

# Equal Treatment Act<sup>1</sup>

Passed 11 December 2008

RT I 2008, 56, 315

entry into force 1 January 2009

## Amended by the following Acts:

Passed	Published	Entry into force
28.01.2009	RT I 2009, 11, 67	01.07.2009
24.09.2009	RT I 2009, 48, 323	23.10.2009
25.01.2012	RT I, 10.02.2012, 1	20.02.2012
13.06.2012	RT I, 06.07.2012, 1	01.04.2013

## Chapter 1

### GENERAL PROVISIONS

#### § 1. Purpose and scope of Act

(1) The purpose of this Act is to ensure the protection of persons against discrimination on grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation.

(2) In order to achieve the purpose specified in subsection (1) of this section, this Act provides for:

- 1) the principles of equal treatment;
- 2) duties upon implementation and promotion of the principle of equal treatment;
- 3) resolution of discrimination disputes.

#### § 2. Scope of application of Act

(1) Discrimination of persons on grounds of nationality (ethnic origin), race or colour is prohibited upon:

- 1) establishment of conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as upon promotion;
- 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions,

remuneration, termination or cancellation of employment contracts or contracts for the provision of services, release from office;

- 3) access to vocational guidance, vocational training, advanced vocational training and retraining, practical work experience;
- 4) membership in an organisation of employees or employers, including a professional organisation, and grant of benefits by such organisations;
- 5) access to the services of social welfare, social security and healthcare, including social benefits;
- 6) education;
- 7) access to and supply of goods and services which are available to the public, including housing.

(2) Discrimination of persons on grounds of religion or other beliefs, age, disability or sexual orientation is prohibited upon:

- 1) establishment of conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as upon promotion;
- 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination or cancellation of employment contracts or contracts for the provision of services, release from office;
- 3) access to vocational guidance, vocational training, advanced vocational training and retraining, practical work experience;
- 4) membership in an organisation of employees or employers, including a professional organisation, and grant of benefits by such organisations.

(3) This Act does not preclude the requirements of equal treatment in labour relations on grounds of any characteristic not specified in subsection 1 (1) of this Act, in particular due to family-related duties, social status, representation of the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces.

(4) The Administrative Procedure Act applies to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

### **§ 3. Discrimination and principle of equal treatment**

(1) The principle of equal treatment means that discrimination on grounds of any characteristic specified in subsection 1 (1) of this Act does not occur.

(2) Direct discrimination is taken to occur where, on grounds of any characteristic specified in subsection 1 (1) of this Act, one person is treated less favourably than another is, has been or would be treated in a comparable situation.

(3) Direct discrimination includes also harassment which occurs when unwanted conduct on grounds of any characteristic specified in subsection 1 (1) of this Act takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(4) Indirect discrimination is taken to occur where an apparently neutral provision, criterion or practice would put persons, on grounds of any characteristic specified in subsection 1 (1) of this Act, at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(5) An instruction to discriminate against persons on grounds of any characteristic specified in subsection 1 (1) of this Act is deemed to be discrimination.

(6) Discrimination includes also a situation where one person is treated less favourably than others or negative consequences follow because he or she has filed a complaint regarding discrimination or has supported a person who has filed such complaint.

#### **§ 4. Employee and employer**

For the purposes of this Act:

1) “employee” means a person employed under an employment contract or a contract for the provision of services, an official or any other person set out in § 2 of the Public Service Act. Persons applying for employment or service are also deemed to be employees;

[RT I, 06.07.2012, 1 – entry into force 01.04.2013]

2) “employer” means a natural or legal person who provides employment on the basis of an employment contract or a contract for the provision of services, or a state authority or a local government authority.

#### **§ 5. Disability**

For the purposes of this Act, disability is the loss of or an abnormality in an anatomical, physiological or mental structure or function of a person which has a significant and long-term unfavourable effect on the performance of everyday activities.

## **Chapter 2**

# **PRINCIPLES OF EQUAL TREATMENT**

#### **§ 6. Positive measures**

This Act does not prejudice the application of specific measures to prevent or diminish inequality deriving from any characteristic specified in subsection 1 (1) of this Act. Such measures shall be in proportion to the objective being sought.

### **§ 7. Duty to provide explanation**

The person suspected of discrimination is required to provide a written explanation concerning his or her activities within fifteen working days after receipt of a written request to the person who believes that he or she has been discriminated against on grounds of any characteristic specified in subsection 1 (1) of this Act.

### **§ 8. Shared burden of proof**

(1) An application of a person addressing a court, a labour dispute committee or the Gender Equality and Equal Treatment Commissioner shall set out the facts on the basis of which it can be presumed that discrimination has occurred.

[RT I 2009, 48, 323 – entry into force 23.10.2009]

(2) In the course of proceedings, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, such refusal is deemed to be equal to acknowledgement of discrimination by the person.

(3) The shared burden of proof does not apply in administrative or criminal proceedings.

### **§ 9. Exceptions to prohibition of discrimination**

(1) This Act does not prejudice the application of specific measures which are in accordance with law and are necessary to ensure public order and security, prevent crime, and protect health and the rights and freedoms of others. Such measures shall be in proportion to the objective being sought.

(2) Differences of treatment on grounds of age, if provided by law, do not constitute discrimination if they are objectively and reasonably justified by a legitimate aim related to employment policy, labour market, vocational training or social security, and if the means of achieving that aim are appropriate and necessary.

(3) The following is not deemed to be discrimination in labour relations:

1) grant of preferences on grounds of representing the interests of employees or membership in an association representing the interests of employees if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary;

2) grant of preferences on grounds of pregnancy, confinement, giving caring for minors or adult children incapacitated for work and parents who are incapacitated for work.

### **§ 10. Occupational requirements**

(1) A difference of treatment on grounds of any characteristic specified in subsection 1 (1) of this Act does not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such characteristic constitutes a genuine and determining occupational requirement, provided that the aim is legitimate and the requirement is proportionate.

(2) In the case of occupational activities within religious associations and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment on grounds of a person's religion or belief does not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

(3) This Act does not prejudice the right of religious associations and other public or private organisations, the ethos of which is based on religion or belief, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

## **§ 11. Taking of measures regarding persons with disabilities**

(1) Grant of preferences to persons with disabilities, including creating a work environment suitable for persons with special needs linked to disabilities, does not constitute discrimination.

(2) Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

(3) Upon determining whether the burden on the employer is disproportionate as specified in subsection (2) of this section, the financial and other costs of the employer, the size of the entity or enterprise and the possibilities to obtain public funding or funding from other sources shall also be taken into account.

## **§ 11<sup>1</sup>. Equal treatment of part-time employees, employees who have concluded employment contracts for specified term, and employees who perform duties by way of temporary agency work**

[RT I, 10.02.2012, 1 – entry into force 20.02.2012]

(1) Employees who have concluded contracts for part-time employment shall not be treated in a less favourable manner in an employment relationship than comparable full-time employees unless different treatment is justified on objective grounds arising from law or a collective agreement.

(2) Employees who have concluded employment contracts for a specified term shall not be treated in a less favourable manner in an employment relationship than comparable employees who have concluded employment contracts for an unspecified term unless different treatment is justified on objective grounds arising from law or a collective agreement.

(2<sup>1</sup>) Employees who perform duties by way of temporary agency work shall not be subjected to less favourable conditions of occupational health and safety, working and rest time and remuneration for work than those applied to comparable employees of the user undertaking. Employees who perform duties by way of temporary agency work are entitled to use, during the period of performing duties, the benefits of the user undertaking, first of all meal, transportation and childcare services, on the same conditions as comparable employees of the user undertaking.

[RT I, 10.02.2012, 1 – entry into force 20.02.2012]

(3) “Comparable employee” means an employee working for the same employer, who is engaged in the same or a similar work, due regard being given to qualification and skills of the employee. Where there is no comparable employee employed by the same employer, the comparison shall be made by reference to the applicable collective agreement. Where there is no collective agreement, an employee engaged in the same or similar work in the same region shall be deemed to be a comparable employee.

[RT I 2009, 11, 67 – entry into force 01.07.2009]

## **Chapter 3**

### **IMPLEMENTATION AND PROMOTION OF PRINCIPLE OF EQUAL TREATMENT**

#### **§ 12. Employer as person implementing and promoting principle of equal treatment**

Upon promotion of the principle of equal treatment, an employer shall:

- 1) take the appropriate measures to protect employees against discrimination;
- 2) inform employees of the rights and obligations provided for in this Act in an appropriate manner.

#### **§ 13. Implementation and promotion of principle of equal treatment in field of education and training**

Educational and research institutions and other entities and persons organising training shall, upon determination of the content of studies and organisation of studies, take account of the need to promote the principle of equal treatment.

#### **§ 14. Obligations of ministries upon implementation and promotion of principle of equal treatment**

Each ministry shall, within their area of government, monitor compliance with the requirements of this Act and shall cooperate with other persons and entities upon promotion of the principle of equal treatment.

## **Chapter 4**

# **GENDER EQUALITY AND EQUAL TREATMENT COMMISSIONER**

### **§ 15. Gender Equality and Equal Treatment Commissioner**

(1) The Gender Equality and Equal Treatment Commissioner (hereinafter Commissioner) is an independent and impartial expert who acts independently, monitors compliance with the requirements of this Act and the Gender Equality Act and performs other functions imposed by law.

(1<sup>1</sup>) The competition for the office of the Commissioner shall be conducted by the Minister of Social Affairs.

[RT I, 06.07.2012, 1 – entry into force 01.04.2013]

(2) The Commissioner is appointed to office by the Minister of Social Affairs for five years.

(3) The activities of the Commissioner are financed from the state budget.

(4) The Commissioner is serviced by the Office. The structure of the Office is approved by the Commissioner.

(5) Officials appointed by the Commissioner or persons employed on the basis of an employment contract assist the Commissioner with his or her work.

[RT I, 06.07.2012, 1 – entry into force 01.04.2013]

(5<sup>1</sup>) Upon the temporary absence of the Commissioner, his or her functions are performed by a Deputy Commissioner. The Deputy Commissioner shall perform the functions of the Commissioner also until the appointment of a new Commissioner upon termination of the mandate of the Commissioner on any basis set out in § 20 of this Act, as well as in the event the Commissioner is released from office pursuant to § 21 of this Act.

[RT I, 06.07.2012, 1 – entry into force 01.04.2013]

(6) The organisation of the activities of the Commissioner and his or her Office are provided for in the statutes established by the Government of the Republic.

### **§ 16. Competence of Commissioner**

The Commissioner shall:

1) monitor compliance with the requirements of this Act and the Gender Equality Act;

- 2) advise and assist persons upon filing of complaints regarding discrimination;
- 3) provide opinions concerning alleged cases of discrimination on the basis of the applications filed by persons or on his or her own initiative on the basis of the information obtained;
- 4) analyse the effect of laws on the situation of persons classifiable on grounds of any characteristics specified in subsection 1 (1) of this Act and on the situation of men and women in society;
- 5) make proposals to the Government of the Republic, government authorities, local governments and their authorities for alteration of and amendments to legislation;
- 6) advise and inform the Government of the Republic, government authorities and local government authorities on issues relating to the implementation of this Act and the Gender Equality Act;
- 7) publish reports on implementation of the principle of gender equality and equal treatment;
- 8) cooperate with other persons and entities to promote gender equality and equal treatment;
- 9) take measures to promote equal treatment and gender equality.

## **§ 17. Opinion of Commissioner**

(1) The Commissioner shall provide opinions to persons who have filed applications concerning alleged cases of discrimination and, if necessary, to persons who have a legitimate interest in monitoring compliance with the requirements for equal treatment.

[RT I 2009, 48, 323 – entry into force 23.10.2009]

(2) The purpose of an opinion specified in subsection (1) of this section is to provide an assessment which, in conjunction with this Act, the Gender Equality Act, international agreements binding on the Republic of Estonia and other legislation, allows evaluating whether the principle of equal treatment has been violated in a particular legal relationship.

(3) An applicant files with the Commissioner an application which sets out the circumstances indicating that discrimination has occurred.

(4) In order to provide an opinion, a Commissioner has the right to obtain information from all persons who may possess information which is necessary to ascertain the facts relating to a case of discrimination, and demand written explanations concerning facts relating to an alleged case of discrimination, and filing of documents or copies thereof within the term set by the Commissioner. The right to obtain information includes also information concerning the remuneration calculated, paid or payable to an employee, the conditions for remuneration and other benefits.

[RT I 2009, 48, 323 – entry into force 23.10.2009]

(5) An opinion shall be provided within two months after filing of an application specified in subsection (3) of this section.

(6) If an opinion is provided on the Commissioner's own initiative or if the applicant agrees with it, the Commissioner shall communicate the opinion for informational purposes or as a recommendation to the person responsible for compliance with the principle of equal treatment in a situation on which the opinion is based.

[RT I 2009, 48, 323 – entry into force 23.10.2009]

### **§ 18. Refusal of Commissioner to provide opinion**

The Commissioner may refuse to provide an opinion, return a written application filed by a person or refuse to formalise an oral application if:

- 1) provision of an opinion is impossible due to lack of facts indicating discrimination;
- 2) the Commissioner has previously provided an opinion on the same basis and regarding the same object;
- 3) on the same basis and regarding the same object, judicial proceedings have been commenced, a court judgment has entered into force, proceedings have been initiated at a labour dispute committee, a decision of a labour dispute committee has entered into force, a petition has been filed with the Chancellor of Justice, or a conciliation procedure of the Chancellor of Justice for the resolution of a discrimination dispute is pending or the Chancellor of Justice has approved an agreement in a conciliation procedure.

### **§ 19. Disclosure of results of investigation relating to application**

Without the consent of the applicant, the Commissioner may disclose to the public only the contents of a pending application.

### **§ 20. Termination of mandate of Commissioner**

The mandate of the Commissioner is deemed to be terminated and he or she shall be released from office:

- 1) as of the date of expiry of the term specified in subsection 15 (2) of this Act;
- 2) as of the date of acceptance of his or her letter of resignation;
- 3) as of the date of entry into force of a judgment of conviction for an intentionally committed criminal offence;
- 4) as of the date of entry into force of a judgment of conviction which prescribes imprisonment for a criminal offence committed due to negligence;
- 5) upon his or her death.

## **§ 21. Extended inability of Commissioner to perform functions**

- (1) If the Commissioner is unable to perform his or her functions for six consecutive months due to illness or for any other reason, the Commissioner may be released from office.
- (2) The Commissioner shall be released from the office pursuant to subsection (1) of this section as of the date specified in the directive of release.

## **§ 22. Restrictions on activities of Commissioner**

- (1) During his or her term of office, the Commissioner shall not:
  - 1) hold any other state or local government office or an office of a legal person in public law;
  - 2) belong to the management board, supervisory board or supervisory body of a company;
  - 3) engage in enterprise, except the making of personal investments and receipt of interest and dividends therefrom, as well as the receipt of income from the disposal of his or her property.
- (2) The Commissioner is permitted to engage in research and teaching unless this hinders the performance of his or her functions.

# **Chapter 5**

## **RESOLUTION OF DISCRIMINATION DISPUTES**

### **§ 23. Resolution of discrimination disputes**

Discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by way of conciliation procedure.

### **§ 24. Compensation for damage**

- (1) If the rights of a person are violated due to discrimination, he or she may demand from the person who violates the rights that discrimination be discontinued and compensation be paid for the damage caused to him or her by the violation on the bases of and pursuant to the procedure provided by law.
- (2) A person whose rights are violated due to discrimination may demand that, in addition to the provisions of subsection (1) of this section, a reasonable amount of money be paid to the person as compensation for non-patrimonial damage caused by the violation.
- (3) Upon determination of the amount of compensation, a court or a labour dispute committee shall take into account, *inter alia*, the scope, duration and nature of discrimination.

(4) Persons applying for employment or service with whom the employer refused to enter into an employment contract or a contract for the provision of services or who were not appointed or elected to office on grounds of any characteristic specified in subsection 1 (1) of this Act shall not demand entry into the employment contract or contract for the provision of services or appointment or election to office.

### **§ 25. Limitation period of claim for compensation for damage**

The limitation period of a claim provided for in § 24 of this Act is one year from the date when the injured party becomes aware or should become aware of the damage caused.

## **Chapter 6**

### **IMPLEMENTING PROVISIONS**

#### **§ 26. Transitional provision**

Upon entry into force of this Act, a person employed in the position of the Gender Equality Commissioner has the right to continue employment as Gender Equality and Equal Treatment Commissioner until expiry of the term of mandate.

**§ 27. – 33.** [Omitted from this text]

#### **§ 34. Entry into force of Act**

This Act enters into force on 1 January 2009.

<sup>1</sup> Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.07.2000, pp. 22–26); Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02.12.2000, pp. 16–22).