the development thereof, the availability, nature and purpose of the health care services required, the risks and consequences associated with the provision of such health care services and of other available health care services” (§766(1)). However, in case of a minor with restricted active legal capacity, the decision is to be taken by their guardians. The decision of the guardians can only be overturned by the doctors if it “appears to damage the interests of the patient” (§766(4)).

The representative of the Social Affairs informs that there is no common practice among health care providers in regard to children who are intersex that could be assessed from the human rights perspective.⁷¹ The compilers of the present report are not aware of any research or survey that has analysed this issue in Estonia. It is, thus, not possible to provide any generalisations of the situation of whether in practice gender reassignment procedures do not occur without person’s informed consent, especially in cases of intersex children.

There have been no significant developments in the health sector since the first report on 2013. As already mentioned in the section on [freedom of association](#) (page 22), LGBTI organisations are not regularly consulted in policy-making, which is especially true in health sector, where the overall strategy makes no reference to LGBTI persons. However, the most significant problem is the lack of data on children born intersex and the practice of medical institutions in those cases. There is no knowledge on whether or how many intersex children are or are not subjected to irreversible

⁶⁷ Law of Obligations Act, RT I, 31.12.2017, 9. Retrieved from <https://www.riigiteataja.ee/en/eli/507022018004/consolide>, §767(2).

⁶⁸ Health Services Organisation Act, RT I, 22.05.2018, 12. Retrieved from <https://www.riigiteataja.ee/en/eli/523052018005/consolide>.

⁶⁹ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitud Rec(2010)5.

⁷⁰ Law of Obligations Act, RT I, 31.12.2017, 9. Retrieved from <https://www.riigiteataja.ee/en/eli/507022018004/consolide>.

⁷¹ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitud Rec(2010)5.

medical gender reassignment procedures. In case of adults, the law is clear, requiring their informed consent, thus, excluding the possibility of any coerced treatment, including “conversion therapies”.

Thus are a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to study the situation and treatment of children born intersex and ensure that their human rights are not violated through irreversible, medically unnecessary, and coerced medical practises and provide up-to-date training of medical staff on the subject;**
- **to make LGBTI related health issues a compulsory part of any medical profession curriculum.**

Right to respect for private and family life and access to health care - specific transgender issues

Paragraphs 20-22 of this section of the Recommendations' Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed.

Paragraphs 35-36 of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Legal gender recognition procedures are available but they are **not quick or transparent and not solely based on self-determination and this also affects accessibility**. There have been no changes in the legislation on legal gender recognition procedures. It is still regulated by the scant regulation that leaves most of the process unregulated and dependent on the discretion of the committee of medical experts and without checks-and-balances.⁷² There is no information available publicly for transgender people to read and acquaint themselves with. The information is shared only from transgender person to transgender person.

In short, legal recognition of gender is based on the second decision of the committee of medical experts, which can be taken only after at least the hormonal treatment, which can be started with only after the first decision by the committee. The basis of the first decision are the existence of transgender identity for at least two years prior, psychiatric diagnosis and genetic research confirming that chromosomal and gonad gender match. Family doctor makes the necessary referrals. The current scant regulation itself is contradictory and ambiguous on the procedure. The short overview has been compiled by the Estonian LGBT Association with the help of transgender people who have already experienced it.⁷³ It must also be noted that the overview indicates that the whole process is heavily relying on the sole discretion of one doctor who decides among other decisions whether and when the committee gathers.

The current scant regulation is also contradictory within itself, leaving it unclear whether hormonal treatment or any other form of medical treatment or surgical procedure is actually required by law. However, the representative of the Ministry of Social Affairs has informed that at least hormonal treatment should be started before legal procedure could be started.⁷⁴

⁷² Soovahetuse arstlike toimingute ühtsed nõuded, RTL 1999, 87, 1087. Retrieved from <https://www.riigiteataja.ee/akt/91001>.

⁷³ Rannaääre, K. (2018, May 7). Eesti ja transsoolitus, in attachment to e-mail communication from A. Kala, 'transteema info'.

⁷⁴ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitus Rec(2010)5.

Representative of the LGBT Association has marked that less than half of transgender persons want to undergo actual medical intervention due to risks associated with it, and only want legal recognition.⁷⁵ The psychiatric diagnosis, the decision of the committee of medical experts and at least two years of “life experience” are requirements. Since the current regulation does not state otherwise, the person will have to be an adult, i.e. over 18 years old, to be able to make decisions in regard to the legal gender recognition. The whole process of gender recognition can take in minimum four to five years⁷⁶ and in average approximately six years.⁷⁷

The procedure of the legal recognition goes as follows: the committee of medical experts issues a written decision indicating that the gender has indeed been reassigned. This decision is the basis for applying for the amendment of the gender in the population register.⁷⁸ The person’s given name, gender and identification code (that in Estonia includes reference to gender) is amended. Document certifying amendment of vital statistics data is issued.

Amended vital statistics data is the basis for amending all other documents and certificates. The representative of the Ministry of Social Affairs stated that since the personal data has been changed then all documents, even those issued by non-state actors must be changed as well.⁷⁹

The only official document that will not be amended is the birth certificate. A person whose reassigned gender was legally recognised turned to the Chancellor of Justice with a corresponding communication.⁸⁰ The Chancellor found that it is justified to retain the original data on the birth certificate, allowing to link the person to their activities and legal relations prior to gender reassignment. It is not cumbersome to the person, since birth certificate is rarely need and persons are usually identified based on the ID card or passport. The data is also stored and handled safely, allowing only persons with appropriate rights to access them and logging every access electronically.

Since the report 2013, the legislation on diplomas and leaving certificates have been amended to ensure that people whose gender reassignment has been legally recognised would be able to have their gender identity reflected on those documents. Thus, since 2015, when personal identification code and name has been amended in the population register, the educational institution must also reissue the document reflecting the change.⁸¹ This affects the documents on all levels of education.

⁷⁵ Kala, A. (2018, May 7). Seadusemuudatuste ettepanek, in attachment to e-mail communication from A. Kala: ‘transteema info’.

⁷⁶ Kala, A. (2018, May 7). Seadusemuudatuste ettepanek, in attachment to e-mail communication from A. Kala: ‘transteema info’.

⁷⁷ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitusel Rec(2010)5.

⁷⁸ Vital Statistics Registration Act, RT I, 30.12.2017, 7. Retrieved from <https://www.riigiteataja.ee/en/eli/525062018017/consolide#para49b1>, §491, and Population Register Act, RT I, 30.12.2017, 12. Retrieved from <https://www.riigiteataja.ee/en/eli/525062018015/consolide>, §52(1.2).

⁷⁹ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitusel Rec(2010)5.

⁸⁰ Office of the Chancellor of Justice. (2018, July 5). Vastus pöördumisele, no 5-3/1803064, p 2.

⁸¹ Haridust tõendavate dokumentide väljaandmist reguleerivate Vabariigi Valitsuse määruste muutmine, RT I, 28.04.2015, 2. Retrieved from <https://www.riigiteataja.ee/akt/128042015002>.

Since legal recognition of person's gender identity is full, allowing to amend the vital statistics data as well, there is nothing to obstruct the person to marry subsequently, as long as the usual conditions are fulfilled. For example, according to the Family Act, marriage can be contracted only between a man and a woman (§1(1)).⁸²

Prior to obtaining recognition of their self-determined gender, there is no requirement to divorce. However, once the legal recognition has been completed, the marriage will be subject to annulment (§9(1.7)) that can be initiated by one of the spouses or the Minister of Internal Affairs (§12(1)). This procedure was enacted in 2014.

There are serious obstacles for transgender persons in access to specialised psychological services. In Estonian health care system, it is the family doctor that makes such a referral. However, endocrinological and surgical services for transgender persons are dependent on the decision of the committee of medical experts as explained above. According to the assessment of the Ministry of Social Affairs, this latter requirement is actually contrary to the current principles of the health care services and the Law of Obligations that requires the provision of such services to be based on the consent of the person concerned (§758(1)).

Currently the national health insurance scheme does not cover the necessary procedures for gender reassignment in full. According to the Estonian LGBT Association, the Estonian Health Insurance Fund only covers 50% of the hormonal treatment.⁸³ The lack of coverage is justified with the absence of medical indication (there is no change due to illness and no need to restore a necessary function).⁸⁴ The surgical services for transgender people are equated with plastic surgery.⁸⁵ Even if such indication could be prescribed, the Chancellor remarks that the national health insurance is solidarity-based with limited resources, unable to cover every medical need of every person.⁸⁶

At the same time, the Gender Equality and Equal Treatment Commissioner has found that the refusal of the Estonian Health Insurance Fund to cover surgical services for trans-people is discrimination based on gender.⁸⁷ This was also briefly suggested as a possibly by the Chancellor.⁸⁸ The Commissioner, thus explained that the Fund compensates the adjusting surgeries for male patients who are assigned male at birth and who have been medically prescribed the surgeries to construct the penis or reduce breasts. In case of a transgender man, who were not assigned male at birth, but has been given permission by the committee of medical experts to reassign his gender or whose male gender has been legally recognised is not compensated for the surgery, even though the medical prescription is essentially the same - absence of

⁸² Family Law Act, RT I, 09.05.2017, 29. Retrieved from <https://www.riigiteataja.ee/en/eli/507022018005/consolide>.

⁸³ Rannaääre, K. (2018, May 7). Eesti ja transsoolitus, in attachment to e-mail communication from A. Kala: 'transteema info'.

⁸⁴ Office of the Chancellor of Justice. (2018, July 5). Vastus pöördumisele, no 5-3/1803064, p 2.

⁸⁵ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitud Rec(2010)5.

⁸⁶ Office of the Chancellor of Justice. (2018, July 5). Vastus pöördumisele, no 5-3/1803064, p 2.

⁸⁷ Gender Equality and Equal Treatment Commissioner. Arvamus nr 43 (18 January 2016). Retrieved from http://www.volinik.ee/wp-content/uploads/2018/02/Arvamus-nr-43_Taastava-Kirurgia-Kliinik-AS.pdf.

⁸⁸ Office of the Chancellor of Justice. (2018, July 5). Vastus pöördumisele, no 5-3/1803064, p 2.

a penis. The Commissioner also determined that the justification given for compensating the surgery for someone assigned male at birth - prevention of suicides and bringing their appearance in line with their legal, factual and self-determined gender - is essentially the same as it would be for a transgender man. Thus, she concluded that the Estonian Health Insurance Fund and the Ministry of Social Affairs must end the difference in treatment between cisgender⁸⁹ men and transgender men. Unfortunately, the opinions of the Commissioner are not binding.

The Ministry has attempted to update the regulations. Aili Kala, the advocacy officer of the Estonian LGBT Association has stated that the Ministry of Social Affairs made plans for the renewal of the regulation in 2017.⁹⁰ According to her, the plan is to separate legal and medical process and to speed it up and to abolish the committee of medical experts making the decision.

By the end of 2017 the Ministry of Social Affairs presented the draft of the new Public Health Act for the round of approvals. The new draft would abolish the provision that has so far been the basis of the aforementioned regulation. The Ministry of Internal Affairs commented that this would create a legal vacuum that should be addressed.⁹¹ Since the regulation would not be valid anymore, the committee of medical experts would cease to exist but other legal acts that allow the change of personal identification code and name - the Vital Statistics Registration Act⁹² and the Population Register Act⁹³ - still include references to the decision of the said committee. The Ministry of Social Affairs responded that the gender reassignment is a matter of private law and can be solely dependent on the decision of the person themselves and not an external committee,⁹⁴ which is also supported by the Estonian LGBT Association.⁹⁵ According to the Ministry of Social Affairs, all the necessary regulation is already in place for that. The Ministry offered its expertise to the Ministry of Internal Affairs in trying to draft legislative amendments that are necessary in order to allow the person's self-determined gender being legally recognised without the committee.

⁸⁹ Cisgender - gender identity that matches the sex that the person was assigned at birth.

⁹⁰ Kala, A. (2017). Chapter 11. The situation of LGBT persons. In Human Rights in Estonia 2016–2017. Tallinn: Estonian Human Rights Centre. Retrieved from <https://humanrights.ee/en/materials/inimoigused-eestis-2016-2017/lgbt-inimeste-olukord/>.

⁹¹ Ministry of Social Affairs. (2018). Rahvatervise eelnõu seletuskirja juurde, kooskõlastustabel, lisa 2, in Rahvatervise seadus. Eelnõu toimiku number: 17-0772. Retrieved from <https://eelnoud.valitsus.ee/main/mount/docList/95ead648-1b86-4966-b742-4a5075194ddf>, p 49.

⁹² Vital Statistics Registration Act, RT I, 30.12.2017, 7. Retrieved from <https://www.riigiteataja.ee/en/eli/525062018017/consolide#para49b1>.

⁹³ Population Register Act, RT I, 30.12.2017, 12. Retrieved from <https://www.riigiteataja.ee/en/eli/525062018015/consolide>.

⁹⁴ Ministry of Social Affairs. (2018). Rahvatervise eelnõu seletuskirja juurde, kooskõlastustabel, lisa 2, in Rahvatervise seadus. Eelnõu toimiku number: 17-0772. Retrieved from <https://eelnoud.valitsus.ee/main/mount/docList/95ead648-1b86-4966-b742-4a5075194ddf>, pp 49-50.

⁹⁵ Kala, A. (2018, May 7). Seadusemuudatuste ettepanek, in attachment to e-mail communication from A. Kala: 'transteema info'.

However, in the end, the Ministry of Justice refused to approve the draft Public Health Act, stating that the regulation of the legal recognition of gender must be determined before the current Public Health Act is annulled.⁹⁶ This stalled the processing of the draft law until the Ministries find a compromise.

Meanwhile, the Tallinn Court of Circuit ruled in 2015 that person must be able to change their name in the Population Register without the decision of the committee of medical experts.⁹⁷ According to the court, the state has set unjustifiably high standards for changing one's name in case of reassignment of gender. Administrative authority can use its discretionary powers to mitigate that.

Although many issues reported in the previous 2013 report have been resolved, e.g. the previously ambiguous requirement to issue new, corrected diplomas, the regulation of gender reassignment procedure and legal recognition of person's gender identity itself is still severely outdated. It is ambiguous, not guided by person's self-determined gender identity and arbitrary as is heavily dependent on one person's decisions. In addition, the information on the whole procedure is hard to come by. The Ministry of Social Affairs has prepared the change in the legislation, separating the medical and legal procedures and basing it on person's self-determination, but the Ministries of Justice and of Internal Affairs have refused to give their approval. Another major problem that has been pointed out by the Gender Equality and Equal Treatment Commissioner is the refusal of the Estonian Health Insurance Fund to cover the costs of the medical procedures.

Therefore, there are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to abolish the present insufficient regulation on the procedure of gender reassignment and legal recognition of self-determined gender, to separate medical and legal gender reassignment procedures and amend the current legislation accordingly;**
- **to change the policy of the Estonian Health Insurance Board in seeing the medical procedures for the reassignment of person's gender as plastic surgery and ensure full coverage for all the medical procedures the person has decided to undergo to reassign their gender.**

⁹⁶ Ministry of Justice. (2018). Rahvatervise seaduse eelnõu kooskõlastamine, nr 8-2/8821 (13.02.2018), in Rahvatervise seadus. Eelnõu toimiku number: 17-0772. Retrieved from <https://eelvoud.valitsus.ee/main/mount/docList/95ead648-1b86-4966-b742-4a5075194ddf>.

⁹⁷ Tallinn Circuit Court decision no 3-14-50447 (11.11.2015) in Kala, A. (2018, May 7). Seadusemuudatuste ettepanek, in attachment to e-mail communication from A. Kala: 'transteema info'

Employment

This section of the Recommendations' Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Both the Equal Treatment Act and the Gender Equality Act apply to the employment relations as required by the corresponding EU law.⁹⁸ This means that all the above-mentioned areas are covered. In addition, the Employment Contract Law⁹⁹ refers to the two acts. The Public Service Act¹⁰⁰ and the Working Conditions of Employees Posted to Estonia Act¹⁰¹ fail to refer to the two legal acts but do require following of the principle of equal treatment.

The privacy of transgender persons is protected once the gender reassignment has been legally recognised and the data in the Population Registry has been changed along with the documents. Please see the section on [right to respect for private and family life and access to health care - specific transgender issues](#) for further discussion (page 33).

The legislative framework is up-to-date and in conformity with the Recommendations. There are no specific recommendations to the government. There is a need for general awareness-raising on discrimination, including that on grounds of sexual orientation and gender identity. This is illustrated by the low number of reporting to relevant authorities and the relative number of discrimination claims that persons are unable to prove, as demonstrated by the reports from labour dispute committees (see section on [Remedies](#) on page 12).

Education

This section of the Recommendations' Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety

⁹⁸ Equal Treatment Act, RT I, 26.04.2017, 9. Retrieved from <https://www.riigiteataja.ee/en/eli/503052017002/consolide>, and Gender Equality Act, RT I, 07.07.2015, 11. Retrieved from <https://www.riigiteataja.ee/en/eli/521012016001/consolide>.

⁹⁹ Employment Contracts Act, RT I, 26.06.2018, 15. Retrieved from <https://www.riigiteataja.ee/en/eli/529062018003/consolide>, §3.

¹⁰⁰ Civil Service Act, RT I, 28.12.2017, 48. Retrieved from <https://www.riigiteataja.ee/en/eli/502012018004/consolide>, §13.

¹⁰¹ Working Conditions of Employees Posted to Estonia Act, RT I, 04.07.2017, 114. Retrieved from <https://www.riigiteataja.ee/en/eli/513072017009/consolide>, §5(1.5).

policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBTI pupils and students, and measures to meet the special needs of transgender students.

Not much has changed since the last report concluded in 2013, there has been little research done on education and schools in relation to LGBTI issues. LGBTI issues are not directly part of the curriculum and schoolteachers are not systematically trained on the matter. From the state side there are neither comprehensive trainings nor guidelines for teachers on how to recognize homophobic bullying and how to tackle it in order to guarantee the security and high quality of school life of the LGBTI students.

Results of the report “Human rights and human rights' values in Estonian school and in education policy” demonstrated that human rights in general are not systematically applied to teaching as a separate topic or concept and more often than not the teachers lack the understanding of how to use the human rights in the teaching process in the classroom, or how to solve or address the human rights related questions raised among the pupils. In addition, the report describes that during the focus group discussions teachers expressed their hesitation about covering some topics such as LGBTI and refugees. Their main concern was whether and how to explain divisive topics.¹⁰²

A positive development worth mentioning is a workbook on family life education for high schools that also corresponds to national curriculum for upper secondary schools. The workbook covers among other topics many issues related to LGBTI topics, e.g. sexual identity, different families.¹⁰³

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **to assemble a working group of education officials, school representatives and advocacy organisations in order to make clear suggestions to the curricula and school programmes on the topic of LGBTI.**

¹⁰² Käger, M., Pertsjonok, N., Kaldus, K., Vollmer, M., Harjo, M., Gutman, K., ... Meior, M. (2017). Inimõigused ja inimõiguste alusväärtused Eesti koolis ja hariduspoliitika. Nende avaldumine hariduspoliitilistes dokumentides ja rakendumine koolisüsteemis. The Institute of Baltic Studies and the Estonian Human Rights Centre. Retrieved from <https://www.ibs.ee/publikatsioonid/inimoigused-ja-inimoiguste-alusvaartused-eesti-koolis-ja-hariduspoliitikas-2/>.

¹⁰³ Ney, M. (2016). *Perekonnaõpetuse tööraamat gümnaasiumile*. Maurus.

Housing

Section VIII of the Recommendations' Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

There have been no changes since the Report 2013. The Equal Treatment Act does not provide protection from discrimination on the ground of sexual orientation in the area of housing or social services. The Gender Equality Act does provide such protection on the ground of gender identity, gender expression and sex characteristics. The Ministry of Social Affairs is attempting to increase the protection provided by the Equal Treatment Act by widening its scope. Currently, the Constitution is the only legal act that LGB-persons could rely on, since it includes a general prohibition of discrimination (§12).¹⁰⁴ For more detailed discussion on the housing, please see Report 2013.

The current legislation does not protect LGBTI persons from discrimination in provision of housing and social services. Thus, the recommendation given in the section on [legal and policy framework](#) (page 9) is also relevant here:

- **to adopt the draft law amending the Equal Treatment Act as prepared by the Ministry of Social Affairs extending the scope of protection on grounds of sexual orientation beyond employment sector and, thus, eliminating the current hierarchy of protections depending on the ground for discrimination.**

¹⁰⁴ The Constitution of the Republic of Estonia, RT I, 15.05.2015, 2. Retrieved from <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

Sports

Section IX of the Recommendations' Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBTI organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

There have been no real changes since the Report 2013 and there are still no measures in place to tackle discrimination on grounds of sexual orientation or gender identity in sports and in connection with sports events. Nonetheless, in May 2017 the Estonian Olympic Committee adopted the Good Governance principles for sport organisations. These principles also include provision that the sports organisation ensures equal treatment for all its active members, and excludes any form of discrimination.¹⁰⁵

In December 2013 the Estonian LGBT Association organized a seminar on Sochi Olympics. As far it is known, the seminar was the first one in Estonia to address LGBTI issues in sports. Since many international human rights and LGBTI groups were calling for a boycott of the Winter Olympics, the participants of the seminar raised number of issues related to LGBT rights in Russia and sports in general. Russian political scientist Andrei Makaritshev introduced the political situation in Russia, Estonian ski jumper and nordic combined skier Kaarel Nurmsalu addressed the topic from the athlete's side and members of the Estonian parliament, representatives of embassies and civil society activists contributed to the discussion.¹⁰⁶

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **collect and analyse data on LGBTI-related issues in sports and addressing them by specific measures.**

¹⁰⁵ Aav, A. (2018, June 29). RE: Euroopa Nõukogu soovitud Rec(2010)5.

¹⁰⁶ Talalaev, H. (n.d.). Politoloog, suusahüppaja ja inimõiguste asjatundjad arutlesid inimõiguste olukorra üle Sochi taliolümpial [homepage]. Retrieved 7 July 2018, from http://www.lgbt.ee/sotshi_arutelu/.

Right to seek asylum

Section X of the Recommendations' Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBTI asylum seekers.

Estonian asylum law is regulated by the Act on Granting International Protection to Aliens (AGIPA). The Act does not specifically mention sexual orientation or gender identity, but regarding the exact criteria for qualifying for international protection, it refers to the Directive 2011/95/EU of the European Parliament and of the Council (Qualification Directive).¹⁰⁷ The Qualification Directive provides for a possibility of determining membership of a particular social group based on sexual orientation and gender identity.¹⁰⁸

In practice, the Estonian Police and Border Guard Board has granted refugee status to asylum seekers who have applied for international protection based on persecution because of their sexual orientation. For example, the Police and Border Guard Board has recognised gay men in Tajikistan as a particular social group.¹⁰⁹

According to the Police and Border Guard Board, there have been no applications for international protection that would have resulted in the granting of international protection on the basis of gender identity.¹¹⁰

There are no particular measures in place to ensure that asylum requests are not turned down on the ground that the claimant can escape persecution in the country of origin by keeping their sexual orientation or gender identity secret. However, the asylum procedures in Estonia are governed by national law, EU law and international law, which means the Police and Border Guard Board officials have to abide by EU law and its interpretation by the Court of Justice of the European Union, including the preliminary ruling in Joined Cases C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor

¹⁰⁷ Act on Granting International Protection to Aliens, RT I, 28.11.2017, 32. Retrieved from <https://www.riigiteataja.ee/en/eli/518122017008/consolide>, § 20(1).

¹⁰⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0095>, Art 10.

¹⁰⁹ Police and Border Guard Board. Decision to Grant International Protection no 7001710451-1.

¹¹⁰ Police and Border Guard Board. (2018, May 25). Reply to query.

Immigratie en Asiel, which found that “an applicant for asylum cannot be expected to hide his homosexuality in his country of origin in order to avoid persecution”.¹¹¹

According to § 50 of AGIPA, the Police and Border Guard Board “shall not expel or return a refugee to a state where his or her life or freedom would be threatened on account of race, nationality or religion or membership of a particular social group or political opinions.”¹¹²

As sexual orientation and gender identity can be taken into account when determining membership to a particular social group, § 50 of AGIPA applies in situations where asylum-seekers life or freedom would be threatened because of their sexual orientation or gender identity.

Estonia has nine countries on its list of safe countries of origin: Albania, Armenia, Bosnia and Herzegovina, Georgia, Kosovo, Macedonia, Montenegro, Serbia, Ukraine. None of those countries criminalise same-sex relations or transgender identities.¹¹³

There are no measures in place to ensure that applicants will not be asked to provide detailed account of their sexual practices or to produce “evidence” to prove their sexual orientation or gender identity in asylum claims. The applicant is required to “co-operate in every way to clarify the circumstances of the application for international protection”,¹¹⁴ including by providing all possible evidence. However, the Police and Border Guard Board is required to respect the applicant’s dignity during the asylum procedure.¹¹⁵ In practice, the questions asked to determine sexual orientation during asylum interviews mainly focus on asylum-seekers’ internal struggle and self-acceptance process.¹¹⁶

Psychological tests are allowed in the asylum procedure in Estonia.¹¹⁷ The Estonian Human Rights Centre is aware of two occasions where the results of psychological testing were used as evidence regarding the sexual orientation of an asylum-seeker. On both occasions, the test confirmed the claims of the applicant.¹¹⁸

When placed in the detention centre, LGBT asylum seekers are treated equally to all other detainees, no specific measures are in place to prevent violence against them. However, the detention centre staff is obligated to guarantee the safety of all the detainees.¹¹⁹ In case a detainee feels threatened, they have an

¹¹¹ Joined Cases X (C-199/12), Y (C-200/12), and Z v Minister voor Immigratie en Asiel (C-201/12) (Court of Justice of the European Union July 11, 2013). Retrieved from <http://curia.europa.eu/juris/document/document.jsf?docid=144215&doclang=EN>, Para 71.

¹¹² Act on Granting International Protection to Aliens, RT I, 28.11.2017, 32. Retrieved from <https://www.riigiteataja.ee/en/eli/518122017008/consolide>, § 50 (1).

¹¹³ Police and Border Guard Board. (2018, May 25). Reply to query.

¹¹⁴ Act on Granting International Protection to Aliens, RT I, 28.11.2017, 32. Retrieved from <https://www.riigiteataja.ee/en/eli/518122017008/consolide>, § 11 (2).

¹¹⁵ Police and Border Guard Board. (2018, May 25). Reply to query.

¹¹⁶ Asylum interview attended by Estonian Human Rights Centre’s lawyer on 21st June 2018.

¹¹⁷ Asylum interview attended by Estonian Human Rights Centre’s lawyer on 21st June 2018.

¹¹⁸ Säär, A. (2018, June 15). Interview with former Legal Expert at the Estonian Human Rights Centre.

¹¹⁹ Police and Border Guard Board. (2018, May 25). Reply to query.

option to apply to be placed in a different section of the detention centre.¹²⁰ Alternatives to detention (such as residing in a determined place of residence and appearing for registration at the Police and Border Guard Board at prescribed intervals¹²¹) always have to be considered first before detention, especially regarding vulnerable applicants, detention is only allowed if efficient application of surveillance measures is impossible.¹²²

There are still a number of actions that the state needs to take in order to fulfil the requirements of the Recommendation:

- **introduce formal guidelines for the Police and Border Guard Board to protect LGBT asylum-seekers from any discriminatory practices;**
- **expressly forbid asking asylum-seekers to provide detailed account of their sexual practices or to produce “evidence” to prove their sexual orientation or gender identity in asylum claims;**
- **expressly forbid the use of psychological testing to determine the sexual orientation or gender identity of asylum-seekers.**

¹²⁰ Estonian Human Rights Centre. (2018, May 23). Monitoring visit to Harku Detention Centre.

¹²¹ Act on Granting International Protection to Aliens, RT I, 28.11.2017, 32. Retrieved from <https://www.riigiteataja.ee/en/eli/518122017008/consolide>, § 29 (1).

¹²² Act on Granting International Protection to Aliens, RT I, 28.11.2017, 32. Retrieved from <https://www.riigiteataja.ee/en/eli/518122017008/consolide>, § 36' (1).

National Human Rights Structures

Paragraph 45 of the Recommendations' Appendix requires states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, through recommendations on legislation and policies, awareness-raising, examination of individual complaints and initiating or participating in court proceedings.

There are two main state institutions that deal with human rights issues with a broad mandate - Chancellor of Justice and the Equal Treatment Commissioner, both are human rights institutions created by law and mandated to address discrimination on grounds of sexual orientation or gender identity. There are currently no national human rights institutions as accredited by the United Nations under the Paris Principles. At the same time, on June 13, 2018 Under the Act on Amendments to the Chancellor of Justice Act (609 SE), the institution of the Chancellor of Justice becomes the national human rights institution in Estonia. The Chancellor of Justice will also monitor compliance with the Convention on the Rights of Persons with Disabilities. The Act enters into force on 1 January 2019.

Anyone can submit an application about potential discrimination case to the Chancellor of Justice and/or The Gender Equality and Equal Treatment Commissioner. Neither the Commissioner nor the Chancellor can give legally binding opinions, neither is there an enforcement mechanism for them. They can both make recommendations.

Discrimination on multiple grounds

Paragraph 46 of the Recommendations' Appendix requires states to take measures against discrimination on multiple grounds, prohibiting or preventing it, including on grounds of sexual orientation or gender identity.

Neither the Gender Equality Act nor the Equal Treatment Act include express reference to multiple discrimination. However, the Gender Equality and Equal Treatment Commissioner has over the years analysed several cases of multiple discrimination confirming, thus, that both the Gender Equality Act and the Equal Treatment Act should be interpreted as including the possibility of multiple discrimination.¹²³ There are no court cases yet that would confirm the Commissioner's interpretation.



¹²³ See e.g. Gender Equality and Equal Treatment Commissioner. (2015). *Soolise võrdõiguslikkuse ja võrdse kohtlemise voliniku 2014. aasta tegevuse aruanne* (annual report). Tallinn. Retrieved from <http://www.volnik.ee/wp-content/uploads/2018/02/SVV-Aastaruanne-2014.pdf>.