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REPORT

by Nils Muižnieks
Commissioner for Human Rights of the Council of Europe

Following his visit to Estonia
from 25 to 27 March 2013

Summary

Commissioner Nils Muižnieks and his delegation visited Estonia from 25 to 27 March 2013. In the course of his visit, the Commissioner held discussions with the Estonian authorities and civil society representatives concerning the economic crisis and its effects on the enjoyment of human rights, the independence and effectiveness of national human rights structures, and the human rights of children.

1. Economic crisis and its effects on the enjoyment of human rights

Estonia experienced a deep economic crisis in 2008-10 which resulted in high unemployment and severe austerity measures. In 2010, the absolute poverty rate reached 11.7% among the general population and 18.6% among children. Although the economy has recovered and the incidence of absolute poverty is decreasing, the Commissioner remains concerned about the long-term effects of the crisis.

Economic recovery should be accompanied by reinforced protection floors for the general population and targeted positive measures for vulnerable groups of people. The social benefits system should be reviewed to ensure that those in need receive adequate support. Measures have to be taken to alleviate youth unemployment and prevent deprivation and social exclusion among children and young people. A stable social protection minimum is essential for preventing the transmission of the effects of the crisis to future generations. Access to education, vocational training and the labour market must be non-discriminatory.

The Commissioner welcomes the Estonian ratification of the UN Convention on the Rights of Persons with Disabilities and calls for the preparation of a national strategy for its implementation in close co-operation with people with disabilities. Inclusion in working life and access to a full range of educational opportunities should be among the priority objectives. There is a need to establish an independent mechanism to monitor the implementation of the Convention. Disability-related benefits should be reviewed to ensure that social protection needs and requirements for long-term sustainability are met.

The long-standing socio-economic gap between ethnic minorities and the majority population has become more pronounced following the economic crisis. It is particularly worrying that the gap is perpetuated among young people. The Commissioner urges the Estonian authorities to develop and implement positive measures to address the long-term unemployment and social exclusion of ethnic minorities in Estonia. The new Integration and Social Cohesion Strategy 2020 can be instrumental for this purpose. The labour inclusion of minority youth should be among the priorities.

It is essential to act decisively to remove barriers to the social inclusion of ethnic minorities. Any language requirement in the labour market should be proportionate, also with reference to the geographical location and sector of employment concerned. There is a pressing need to improve awareness of ethnic discrimination and complaints mechanisms among employers and employees. Diversity and equality planning in the labour market should become a regular practice in the private and public sectors alike.

The Commissioner welcomes the recent Estonian measures to improve access to justice. Court fees have been reduced, efforts have been made to provide remedies for excessively lengthy proceedings and the system of legal aid has been reformed. The Commissioner urges the speedy adoption of the new State Liability Act to ensure compensation for those court cases which are delayed for years without a valid reason.

2. Independence and effectiveness of national human rights structures

The Chancellor of Justice plays a broad and well established role in protecting human rights in Estonia. The institution has been able to operate effectively and independently during the economic crisis as well. However, the visibility of its functions as the Ombudsman for Children should be improved. It is particularly important that children know of the possibility to submit complaints to the Ombudsman for Children.

The Gender Equality and Equal Treatment Commissioner is seriously understaffed and underfunded despite the institution's wide mandate. Commissioner Muižnieks urges the Estonian authorities to strengthen the Equal Treatment Commissioner's Office so that it can reach out effectively to minorities

and vulnerable groups throughout the country. A national strategy on equal treatment would be a welcome development. In addition to responding to individual complaints about discrimination, the Equality Commissioner should be able to raise awareness, provide advice to authorities and carry out independent research.

The authorities should consult the Chancellor of Justice and the Equal Treatment Commissioner when measures and laws affecting the enjoyment of human rights are considered. They should also be involved in monitoring the long-term effects of the economic crisis. The Commissioner encourages the authorities to establish or designate an internationally accredited national human rights institution which would become the focal point for promoting human rights in the country.

3. Human rights of children

There are 1181 stateless children under the age of 15 in Estonia. Although parents can use a simple and accessible procedure to acquire Estonian nationality for their stateless children, the authorities also bear responsibility for preventing statelessness among children. The Commissioner urges the government to initiate a reform of the Citizenship Act so that citizenship is granted automatically at birth to children who would otherwise be stateless. An opt-out possibility could be made available to parents who do not wish that their new-born child obtains Estonian citizenship and who can prove that the child will receive the nationality of another state. It is in the best interests of the child to acquire nationality at birth as citizenship consolidates the enjoyment of human rights.

The Commissioner notes with satisfaction the on-going reform of the Child Protection Act. The new Act should outline the applicable standards for child protection and clearly identify the respective responsibilities of central, regional and municipal authorities. Sufficient staff and expertise for child protection should be made available in every municipality. The establishment of regional competence centres and mobile units will serve this aim. Particular emphasis should be placed on the development of psychiatric and psychological care for children as well as preventive measures and early detection.

The system of resource allocation for the alternative care of children should be reviewed to fulfil the legal requirements for an adequate number of qualified staff for all substitute homes. Minimum standards for the basic needs of children living in alternative care have to be clearly established. The municipalities should draw up individual case plans for each child together with the children and review them regularly. Further efforts are needed to provide assistance to foster families and to prepare young persons to live independently after they have left alternative care.

Sexual abuse, violence and bullying in schools continue to be serious problems in Estonia. Corporal punishment is still accepted by many adults. The Commissioner calls on the Estonian authorities to prohibit the corporal punishment of children in all settings through explicit legal provisions. A legal prohibition sends a clear signal that any kind of violence against children is unacceptable, including in the home. A systematic and firm response is necessary to address all violence and abuse against children, including internet-based abuse. Bullying and abuse in educational settings should be addressed through a comprehensive policy. Children should be informed about their right to be protected from violence and the services available to them as victims of violence.

The Commissioner encourages the Estonian authorities to proceed with the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Preventing and Combating Violence against Women and Domestic Violence.

Introduction

1. The present Report is based on a visit to Estonia by the Council of Europe Commissioner for Human Rights (the Commissioner) from 25 to 27 March 2013.[1] The aim of the visit was to review the following human rights issues in Estonia:

   - economic crisis and austerity measures and their effects on the enjoyment of human rights with reference to access to justice and the enjoyment of social and economic rights by vulnerable groups;
   - independence and effectiveness of national human rights structures in protecting and promoting human rights and equality;
   - human rights of children with reference to stateless children and naturalisation, reform of the child protection legislation, living conditions in child care institutions and protection from violence and abuse.

2. In the course of the visit, the Commissioner engaged in a dialogue with representatives of the national authorities, including the President of the Republic of Estonia, Mr Toomas Hendrik Ilves; the Speaker of the *Riigikogu* (Parliament), Mrs Ene Ergma; the Minister of Justice, Mr Hanno Pevkur; the Minister of Social Affairs, Mr Taavi Rõivas; the Minister of Foreign Affairs, Mr Urmas Paet; and the Undersecretary in the Ministry of Culture, Ms Anne-Ly Reimaa. The Commissioner also held meetings with the Chief Justice of the Supreme Court, Mr Märt Rask; the Deputy Chancellor of Justice, Mr Hent Kalmo; the Gender Equality and Equal Treatment Commissioner, Ms Mari-Liis Sepper; and members of the *Riigikogu*. In addition, the Commissioner held discussions with a number of non-governmental organisations working in the field of human rights and made an on-site visit to the Maarjamäe Centre at Tallinn Children's Home.

3. The Commissioner wishes to thank the Estonian authorities in Tallinn and Strasbourg for their valuable assistance in organising and facilitating the visit. He expresses his gratitude to all of his interlocutors for their willingness to share their knowledge, insights and comments with him.

1. Economic crisis and its effects on the enjoyment of human rights

1.1 Economic crisis and recovery in Estonia

4. Estonia faced a deep economic crisis in 2008-2010. The real GDP per capita dropped by 4% in 2008 and 14% in 2009 (Eurostat). In 2009, the government started introducing austerity measures to address the expected budget deficit by tackling both revenue and expenditures. Social insurance contributions for unemployment, pensions and health care were increased, as were indirect taxes. Public sector investments and wages were reduced and public services cut down. Several benefits and tax credits were abolished or their eligibility conditions were narrowed down. Whereas old-age pensions were substantially increased in 2008-2009, they were subsequently frozen for two years.[2] The education budget was subjected to a decrease of over 10% between 2008 and 2009.[3] Following an average annual growth rate of 7.2% between 2000 and 2009, expenditure on health care per capita dropped by 7.3% in 2010 owing to reductions in both public and private spending.[4]

5. The average gross monthly salary in 2008 was € 825, falling to € 784 in 2009, while the minimum salary was maintained at € 278 from 2008 to 2011.[5] Unemployment rose rapidly, from the very low rate of 4.8% at the time of the Estonian economic boom of 2007, reaching the peak of 17.3% in 2010 (Statistics Estonia).

[1] The Commissioner was accompanied during the visit by Mr Lauri Sivonen and Mr Marsel Capi, Advisers to the Commissioner.
[2] Social Situation Observatory, Modelling the distributional effects of austerity measures, Research note 8/2010, pp. 9-10; The distributional effects of austerity measures: a comparison of six EU countries, Research Note 2/2011, pp. 10-11 ; The Distributional effects of fiscal consolidation in nine EU countries, Research note 01/2012, p. 31.
[3] OECD, Education at a Glance: OECD Indicators 2012, Estonia, p. 8.
[4] OSCE, Health at a glance – Europe 2012, p. 120.
[5] Ministry of Social Affairs, Employment and working life in Estonia 2010-2011, No. 2/2012, p. 25 and Statistics Estonia.

6. It has been estimated that the impact of austerity measures on low income households with children was quite severe and there was also a negative impact on households with older persons.[6] The share of the population living below the absolute poverty line (i.e. below the subsistence minimum) increased from 8.2% in 2007 to 11.7% in 2010. Among children it doubled from 9.4% to 18.6% (Statistics Estonia). As entitlements to unemployment benefits and social assistance remained very restricted, disability-related pensions and benefits apparently became the last resort of income support in addition to family benefits. The share of the labour force claiming disability and incapacity support reached nearly 10% in 2010.[7]

7. In 2009, the European Committee of Social Rights concluded that the situation in Estonia was not in line with Article 12§1 of the revised Charter (right to social security – existence of a social security system) on the ground that the unemployment benefits, the minimum unemployment insurance benefits, the national pension and the minimum old age and disability pensions were manifestly inadequate at their pre-crisis levels in 2007.[8]

8. During the past two years, the Estonian economy has recovered strongly from the crisis. Estonia joined the Euro zone in January 2011 and its GDP grew by 8.3% during that year. 2012 saw more moderate growth - 3.3% - and the estimate for 2013 stands at 3.1% (Eurostat). Unemployment fell to 10.4% and the minimum wage was increased to € 290 in 2012 (Statistics Estonia). The government intends to increase unemployment assistance benefits (which have amounted to € 64 per month since 2008) to the level of 50% of the minimum wage.[9] However, most economic indicators have not yet returned to pre-crisis levels. Furthermore, an OECD report has pointed out that the Estonian economy is exposed to considerable volatility, which could threaten growth and well-being and contribute to high long-term unemployment.[10]

9. The Commissioner remains concerned about the long-term effects of the crisis in terms of poverty and social exclusion. In 2011, 8.7% of the country's population was characterised as "severely materially deprived." Over the past two years, persons experiencing long-term (over one year) unemployment have constituted about 55% of the total number of the unemployed. The share of the population at risk of poverty or social exclusion increased from 21.7% in 2010 to 23.1% in 2011 (Eurostat). However, the share of the population living below the absolute poverty line has begun to decrease: the figures for 2011 and 2012 were 10.8% and 9.9% respectively (Statistics Estonia).

[6] Social Situation Observatory, Modelling the distributional effects of austerity measures, Research note 8/2010, pp. 14-15 and 18; The distributional effects of austerity measures: a comparison of six EU countries, Research Note 2/2011, pp. 19-23; The Distributional effects of fiscal consolidation in nine EU countries, Research note 01/2012, pp. 12-18.

[7] The OECD has given the figure of 6.5% as the share of population living under absolute poverty line in 2007. The methodology for calculating the figure changed between 2007 and 2010, yet an OECD report stresses that there was in any event a significant increase in the rate of absolute poverty. OECD Economic Surveys, Estonia 2012, pp. 25-26; and Reducing Poverty in Estonia through activation and better targeting, OECD Economic Department Working Paper No. 1008, 10 December 2012, pp. 7, 15-18.

[8] European Committee of Social Rights, Conclusions 2009 (Estonia), January 2010, pp. 18-19.

[9] OECD, Reducing Poverty in Estonia through activation and better targeting, Economic Department Working Paper No. 1008, 10 December 2012, pp. 9-10.

[10] OECD Economic Surveys, Estonia 2012, p. 1.

1.2 Effects on vulnerable groups

Children and young persons

10. The economic crisis had a particularly negative impact on children and young persons in Estonia. In 2010, 18.6% of minors (i.e. more than 45,000 persons under 18) lived in households below the absolute poverty level, which amounted to approximately double the pre-crisis figure. The risk-of-poverty rate was particularly high in single-parent households with one or more dependent child (34.2% in 2010) and in households with two adults and more than two children (25.4% in 2010). The youth unemployment rate (15-24 years) peaked at 32.9% in 2010, more than triple the rate in 2007 (Statistics Estonia). In 2011, the absolute poverty rate of the population aged 16–24 reached 14%. The proportion of young adults aged 18-24 living independently with an income below the risk-of-poverty threshold increased by over 8 percentage points between 2007 and 2009.[11] Absolute poverty among children has started to decrease during the recovery, falling to16% in 2011 and 14.8% in 2012; nevertheless, the rate is still markedly higher than among the general population. Youth unemployment fell to 22.3% in 2011 and 20.9% in 2012 (Statistics Estonia).

11. In February 2012, the Ombudsman for Children published a report on child poverty in Estonia concluding that in terms of absolute poverty children were clearly worse off compared with the rest of society. The Ombudsman found that poverty was correlated to learning difficulties, health problems, limited social contacts, low self-esteem and drug addiction, and ultimately restricted children's equal participation in society and limited their future opportunities as adults. The report pointed out that children living in poverty were not receiving adequate support services, especially psychological, psychiatric and drug rehabilitation care. In many cases income support did not suffice to rescue families with children from absolute poverty. The report recommended that measures aimed at alleviating child poverty be organised and financed at national level and be equally accessible in all regions, and that local authorities cooperate in the provision of support services to children.[12]

12. The effects of social inequality and poverty on children's health have been recognised in the National Health Plan 2009-2020, which stresses that the socio-economic conditions experienced in childhood, rather than social status during adult years, are often decisive in terms of the health conditions of adults. Social exclusion, poor living conditions and poverty are also among the indirect causes of childhood illnesses and deaths. The plan refers to shortcomings in the availability of psychological assistance and psychiatric care for children and notes that the routinely collected child and adolescent health statistics do not provide information on different target groups for the purpose of planning preventive interventions.

13. During the crisis period, the government reduced the level of support for children and families. The child school allowance was abolished and the eligibility conditions for the childcare allowance were narrowed down. Benefits paid to parents taking care of a sick child were reduced and the paternity leave benefit was suspended until the end of 2012. The situation is now being reversed and new benefits to support children living in need or at high risk of poverty are being introduced. The Strategy on Children and Families 2012-2020 refers to child poverty as a human rights issue and outlines measures to develop a system of combined benefits and services which provides adequate income support to families and promotes their economic independence. In 2013, the government plans to increase substantially child benefits for the third child and subsequent children and an additional needs-based benefit will be available for children who live in relative poverty. There will also be an annual adjustment of the subsistence benefits which are paid by the municipalities.[13]

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[11] Quarterly Bulletin of Statistics Estonia 1/2013, pp. 62, 74-75; Social Situation Observatory, Young people in the crisis, Research note 5/2012, p. 22.

[12] *Lasteombudsman*, *Vaesus ja sellega seotud probleemid lastega peredes*, 2011.

[13] Social Situation Observatory, The Distributional effects of fiscal consolidation in nine EU countries, Research note 01/2012, p. 31; European Platform for Investing in Children, Country Profile – Estonia, available at: http://europa.eu/epic/countries/estonia/index_en.htm; Eurochild, How the economic and financial crisis is affecting children & young people in Europe, December 2012, p. 7; European Women's Lobby, The price of austerity – The

People with disabilities

14. The number of persons with disabilities has risen in recent years. While in 2007 there were 115,354 people with disabilities in Estonia (8.6% of the country's population), in 2012, there were 133,847 persons (10% of the population). More than half of people with disabilities are over 63 years old (Statistics Estonia). The number of persons claiming disability and incapacity benefits has also increased substantially, reaching nearly 10% in 2010, and there are concerns about the sustainability of the support system. It would appear that disability related benefits have been used as a social protection floor of last resort during the crisis when other benefits have not been sufficient or available.[14] Many persons with disabilities who are not able to work may not receive benefits that are sufficient to prevent them from falling into poverty.[15]

15. The labour inclusion of people with disabilities remains a challenge in Estonia and the economic crisis has made it more difficult for people with disabilities to enter the labour market. In 2009, only 8% of all disabled persons of 16 years of age and older were working.[16] For people with disabilities aged from 20 to 64 the employment rate stood at 20.3% in 2009, as opposed to 72.5% for people without disabilities. The employment rate among people with disabilities fell to 18.5% in 2010. With the start of the economic recovery in 2011, the figure rose to 21.2%. The low employment rates have resulted in higher risk-of-poverty rates among people with disabilities, which in 2011 amounted to 26.1% (Statistics Estonia).

16. Estonia ratified the UN Convention on the Rights of Persons with Disabilities (ICRPD) and its Optional Protocol on 30 May 2012. A co-operation assembly between the central authorities and NGOs representing people with disabilities has been established to identify strategic objectives and priorities and to co-ordinate activities in this field. There is as yet no national strategy for implementing the Convention. A national monitoring mechanism for the implementation of the Convention with reference to Article 33 is currently being set up.

17. Civil society representatives have raised concerns about the fact that the Equal Treatment Act does not provide an equally high level of protection for the ground of disability as that afforded to the ground of ethnicity. The European Committee of Social Rights has pointed out that there is no anti-discrimination legislation in Estonia to protect persons with disabilities which explicitly covers the fields of housing, transportation, telecommunications and cultural and leisure.[17]

18. Shortcomings in access to rehabilitation and social services, and as concerns measures supporting independent living, have come under scrutiny in the context of the economic crisis. The number of persons living in residential institutions in Estonia is low, and disabled persons' family carers need more assistance to reduce their care burden.[18]

Older people

19. As in other parts of Europe, the demographic trends in Estonia reveal that the population as a whole is aging. In 2000, 15% of the population was older than 65 years. By 2011 this rate had

impact on women's rights and gender equality in Europe, 2012, p. 9; OECD, Reducing Poverty in Estonia through activation and better targeting, Economic Department Working Paper No. 1008, 10 December 2012, p. 10.

[14] OECD Economic Surveys, Estonia 2012, p. 28.

[15] OECD, Reducing Poverty in Estonia through activation and better targeting, Economic Department Working Paper No. 1008, 10 December 2012, pp. 15-18; OECD Economic Surveys, Estonia 2012, pp. 28-29; Human Rights Centre, Human Rights in Estonia 2011, pp. 164-5.

[16] Coping of Disabled Adults and Care Load Arising from Disability, Policy Analysis, Series of the Ministry of Social Affairs No 7/2010, pp. 10-11.

[17] Human Rights in Estonia 2011, Annual Report of the Estonian Human Rights Centre, p. 163; European Committee of Social Rights, Conclusions 2012, (Estonia), January 2013, p. 29.

[18] Academic Network of European Disability Experts, Country report on the implementation of policies supporting independent living for disabled people – Estonia, May 2009; Coping of Disabled Adults and Care Load Arising from Disability, Policy Analysis, Series of the Ministry of Social Affairs No 7/2010, pp. 16-24; A Review of the Situation of People with Disabilities in Estonia, TRAVORS, University of Tartu, January 2009, pp. 7-8.

already increased to 18%. There is a marked difference in the life expectancy of women and men; in 2011 it was 81 years for women and 71 for men (Statistics Estonia).

20. Older persons were initially shielded from the worst effects of the crisis, as the rate of old-age pensions was raised significantly in 2008-2009. Only more recently have austerity measures impacted pensions. At the beginning of the economic crisis, the average monthly pension was increased to € 278 in 2008 and € 301 in 2009 from € 226 in 2007. In 2010 and 2011 it was maintained at € 305, rising only slightly to € 313 in 2012 owing to new changes in indexation (Statistics Estonia). It has been estimated that the average pension in 2012 would have been 10.5% higher if its indexation had not been changed as a result of the crisis.[19] In 2012, 297,985 people received an old-age pension.

21. The initial increases in the pension rate protected older people from relative poverty during the crisis years. In fact, the relative risk-of-poverty threshold decreased following the general drop in incomes among the wider population. However, the purchasing power of old-age pensioners is now decreasing because of inflation and the stagnating pension rate which may increase the risk of relative poverty in the future. Older women face a higher risk, as many of them live alone.[20]

22. The number of older people - especially those older than 80 - receiving long-term care in institutions has increased during the past decade. The economic crisis has amplified concerns about geographic inequalities within the country in access to services available to older people and the financial sustainability of the care system. The focus is on providing services to older persons in their homes as long as possible.[21]

Ethnic minorities

23. The socio-economic gap between the majority population and ethnic minorities has become more pronounced due to the crisis, particularly in terms of employment. Members of ethnic minorities are clearly disadvantaged in terms of income, employment, representation among decision-makers and risks of poverty. Socio-economic differences by ethnicity appear to be reproduced among the younger generation as well.[22]

24. According to the 2011 census, Estonia's permanent population of 1,294,455 includes 192 different ethnic groups. Of those, 68.7% are ethnic Estonians (889,770), 24.8% are Russians (321,198) and 1.7% are Ukrainians (22,302). The share of Belarusians (12,419) and Finns (7,423) is less than 1%. The number of Roma is 456.[23]

25. Over the years, the unemployment rate of ethnic minorities - who are also increasingly more likely to experience long-term unemployment - has been nearly twice as high as that of the majority. The first quarter of 2010 saw unemployment rates peak at 27.9% among ethnic minorities and 15.7% among the majority population (persons aged between 15 and 74).[24] By 2012, the annual figures fell to 15.3% among minorities and 7.8% among the majority. The pattern is similar for young people; in 2010 unemployment rates for persons aged 15-24 reached a high of 42.1% in the case of minorities and 29.1% for the majority population, falling to 33% and 16.8% in 2011. As

[19] Social Situation Observatory, The Distributional effects of fiscal consolidation in nine EU countries, Research note 01/2012, p. 31.
[20] Quarterly Bulletin of Statistics Estonia 1/2013, pp. 62 and 74-76.
[21] OECD, Case Study Two: Social Services for the Elderly in Estonia, in OECD Public Governance Reviews – Estonia: towards a single government approach, 2011; pp. 343-384; European Network of Economic Policy Research Institutions, The long-term care system for the elderly in Estonia, June 2010, pp. 13-17; Analytical Support on the Socio-Economic Impact of Social Protection Reforms, Annual National Report 2010: pensions, health and long-term care, Estonia, May 2010, pp. 24-25.
[22] Estonian Human Development Report 2007, Eesti Koostöö Kogu, 2008, pp. 47-54; The Russian Second Generation in Tallinn and Kohtla-Järve: the TIES Study in Estonia, Amsterdam University Press, 2011; Estonian Integration Monitoring 2011, Summary, pp. 7 and 12-14.
[23] Estonian statistics and academic literature often apply the terms "(ethnic) Estonians" and "non-Estonians" when referring, respectively, to the majority population (whose mother tongue is Estonian) and to ethnic or national minorities (the vast majority of whom are Russian-speakers).
[24] By way of comparison, the respective figures had amounted to only 6% and 3% during the second quarter of 2008.

for long-term unemployment as a percentage of the total number of unemployed persons in the respective population segments, 48% of unemployed minorities in 2010 fell in this category; for the majority population the share was 43%. In 2012, the figures stood at 61.5% and 47.3% respectively.[25]

26. One cause for the socio-economic gap between ethnic minorities and the majority population over the long term is structural. Ethnic minorities are mostly employed in lower-paid sectors, such as manufacturing and in wholesale and retail trade. Nearly 52% of the majority population work in white collar jobs, while the figure for ethnic minorities is 35.3%.[26] There is a regional dimension to the disparities as well, with unemployment and risk of poverty being usually the highest in the North-Eastern region (Ida-Viru County) where ethnic minorities constitute the majority. Unemployment (15-74 years) in this region reached 25.8% in 2010 while the national average stood at 16.9%. The respective figures had been 9% and 4.7% in 2007. By 2012, unemployment fell to 17.5% against the national average of 10.2%. In 2011, the at-risk-of-poverty rate for residents of Ida-Viru County stood at 29.4% as compared to a national average of 17.5%. Also during that year, 22.4% of ethnic minorities in Estonia fell under the at-risk-of-poverty line, while the figure was 15.5% for the majority population (Statistics Estonia).

27. The Advisory Committee on the Framework Convention for the Protection of National Minorities (AC FCNM) stressed in 2011 that the unemployment rate among ethnic minorities remained disproportionately high compared with that of the majority population although the wage gap between the two groups appeared to be decreasing. It stated that there was a need to combat lingering perceptions that ethnic Estonians are the preferred candidates for jobs, irrespective of qualifications or language ability, in order to ensure that persons belonging to national minorities feel encouraged to participate effectively in economic life. The Committee urged the Estonian authorities to use the ongoing economic recovery as an opportunity for targeted development initiatives in the particularly disadvantaged region of Ida-Virumaa. In its reply, the Estonian government stated that a specific regional development plan (2010-2014) was being implemented.[27]

28. Strict language requirements in Estonian for employment in both the public and private sectors, monitored by the Language Inspectorate, have also put ethnic minorities at a disadvantage. In some cases employers have used more stringent language requirements than those established by language legislation, which has resulted in ethnic discrimination. Expressing concern about the situation, the Advisory Committee on the FCNM underlined that requirements for Estonian language proficiency must be proportionate to the legitimate aims pursued and that their application should allow for some flexibility. Similar concerns have been expressed by the UN Committee on the Elimination of Racial Discrimination (CERD). The Estonian Gender Equality and Equal Treatment Commissioner has applied the ground of ethnicity of the Equal Treatment Act in her Opinions which have found that linguistic discrimination has taken place against Russian-speakers in the labour market.[28]

29. According to data collected by the EU Agency for Fundamental Rights (FRA) in 2009, 13% of Russians had experienced discrimination in the workplace, and 39% when seeking work. In 2012, 37% of residents surveyed for Eurobarometer considered that discrimination on the basis of ethnicity was widespread in Estonia. A survey assessing the effectiveness of Estonian integration policy published in 2011 found that 20% of respondents coming from ethnic minorities had experienced unequal treatment. However, the lack of a regular data collection mechanism on discrimination in Estonia makes it difficult to make a more detailed assessment of the extent of ethnic discrimination as a barrier to labour inclusion. Some guidance in this area is expected to result from a project initiated in 2012 and carried out by civil society, co-funded by the EU

[25] Ministry of Social Affairs, Employment and working life in Estonia 2010-2011, No. 2/2012, pp. 30-33; Employment and working life in Estonia 2009-2010, No. 9/2010, p. 48; Statistics Estonia.
[26] Ministry of Social Affairs, Employment and working life in Estonia 2010-2011, No. 2/2012, p. 38.
[27] Advisory Committee on the FCNM, Third Opinion on Estonia, 7 November 2011, ACFC/OP/III(2011)004, p. 8; and Comments of the Government of Estonia, GVT/COM/III(2011)005, p. 12.
[28] Advisory Committee on the FCNM, Third Opinion on Estonia, 7 November 2011, ACFC/OP/III(2011)004, p. 26; UN CERD, Concluding Observations, Estonia, 23 September 2010, CERD/C/EST/CO/8-9, p. 3.

Progress Programme and the Ministry of Social Affairs. The project aims to prepare a diversity charter for the labour market and encourage the development of diversity and equality plans in companies.[29]

30. The Estonian Integration Strategy 2008-2013 has been the central policy document setting out the objectives for the social and economic inclusion of ethnic minorities. A new Strategy of Integration and Social Cohesion in Estonia until 2020 is planned for adoption in autumn 2013. The active participation of ethnic minorities in the labour market and the importance of raising awareness of human rights and equal treatment have been identified among the objectives for the new Strategy.[30] Two new studies have also been commissioned to evaluate the implementation of the 2009 Equal Treatment Act.

1.3 Access to justice

31. Austerity measures have resulted in significant cuts in the justice system and a major increase in the level of court fees. The overall budget of the justice system decreased from € 118.3 million in 2008 to € 98.5 million in 2010. The budget of the courts fell by 21.8%, i.e. from € 34.2 million in 2008 to € 26.8 million in 2010. Judges' salaries were subjected to the general pay cuts applied in public administration, although the pre-crisis salary levels should be restored by July 2013. In 2009, the budget cuts in the judiciary were accompanied by two- to five-fold increases in state fees for civil and certain administrative law proceedings, reaching some of the highest levels in Europe.[31] The increase in state fees was justified in the *Riigikogu* as a means to introduce cost-oriented civil proceedings, avoid excessive and vexatious appeals and identify new financing for the state budget. In 2010, the financial contribution from the court fees to the state budget amounted to 48.2% of the total annual budget for the courts.

32. During the visit, the Chief Justice informed the Commissioner that the Supreme Court had considered 40 applications against high state fees in court proceedings, out of which 35 had been successful. The Supreme Court had emphasised that the possible objective of court fees to earn additional revenue for the state in excess of covering the costs of the proceedings was not legitimate. The Chancellor of Justice also took the position, reflected in a several opinions he submitted to the Supreme Court, that the level of court fees was unconstitutional and that it posed an obstacle to access to justice. By the end of 2011, several provisions of the State Fees Acts had been declared unconstitutional by the Supreme Court.[32] The situation was subsequently resolved through the adoption of legislation amending the State Fees Act, the Code of Civil Procedure and other laws. The revised provisions, which entered into force on 1 July 2012, restored court fees to their pre-2009 levels and stemmed the flow of cases to the Supreme Court on this matter.

33. The excessive length of judicial proceedings continues to be an obstacle to accessing justice in Estonia. The European Court of Human Rights has repeatedly ruled against Estonia in such cases in the past and new applications continue to be registered.[33] Difficulties in delivering court documentation on time to parties as well as re-adjudication have been cited as the main causes of lengthy proceedings. A report commissioned by the Supreme Court in 2011 found that while statistics showed that the duration of single-round judicial proceedings was not excessive, the

[29] FRA, EU-MIDIS – European Union Minorities and Discrimination Survey, Main Results Report, 2010, pp. 176-195; Special Eurobarometer 393, Discrimination in the EU in 2012, Report, p. 29; Estonian Integration Monitoring 2011, Summary, p. 8.

[30] Ministry of Culture, The Strategy of Integration and Social Cohesion in Estonia, Proposal to the Government of the Republic to draft a development plan for the field (unofficial translation), 2012, p. 10.

[31] An analysis of the Ministry of Justice reported that Estonian state fees were 334.93% higher than the EU average at the time. The European Commission for the Efficiency of Justice (CEPEJ), European Judicial Systems, Edition 2010 (Data 2008), pp. 15-29; and Edition 2012 (Data 2010), pp. 17-41 and p. 77; Supreme Court, Constitutional Judgement *en banc* 3-3-1-22-11, 29 November 2011.

[32] See, for example, Supreme Court, Constitutional Judgement *en banc* 3-3-1-22-11, 29 November 2011; Human Rights in Estonia 2011, Annual Report of the Estonian Human Rights Centre, pp. 41-48.

[33] See for example *Missenjov v. Estonia* (application no. 43276/06, judgment of 29/01/2009) *and Saarekallas OU v. Estonia* (application no. 11548/04, judgment of 8/11/2007).

data did not include information on whether a case had been sent back for re-adjudication to a lower instance court. In such instances, the case would be counted as a new proceeding.[34]

34. The Estonian authorities have acknowledged the problem of excessive length of proceedings and the Minister of Justice informed the Commissioner that the government considered it possible to reduce the average length of judicial proceedings to 100 days. Additional staff for the courts had also been recently recruited with a view to reinforcing capacity.

35. The European Court of Human Rights has also drawn attention to a related structural shortcoming in the judicial system, i.e. the lack of an effective remedy for excessively lengthy proceedings.[35] To address this issue, the *Riigikogu* adopted in 2011 amendments to the Code of Criminal Procedure and the Code of Civil Procedure introducing such a remedy in line with Articles 6 and 13 of the European Convention of Human Rights. Parties are now entitled to request an expedited procedure if a case has been pending for at least 9 months and the court has not taken the necessary procedural action without a good reason. If the court refuses an expedited procedure, the possibility for an appeal exists. The same provisions have applied to administrative proceedings since the entry into force of the new Code of Administrative Court Procedure on 1 January 2012.

36. However, the current legal framework does not explicitly include the right to compensation as a remedy for unreasonably lengthy proceedings, even though Article 25 of the Constitution foresees the right to compensation for damage caused by unlawful action.[36] This gap in the domestic legislation has been highlighted by both the European Court of Human Rights and the Supreme Court of Estonia. In its landmark judgment of 22 March 2011 on a case concerning excessively lengthy pre-trial criminal proceedings, the Supreme Court *en banc* found the State Liability Act to be in conflict with the Constitution,[37] thereby establishing an important precedent for domestic administrative courts, which can now award compensation for non-pecuniary damage due to excessively lengthy proceedings.

37. Specific legal provisions for compensation in such cases have been included in a draft law amending the State Liability Act. During the visit, the Commissioner was informed that there had been a delay in the adoption of the amended Act - which has been under preparation since 2011 - but that a new working group was about to be set up to finalise it for adoption by the *Riigikogu*.

38. State-funded legal aid in Estonia is available in criminal, misdemeanour, civil and administrative proceedings in accordance with the 2005 State Legal Aid Act. The extent of the aid to be provided is established by the courts, Prosecutor Office and investigative bodies. Apart from a person's financial situation, the potential success of the case concerned plays an important part in granting legal aid. Following modifications to the State Legal Aid Act in 2010, the Estonian Bar Association has been responsible for providing legal aid and appointing legal counsel. Previously, concerns had been raised about the quality of state-funded legal aid, and were also highlighted in the case of *Andreyev v. Estonia* (application no. 48132/07, judgment of 22 November 2011) before the European Court of Human Rights. The Court found that Article 6(1) of the ECHR had been violated, inter alia, by the failure of the applicant's lawyer to duly perform his duties which had deprived the applicant of his right of access to the Supreme Court.

39. The State Legal Aid Act obliges the Bar Association to ensure an uninterrupted provision of state legal aid even if the funds allocated from the state budget run out before the end of the fiscal year. The budget of the legal aid scheme stood at € 3 million for two consecutive years (2010 and 2011) even though the annual number of legal aid cases increased from 17,789 to 18,824. In 2012, the legal aid budget was increased to € 3.8 million. Although most law firms in Estonia are based in Tallinn, the Bar Association is making efforts to provide initial legal counselling services in other areas through web-based remote consultations. Services are also available in Russian. The

[34] *Mõistlik Menetlusaeg Tsiviilkohtumenetluses, Kohtupraktika analüüs*, Tartu, 2011.
[35] *Raudsepp v. Estonia* (application no. 54191/07, judgment of 8/11/2011).
[36] In contrast, compensation is available for persons wrongfully arrested and sentenced (Act on Compensation for Damage Caused by the State to Persons by Unjust Deprivation of Liberty).
[37] Supreme Court constitutional judgment 3-3-1-85-09 of 22 March 2011.

Commissioner was informed that the demand for legal aid for civil law cases had steadily increased over recent years.[38]

1.4 Conclusions and recommendations

40. In Estonia, the economic crisis and ensuing austerity measures resulted in higher rates of unemployment and poverty. Although unemployment has been reduced considerably during the past two years, the lingering effects of the crisis are still visible in indicators for poverty, social exclusion and long-term unemployment. The Commissioner is particularly concerned about absolute poverty among children and unemployment of young people, which can result in negative long-term effects unless effective measures are taken to prevent deprivation and social exclusion.

41. Poverty is a serious human rights problem in itself. The UN Committee on Economic, Social and Cultural Rights has described poverty as a "condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights."[39]

42. The Commissioner underlines that economic recovery should be accompanied by reinforced social protection floors for the general population and targeted positive measures for vulnerable groups of people. The social benefits system should be reviewed to ensure that those in need receive adequate support. Unemployment insurance and assistance, subsistence benefits, family support and child benefits should be readjusted and targeted in a co-ordinated way so that their recipients do not fall under the absolute poverty threshold. Support services for children and families should be made available in all municipalities on an equal basis. A stable social protection minimum is essential for preventing the transmission of the effects of the crisis to future generations.

43. The Commissioner stresses that social and economic rights should be realised progressively through the full use of the maximum of available resources.[40] Even where the available resources are demonstrably inadequate, for example during a period of austerity relating to an economic crisis, the state is under an obligation to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Special attention should be given to the protection of vulnerable groups when austerity measures apply. Austerity measures should remain temporary and be strictly limited in time. When more resources become available during economic recovery, any remaining austerity measures should be re-assessed.

44. The Commissioner encourages the Estonian authorities to develop and adopt strategies to reduce unemployment, including among youth. Access to education, vocational training and the labour market must be non-discriminatory. Specific measures are needed to address long-term unemployment.

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[38] State legal aid and regulations: overview of funding arrangements in Estonia, Presentation by Kristen Voltenberg, Chancellor of the Estonian Bar Association, at a Conference on State-Guaranteed Legal Aid, 4 May 2012.

[39] Cf. Statement adopted by the Committee on Economic, Social and Cultural Rights on 4 May 2001, E/C.12/2001/10, pp. 2-3.

[40] Cf. UN Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties obligations: "The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time […] It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the [International] Covenant [on Civil and Political Rights] which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."

45. The Commissioner welcomes the Estonian ratification of the UN Convention on the Rights of Persons with Disabilities and calls for the preparation of a national strategy for its implementation in close co-operation with people with disabilities and organisations representing them. Inclusion in working life and access to a full range of educational opportunities should be among the priority objectives. An independent mechanism should be set up to monitor the implementation of the Convention with the active participation of persons with disabilities and their organisations.[41]

46. There is a need to address protection gaps in equal treatment legislation for the ground of disability and to improve reasonable accommodation at the workplace. Supported decision-making alternatives have to be made available to those who want assistance in making decisions or communicating them to others. Benefits for disability and incapacity should be reviewed to ensure that social protection needs and requirements for long-term sustainability are met.

47. The major challenges associated with an aging population relate to the availability of long-term care and the adequacy of the old-age pension system. Particular attention should be paid to gender equality in the provision of social protection and sufficient income to older people.

48. The Commissioner is concerned by the long-standing socio-economic gap between ethnic minorities and the majority population, which has become more pronounced following the economic crisis. It is particularly worrying that the gap is perpetuated among young people.

49. The Commissioner urges the Estonian authorities to develop and implement positive measures to address the long-term unemployment and social exclusion of ethnic minorities. The new Integration and Social Cohesion Strategy 2020 and other related policy documents, such as regional development plans, should be used for this purpose. Specific attention should be devoted to the labour inclusion of young persons as well as the availability of quality education and vocational training. Ethnic minorities should be actively involved in the planning, implementation and monitoring of the policies concerned.

50. It is essential to act decisively to remove barriers to the social inclusion of ethnic minorities and to combat ethnic discrimination. There is a pressing need to improve awareness among employers and employees of such discrimination, and of the available remedies. The current strict language requirements for employment in the public and private sector should be reviewed to ensure that they are proportionate to the legitimate aims pursued. The application of language requirements should allow for some flexibility, taking into account the geographical location and sector of employment concerned.

51. The Commissioner encourages the on-going efforts to improve diversity and equality planning in the Estonian labour market. This should become a regular practice in both the private and public sectors. Data on discrimination and inequalities should be collected on a regular basis.

52. The Commissioner welcomes the recent measures to improve access to justice in Estonia, including the reduction of court fees, the provision of remedies for excessively lengthy court proceedings, and the reform of the system of legal aid. He urges the prompt adoption of the new State Liability Act to ensure compensation for those court cases which are delayed for years without a valid reason. He also encourages the authorities to pursue efforts to shorten the average length of proceedings; however, in doing so, care should be taken not to compromise the quality of justice.

[41] The Issue Papers, "Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities", and "The right of people with disabilities to live independently and be included in the community", published by the Commissioner's Office in 2012, provide detailed recommendations on the implementation of the UNCRPD in two key areas.

2. Independence and effectiveness of national human rights structures

2.1 National human rights structures

53. Independent national human rights structures (NHRSs), established by law, play an essential role in protecting and promoting human rights and equality in society. In Estonia there are three different NHRSs, including a Data Protection Inspectorate specialised in the protection of personal data and the right to access public information. The Commissioner's visit focused on the two other structures, i.e. the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner. Currently, the Estonian NHRSs do not have accreditation as national human rights institutions under the Paris Principles (cf. paragraphs 66 to 69 below).[42]

Chancellor of Justice

54. The Chancellor of Justice, an independent institution established by the Constitution, has wide-ranging terms of reference. The Chancellor is appointed to a seven-year term of office by the *Riigikogu* on the proposal of the President. The institution combines four major functions: constitutional review of legislation, safeguarding legality of the actions of public authorities (ombudsman), protection of the rights of the child (children's ombudsman), and prevention of ill-treatment in places of detention. The Chancellor's Office is well-resourced; it has five departments and 49 positions, and was not subjected to significant cuts during the economic crisis.

55. The Chancellor reviews laws and regulations to ensure their compliance with the Constitution and international conventions, and has the right of referral to the Supreme Court, which functions as a constitutional court. As Ombudsman, the Chancellor investigates individual complaints of violations of fundamental rights and maladministration by public authorities and private bodies carrying out public functions. The Chancellor can carry out investigations *ex officio*. Any statements made on the legality of the authorities' actions are final and cannot be contested in courts. If the Chancellor's recommendations are not acted upon, a report may be submitted to the supervisory authority of the agency in question, the Government or the *Riigikogu*. The Chancellor also submits an annual report to the *Riigikogu*.

56. In 2011, the Chancellor's mandate was expanded to include specifically that of Children's Ombudsman and a Children's Rights Department was established in the Chancellor's Office. As Children's Ombudsman, the Chancellor promotes and protects the rights of the child in line with the UN Convention on the Rights of the Child, monitoring the implementation of the UN Convention, reviewing the constitutionality of legislation on children, resolving specific complaints concerning children's rights, raising awareness, and reviewing systemic problems in the child protection system. Regular inspection visits are made to children's institutions. An Advisory Committee composed of children supports the institution in its activities.

57. Since 2007, the Chancellor has performed the functions of a national preventive mechanism under the Optional Protocol to the UN Convention against Torture (OP-CAT). The Chancellor conducts regular inspection visits to closed institutions.

58. While the Chancellor also has a general task to promote the principles of equality and equal treatment and can apply voluntary conciliation proceedings to resolve discrimination disputes, only one conciliation proceeding had been carried out as of the time of the Commissioner's visit.

59. In 2011, the Chancellor received a total of 2122 petitions and opened 1739 cases, of which 72 were opened *ex officio*. During the same year, 53 inspection visits were carried out.[43]

60. In 2012, the Chancellor published a major report on child poverty in Estonia. However, the Chancellor's activities as Children's Ombudsman are not yet well known among the public.

[42] "Principles relating to the status of national institutions", appended to the UN General Assembly Resolution A/RES/48/134, 4 March 1994.
[43] 2011 Overview of the Chancellor of Justice Activities, p. 36.

Among the respondents to a recent survey, 67% of adults and 80% of children knew nothing about the Ombudsman for Children. Awareness is particularly low among people whose main language is not Estonian.[44] In 2011, the Chancellor of Justice opened 82 cases concerning the rights of children. Children themselves directly contacted the Ombudsman for the protection of their rights on only three occasions during the reporting year. In the remaining cases the Ombudsman was contacted by parents or other legal representatives of a child.[45]

Gender Equality and Equal Treatment Commissioner

61. The Gender Equality and Equal Treatment Acts implement the provisions of EU Directives on gender equality and equal treatment, which prohibit discrimination on the grounds of sex, nationality (ethnic origin), race, colour, religion or other beliefs, age, disability and sexual orientation. As in EU law, a hierarchy of discrimination grounds is maintained, with a higher level of protection afforded to the grounds of sex, nationality (ethnic origin) and colour. The material scope covers working life (employment, vocational training and trade union activities) for all grounds of discrimination, but does not extend further (social protection, education, and access to goods and services) in respect of the grounds of religion or belief, age, disability and sexual orientation. The Estonian Constitution (Article 12) establishes a general prohibition of discrimination with an open-ended list of discrimination grounds. Estonia has signed but not ratified Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination.

62. The Gender Equality and Equal Treatment Commissioner (hereinafter "Equality Commissioner") is an independent and impartial expert appointed for a five-year period by the Minister of Social Affairs. Pursuant to the Gender Equality and Equal Treatment Acts, the Equality Commissioner has a wide variety of duties in the field of equality and non-discrimination, which include: providing opinions on possible cases of discrimination on the basis of individual complaints or *ex officio*, and advising and assisting the complainants; analysing the effects of particular laws on the situation of women and men as well as minorities; and making proposals for legislative changes to the authorities and advising them on equality matters. The Equality Commissioner is also mandated to publish reports. Disputes in employment relations, including cases of discrimination, can also be solved by Labour Dispute Commissions, which are quasi-judicial bodies giving legally binding decisions. Court cases regarding discrimination remain rare.

63. Despite its broad mandate, the effectiveness of the Equality Commissioner is severely constrained in terms of staff and budget: there are only two positions - including that of the Commissioner - and the annual budget is about € 60,000. When the Gender Equality Commissioner assumed the additional tasks of Equal Treatment Commissioner in 2009, after the adoption of the Equal Treatment Act and in the middle of the economic crisis, no additional resources were made available to the institution. The Advisory Committee on the FCNM has noted with concern that the Office of the Equality Commissioner was dramatically under-resourced and that awareness of its competence in the field of ethnic discrimination remained low among the public.[46]

64. In 2011, 358 inquiries and 90 complaints of discrimination were made to the Equality Commissioner. In respect of 23 complaints, the Equality Commissioner found that discrimination had taken place. Half of the complaints received related to the ground of sex, 9% to ethnicity, 6% to sexual orientation (or sexual identity) and 2% to disability.

65. During the visit, the Equality Commissioner informed the Commissioner that the lack of resources for the institution had a direct bearing on her ability to accomplish all the functions foreseen in its mandate. In particular, it was not possible to devote sufficient attention to analysis of the impact of national legislation, preparation of reports on discrimination, and awareness-raising activities. There was a particular need to develop responses to discrimination on the ground of ethnicity,

[44] Monitoring of the rights of the child and parenting, Praxis Centre for Policy Studies, 2012, p. 9.
[45] 2011 Overview of the Chancellor of Justice Activities, p. 22.
[46] Advisory Committee on the FCNM, Third Opinion on Estonia, 7 November 2011, ACFC/OP/III(2011)004, p. 11.

including with reference to language. The gender pay gap and high unemployment rates among people with disabilities were other major concerns. Some reinforcement will come to the institution through funding for the promotion of gender equality obtained from the Norwegian Financial Mechanism, which will enable the hiring of six more staff for a three-year-period.

National human rights institution

66. There is currently no institution in Estonia that has accreditation as a national human rights institution (NHRI) from the International Coordinating Committee of National Human Rights Institutions under the Paris Principles. UN bodies and human rights NGOs in Estonia have repeatedly called for the creation or designation of such an institution.[47] Without an internationally recognised NHRI, Estonia is not in a position to benefit from or participate in European and international co-operation among NHRIs, including UN activities reserved for accredited NHRIs. During the visit, the Estonian authorities informed the Commissioner that they had as yet no precise plans for the establishment or designation of an NHRI.

67. At present, the Chancellor of Justice would appear to fulfil most of the functions and criteria of an NHRI based on the Paris Principles, apart from the requirement for pluralist representation in its composition. Several national equality bodies have been accredited as NHRIs and the Gender Equality and Equal Treatment Commissioner could also fulfil this role, provided its resources are reinforced considerably and its mandate developed.

68. There are also several civil society organisations in Estonia which carry out some of the functions associated with NHRIs, i.e. promoting and monitoring human rights by carrying out research and awareness-raising. Such bodies include the Estonian Institute of Human Rights, the Estonian Human Rights Centre and the Legal Information Centre for Human Rights. However, they do not fulfil an essential criterion for an NHRI, which is that it be established through constitutional or statutory provisions which guarantee its independence and competence.

69. A new element in the debate on the establishment of an NHRI in Estonia is the need to create or designate an independent monitoring mechanism for the implementation of the International Convention on the Rights of Persons with Disabilities. Such a role could also be assumed by an NHRI.

2.2 Conclusions and recommendations

70. The Chancellor of Justice plays a wide-ranging and well-established role in protecting and promoting human rights in Estonia. The resources made available to the institution over the years have been increased in tandem with its expanding duties, and the Chancellor has been able to operate in an effective and independent manner during the economic crisis as well. However, the Commissioner observes that public awareness of the Chancellor's functions as the Ombudsman for Children is still quite limited. He encourages the Chancellor of Justice, in co-operation with other authorities and NGOs, to step up efforts to increase the visibility and awareness of the institution of the Children's Ombudsman among children and the general public, including ethnic minorities. Efforts should be made to inform children of the possibility to submit their complaints directly to this institution.

71. In contrast, the Gender Equality and Equal Treatment Commissioner remains seriously understaffed and underfunded, despite the institution's broad mandate. Although the Equality Commissioner's Office will soon be reinforced through substantial external funding, this does not provide a sustainable solution for its resource needs in the long term. The Commissioner emphasises that, if it is to have an impact, a national equality body should have sufficient resources in terms of staff, expertise and operational budget to implement all of its functions. He therefore urges the Estonian authorities to provide the Gender Equality and Equal Treatment Commissioner with sufficient human and operational resources to enable the institution to fulfil its

[47] UN Human Rights Council, Compilation prepared by OHCHR in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 10 November 2010, A/HRC/WG.6/10/EST/2, pp. 3-4.

mandate effectively and independently. In addition to issuing opinions on individual complaints of discrimination and assisting victims, the Equality Commissioner should be able to play a central role in promoting a culture of equality in society by raising awareness, providing advice to authorities and carrying out independent research.

72. It is particularly important that the Equality Commissioner is able to reach out to minorities and vulnerable groups of people throughout the country. The independence of the Equality Commissioner should be better reflected in the appointments and reporting procedure which currently takes place at ministerial level. It would be useful to involve the *Riigikogu* in that procedure. The Commissioner's 2011 Opinion on national structures for promoting equality provides detailed guidance on the establishment and operations of independent and effective equality bodies.[48]

73. Commissioner Muižnieks calls on the Estonian authorities, in co-operation with the Equality Commissioner, Chancellor of Justice and civil society organisations, to increase awareness of equal treatment legislation, discrimination and available remedies among the authorities and the public. There is also a need to improve data collection on discrimination and encourage reporting to complaints bodies. The preparation of a national strategy on equal treatment would be a welcome development.

74. In the Commissioner's opinion, national human rights structures should be consulted to provide advice to governments on human rights compliant responses to the economic crisis, as well as information on the possible impact of austerity measures and budgets on vulnerable groups. The legal review and advisory functions of the Chancellor of Justice and the Equal Treatment Commissioner are particularly useful from this point of view. The Commissioner encourages the Estonian authorities to avail themselves of such opportunities when considering policies and laws likely to affect the enjoyment of human rights. National human rights structures should also be involved in monitoring the real effects of the crisis. The recent report by the Chancellor of Justice on child poverty constitutes a good practice in this area.

75. The Commissioner encourages the Estonian authorities to establish or designate a national human rights institution compliant with the Paris Principles. An internationally-accredited NHRI should play a major role in protecting and promoting human rights in Estonia and become the focal point for coordinating human rights work in the country. Independence and pluralist representation are central conditions for the effective functioning of NHRIs. Pluralist representation could be ensured, for example, through the establishment of a broadly representative advisory body on human rights which would be associated with the NHRI.

3. Human rights of children

3.1 Stateless children

76. Citizenship implies being a full member of a national community and consolidates the enjoyment of human rights. Under international human rights law, every child has the right to acquire a nationality from birth.[49]

77. Estonia is not a party to the UN Convention on Reduction of Statelessness. Most stateless children in Estonia belong to Russian-speaking families (i.e., those having Russian as a native language) whose members did not acquire Estonian or other nationality after the break-up of the Soviet Union and the restoration of Estonian independence. According to Article 8 of the Constitution, children acquire Estonian citizenship by birth if at least one of the parents holds Estonian citizenship. In addition to the *ius sanguinis* principle, the Citizenship Act as modified in 1999 establishes a simplified procedure for the naturalisation of children under the age of 15 who

[48] The Commissioner for Human Rights, Opinion on national structures for promoting equality, 21 March 2011, CommDH (2011)2.
[49] International Covenant on Civil and Political Rights, Article 24, and the Convention on the Rights of the Child, Article 7.

are born of non-citizen parents in Estonia after 1992. These children are eligible to acquire citizenship by naturalisation upon application by their parents provided that the latter have been legally resident in Estonia for at least five years.

78. There were 1181 stateless children under the age of 15 on 1 January 2013 and the total number of non-citizens in Estonia stood at 90,718 on 1 April 2013. The overall share of non-citizens in the general population has decreased from 32% to 6.8% between 1992 and 2012. However, the rate of naturalisations has slowed down in recent years. In 2012, 469 stateless children under the age of 15 acquired citizenship through naturalisation, whereas the figure for 2011 was 605.[50] In its 2011 Opinion on Estonia, the Advisory Committee on the FCNM reported that about 600 stateless children were born annually.[51]

79. The authorities have implemented information campaigns aimed at non-citizen parents, promoting the naturalisation of their new-born children. However, the Advisory Committee on the FCNM has pointed out that many parents miss the opportunity to apply for nationality for their children and consider the information campaigns carried out in this regard as unhelpful.[52] During the visit, the Commissioner was informed by the Estonian authorities that since November 2011 the Police and Border Guard Board have been able to use an automatic system linked to the population register to send information to the parents concerned on the possibilities of acquiring citizenship for their children. The information is also sent out in Russian. The authorities indicated that the resulting applications for citizenship are hardly ever refused by the government.

80. In 2011, the Advisory Committee on the FCNM encouraged the authorities to consider granting citizenship to new-born stateless children automatically unless the parents object. Such a proposal had also been made by the Chancellor of Justice in Estonia. In addition, UNHCR has recommended that Estonia undertake a review of nationality legislation to ensure that all children born on the territory who would otherwise be stateless acquire Estonian nationality automatically at birth.[53] The implementation of these recommendations would bring Estonian practice in this area in line with its international obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Regrettably, this has not yet been done.

81. During the visit, the authorities repeatedly invoked the argument that non-citizen parents should clearly express their willingness to obtain citizenship for their children. In addition, they considered that the automatic granting of citizenship to new-born children conflicted with the *ius sanguinis* principle of the Constitution. The authorities were of the opinion that in view of the small number of children involved it was likely that the problem would be solved without additional measures in the space of a few years.

82. In November 2012, the Chancellor of Justice found that some of the provisions on residence requirements in the Citizenship Act were not in line with the equality principle enshrined in the Constitution. The matter arose from an application in which a young person complained that, although he had lived in Estonia for his entire life, he was not granted Estonian citizenship because his parent had not applied for a residence permit for him before he reached the age of 15. Under the current legal framework, minors aged 15 and older who are stateless would have to demonstrate eight years of legal residence in Estonia and possess a long-term residence permit before qualifying for naturalisation. In January 2013, the *Riigikogu* expressed its support for the Chancellor's position on the need to amend the Citizenship Act. The authorities informed the Commissioner that the administrative practice had already been brought into line with the Constitution.

[50] In 2012, there were 654 non-citizens of 15 years of age and older who acquired Estonian citizenship through naturalisation compared with 736 in 2011. The figures come from the Estonian authorities based on the Population Register. The Estonian authorities usually apply the term "persons of undetermined citizenship" to non-citizens.
[51] Advisory Committee on the FCNM, Third Opinion on Estonia, 7 November 2011, ACFC/OP/III(2011)004, p. 14.
[52] Idem.
[53] Idem and UNHCR, Submission for the OHCHR Compilation Report – Universal Periodic Review: Estonia, July 2010, p. 11.

3.2 Legal and policy framework for child protection

83. Estonia ratified The Convention on the Rights of the Child in 1991. The 1992 Child Protection Act is the principal national instrument for protecting the human rights of children, along with the Family Law Act and Social Welfare Act. Estonia has signed but not yet ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Preventing and Combating Violence against Women and Domestic Violence. During the visit, the Commissioner learned that the ratification of both conventions was planned for 2013.

84. The Chancellor of Justice and civil society organisations have highlighted the need to reform the 1992 Child Protection Act, as it is by now considered to be outdated. The Ministry of Social Affairs has been tasked with amending the relevant legislation, and the Minister of Social Affairs informed the Commissioner that it was planned to introduce the draft of a new Child Protection Act to the Government in 2013.

85. In 2011, the government adopted a Strategy for Children and Families 2012-2020, prepared with the involvement of NGOs working on children's rights and young people. The Strategy is aimed at improving the well-being and quality of living of children and families through a functional child protection system which guarantees children's rights and encourages positive parenting. Prevention and early intervention are among the Strategy's key principles. Other major policy documents related to the protection of children include the Development Plan for the Reduction of Violence 2010-2014, the National Health Plan 2009-2020 and the Estonian Education Strategy 2012-2020.

86. The child protection system is largely decentralised. Local authorities enjoy broad independence in terms of administrative matters and policy priorities. Municipalities organise and develop child protection programmes and are responsible for ensuring children's and families' access to child protection services. However, there are considerable disparities in child protection practice between different municipalities. Many smaller municipalities lack qualified child protection workers, and this can diminish their capacity for the early detection of children and families at risk. Supervision and monitoring of the quality of child protection services at local level are carried out by the county governments.

87. A recent state audit report found that only 38% of local authorities had a designated child protection worker and that one-fifth of children in Estonia lived in local government units which did not have a child protection worker.[54] In 2010, there was on average one child protection worker per 1348 children. The stated objective of the government is to ensure that there is one child protection worker per 1325 children by 2015 and, by 2020, to reach the goal of one per 1274 children.[55] According to civil society representatives, the number of children per child protection worker is as high as 1700 in some regions. Owing to austerity measures, social protection workers have reportedly assumed the tasks for child protection in several municipalities.

88. The state audit report pointed out that there were shortcomings in the preventive work of municipalities, as assistance was predominantly provided in cases where a problem had become so serious that a parent or carer had decided to seek help from the local authority. It also identified a lack of indicators for the quality of child protection services. The report noted that the state had not imposed adequate rules for child protection and that the local authorities had too much leeway in decision-making. Many local authorities did not give adequate attention to child protection and left it underfinanced.[56]

89. The Minister of Social Affairs informed the Commissioner that the government was responding to the situation by creating mobile teams of child protection workers which could be deployed in

[54] Organisation of child welfare in municipalities, towns and cities, Report of the National Audit Office to the *Riigikogu*, Summary of audit results, 29 January 2013.
[55] Strategy of Children and Families 2012-2020, p. 26.
[56] Organisation of child welfare in municipalities, towns and cities, Report of the National Audit Office to the *Riigikogu*, Summary of audit results, 29 January 2013.

those municipalities which needed more capacity and expertise. In addition, the creation of regional counselling centres has been included in the Strategy for Children and Families as an option for ensuring the accessibility of services for municipalities unable to hire qualified specialists.

90. Civil society representatives voiced concern about the general lack of experienced child protection professionals and the limited availability of study programmes on issues related to child protection to train such professionals. The new Child Protection Act is expected to establish criteria for the educational qualifications of child protection workers. As for the awareness of children's rights among the general population, it could be improved; as a recent survey demonstrated, 23% of adults and 16% of children in Estonia had not heard about the rights of the child.[57]

3.3 Children in alternative care

91. In Estonia there are four types of alternative care: children's homes (known as "substitute homes"), foster care, guardianship and child shelters for emergency care. Children living in children's homes account for 69% of the total number of children in alternative care, while 31% live in foster care families or under guardianship. As of 15 November 2012, 1096 children and young people lived in children's homes, 44% of whom had disabilities. There were 35 children's home service providers in Estonia in March 2013.[58]

92. Child and youth care services, including child care facilities, are under the governance of municipalities, while the state exercises a supervisory role. State funding for children's homes is based on the number of children rather than actual expenses. Civil society representatives pointed out that children's homes with a smaller number of children were in a particularly difficult position and that they struggled to hire staff to match the professional qualifications required by law.

93. In April 2013, the Chancellor of Justice published an analysis on the rights of children in substitute homes in Estonia. The findings revealed that two-thirds of the institutions visited failed to meet the standard requirement of one caregiver per eight children. Many institutions which did meet this requirement lacked the services necessary for the development of children, such as recreational activities and outings. The Chancellor of Justice called for a review of the amount allocated by the state on a per-capita basis to determine whether it satisfied the basic needs of the child. He also recommended establishing a minimum standard for the basic needs of children that should always be met.[59]

94. Municipalities are required by law to draft an individual case plan for each child placed in alternative care, with the exception of guardianship placements. The plan should include a needs assessment and an action plan which should be updated every year. In practice, however, there are still cases where such plans are either not developed or regularly revised, or the children are not actively involved in their preparation. The inspections carried out by the Chancellor of Justice have identified situations where the local authorities have delegated this function to substitute homes.[60]

95. The Strategy for Children and Families sets out the objective of nurturing a family-centred approach in alternative care. Family-based substitute care is to be preferred to institutionalisation and children's homes should be reorganised in accordance with the family-oriented model of care. NGOs consider that the reform has encountered several difficulties. The number of families willing to provide foster care is diminishing constantly, while the number of children returning to children's homes from foster families continues to grow. The biological family of a child would also need more assistance to enable a return from alternative care.

[57] Monitoring of the rights of child and parenting, Summary in English, Praxis Centre for Policy Studies, 2012, p. 9.
[58] *Asenduskoduteenuse analüüs*, Chancellor of Justice, 2013. A summary in English is available at the web-site of the Chancellor of Justice – "Ombudsman for Children analyses how the rights of children in substitute homes are guaranteed", 22 April 2013.
[59] *Asenduskoduteenuse analüüs*, Chancellor of Justice, 2013.
[60] *Ibid*.

96. Civil society representatives have also expressed concerns as regards the situation of young people reaching the age of majority and leaving alternative care. Scarce data are available on this group, which in turn makes it difficult to monitor their well-being and plan their post-care life. The level of services to which young people leaving care are entitled depends largely on the municipality where they are registered. The major problems identified by NGOs include the lack of financial assistance, adequate housing, or guidance for preparing such persons to live independently.[61]

97. The Commissioner carried out an on-site visit to the Maarjamäe Centre, a family-type substitute home forming part of the Tallinn Children's Home. The centre applies the "children's village" model and consists of ten family houses accommodating up to six children in each house attended by one family "mother" and one family "aunt". The Commissioner was informed that the budget allocated to the institution on a per-capita basis had not been cut by austerity measures although the funds had been insufficient to match the rising living costs. The living areas were well-equipped and material standards appeared to be adequate. However, the staff voiced concerns over the general lack of specialised psychiatric and psychological services for children, the need for which had increased during the economic crisis. The children met by the Commissioner indicated that they wished to have increased possibilities for leisure and holiday activities.

3.4 Protection from violence and abuse

98. Provisions prohibiting violence and abuse of children can be found in several different laws, including the Child Protection Act, the Family Law Act, the Code of Administrative Offences and the Penal Code. However, these provisions do not provide a coherent and explicit prohibition of all corporal punishment in family and institutional settings. This has drawn frequent criticism from international organisations, including the UN Committee on the Rights of the Child. In 2011, the European Committee of Social Rights found Estonia to be in violation of Article 17§1 of the revised Social Charter on the right of children and young persons to social, legal and economic protection, in view of the fact that corporal punishment had not been explicitly prohibited in schools and in the home.[62]

99. Corporal punishment is still accepted by many adults. According to a recent survey, 25% of respondents did not consider corporal punishment to be an act of violence, while 38% felt that imposing it was understandable in certain conditions. Of the children surveyed, 5% had been slapped or had their hair pulled, and 3% had been struck with a belt or lash. Acceptance of corporal punishment was higher among people with a low level of education and those whose language of communication was not Estonian.[63] According to civil society representatives, unemployment and substance abuse among parents are risk factors for a higher level of corporal punishment and abuse of children. Although campaigns for the elimination of violence and corporal punishment had been carried out, their reach had been uneven among different population groups.

100. The Estonian authorities are committed to the full prohibition of corporal punishment, which is expected to be included in the new Child Protection Act. In November 2012, the Ombudsman for Children (Chancellor of Justice) addressed a public request to the Minister of Social Affairs to amend the Child Protection Act to that effect.

101. Child sexual abuse and school violence and bullying continue to be serious problems in Estonia. The number of cases of child sexual abuse reached 233 in 2011, demonstrating a growing trend.[64] According to a study carried out in Estonian schools from 2001–2009, 45% of children had experienced violence in schools, but most of them had not informed their parents or the police

[61] Ageing out of care: from care to adulthood in European and Central European Societies, Chapter on Estonia, SOS Children's Villages.
[62] European Committee of Social Rights, Conclusions 2011 (Estonia), January 2012, p. 19.
[63] Monitoring of the rights of child and parenting, Summary in English, Praxis Centre for Policy Studies, 2012, p. 14.
[64] "Domestic Violence, Child Abuse Cases Increase in 2011", Estonian Public Broadcasting, news item 19 April 2012.

about it. According to a study published in 2011, 20% of children had been hurt at school, 25% of them had been injured by their schoolmates and 10% had suffered from domestic violence.[65] Representatives of NGOs working with children pointed out that the rising poverty related to the financial crisis had exposed children to a higher risk of domestic violence and abuse than before. A 24-hour child support helpline has been operating since 2009.

102. In the process of the UN universal periodic review, the Estonian authorities stated that the priorities in combating violence against children in the years to come would focus on bullying in schools, violence in child-care institutions, exploitation of children on the internet, and sexual crimes, as well as early detection and assistance.[66] Efforts to deal with violence and abuse of children included the adoption of a Development Plan for the Reduction of Violence 2010-2014. The Development Plan contains measures for the prevention and reduction of violence against children, youth violence and crime, domestic violence and human trafficking. In addition, the Strategy for Children and Families seeks to promote positive parenting practices by improving the accessibility of counselling services to parents. The Strategy highlights the need to create a system of detection of ill-treatment in children so that intervention is timely and professional.

103. While internet literacy skills of Estonian children are among the highest in European countries, they are also prone to a higher risk of abuse on the internet. According to the EU Kids Online survey conducted among children aged 9 to 16 and their parents in 25 European states in 2011, 29% of Estonian children had seen sexual images on the internet, and 19% had seen or received sexual messages. This was the second highest figure among the polled European countries. Estonia is also the top European Union country in cyber-bullying, with 14% of children having been subjected to bullying on the internet.[67]

104. During the visit, the Commissioner was informed about the internet police unit of the Police and Border Guard Board, which has been operational since 2011. The "web-constables" supported safe internet use by children through provision of advice and monitoring as well as reporting illegal web contents for further action by criminal investigators. According to the authorities, the activities of the internet police had resulted in increased reporting of internet abuse, including child pornography.

3.5 Conclusions and Recommendations

105. The Commissioner notes that while non-citizen parents can avail themselves of a simple and accessible procedure to acquire Estonian nationality for their children, the authorities also bear responsibility for preventing statelessness of new-born children. This is particularly important in situations where children are left stateless because of the unwillingness or inability of their parents to acquire Estonian citizenship for them or register them as legal residents in Estonia. The acquisition of nationality at birth is in line with the principle of the best interests of the child, as enshrined in Article 3 of the Convention on the Rights of the Child, and consolidates children's ability to participate fully in society.

106. The Commissioner urges the government to initiate a reform of the Citizenship Act so that citizenship is granted automatically at birth to children who would otherwise be stateless, instead of requiring their parents to apply for citizenship on their behalf. An opt-out possibility could be made available to parents who do not wish their new-born child to obtain Estonian citizenship and who can prove that the child has or will receive the nationality of another state.

107. As already recommended by the Chancellor of Justice, the authorities should address as a matter of urgency the situation of stateless minors aged 15 and older who are not granted citizenship because their parents have not applied for a residence permit for them before reaching the age of 15. The Commissioner stresses that an amendment to the Citizenship Act will be necessary to

[65] Child Abuse and the External Cause of Death in Estonia, Väli et al., 2011, p. 180.
[66] National report submitted by Estonia in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/10/EST/1, 8 November 2010, p. 13.
[67] EU Kids Online, 2011 Survey, pp. 23-25.

clarify the legal situation of such persons. The support expressed by the *Riigikogu* to the Chancellor's position on the issue is a positive step towards resolving the problem.

108. The Commissioner notes with satisfaction the plans to reform the Child Protection Act and the adoption of the Strategy for Children and Families 2012-2020. The new Act should outline the applicable standards for child protection and clearly identify the respective responsibilities of central, regional and municipal authorities. Following the good practice established for the Strategy, children and young people themselves should be heard in the process of preparing the Act. The availability of sufficient staff and expertise for child protection should be ensured in every municipality. The establishment of regional competence centres and mobile units will serve this aim. Particular emphasis should be placed on the development of psychiatric and psychological care for children as well as on preventive measures and early detection.

109. As regards alternative care for children deprived of parental care, the Commissioner stresses that the system of resource allocation should be reviewed to fulfil the legal requirements for an adequate number of qualified staff for all children's homes. The recommendation of the Chancellor of Justice to establish minimum standards for the basic needs of children should be implemented. Municipalities should draw up individual case plans for each child together with the children concerned and review them regularly. Further efforts are needed to provide assistance to foster families and to prepare young persons to live independently after they have left care homes. This is especially important for children and young adults with disabilities.

110. The Commissioner calls upon the Estonian authorities to prohibit the corporal punishment of children in all settings through explicit legal provisions. A legal prohibition sends a clear signal that any kind of violence against children is unacceptable, including in the home. Such a legislative ban should be supported by public education and awareness-raising campaigns advocating positive parenting and education without violence.

111. A systematic and firm response is necessary to address all violence and abuse against children, including internet-based abuse. It is important to pursue a comprehensive and systematic policy against bullying and other abusive behaviour in educational settings, which should include early interventions, victim support, training of staff, and targeted measures to instil a rights-based culture in schools. The Commissioner welcomes the Development Plan for Reducing Violence 2010-2014 and urges its full implementation and follow-up. Children should be informed about their right to be protected from all forms of violence and the services and assistance available to them as victims of violence.

112. The Commissioner encourages the Estonian authorities to proceed with the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Preventing and Combating Violence against Women and Domestic Violence.