

Equal Treatment Act

Passed 11 December 2008

(RT I 2008, 56, 315),

entered into force 1 January 2009

amended by the following Acts:

24.09.2009 entered into force 23.10.2009 - [RT I 2009, 48, 323](#);

28.01.2009 entered into force 01.07.2009 - [RT I 2009, 11, 67](#).

Chapter 1

General Provisions

§ 1. Purpose and scope of Act

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

(2) In order to fulfil the objective specified in subsection (1) of this section, the following shall be provided by law:

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

§ 2. Scope of application of Act

(1) Discrimination of persons on the grounds of nationality (ethnic origin), race or colour is prohibited in relation to:

- 1) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination of employment contracts or contracts for the provision of services, release from office;
- 3) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- 4) membership of, and involvement in, an organisation of employees or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- 5) social protection, including social security and healthcare, and social advantages;
- 6) education;
- 7) access to and supply of goods and services which are available to the public, including housing.

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

- 1) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional

hierarchy, including promotion;

2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination of employment contracts or contracts for the provision of services, release from office;

3) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

4) membership of, and involvement in, an organisation of employees or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

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

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

§ 3. Principle of equal treatment and discrimination

(1) The principle of equal treatment means that discrimination on the basis of attributes specified in subsection 1 (1) of this Act does not occur.

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

(3) Harassment is deemed to be a form of direct discrimination when unwanted conduct related to any of the attributes specified in subsection 1 (1) of this Act takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

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

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

(6) Discrimination shall also be taken to occur where one person is treated less favourably than others or negative consequences follow because he or she has submitted a complaint regarding discrimination or has supported a person who has submitted such complaint.

§ 4. Employee and employer

For the purposes of this Act:

“employee” means a person employed under an employment contract or a contract for the provision of services or a public servant within the meaning of the Public Service Act. Persons applying for employment or service are also deemed to be employees;

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

§ 5. Disability

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

Chapter 2

Principles of Equal Treatment

§ 6. Positive action

This Act does not prejudice the maintaining or adopting of specific measures to prevent or compensate for disadvantages linked to any of the attributes specified in subsection 1 (1) of this Act. Such action shall be in proportion to the objective being sought.

§ 7. Duty to provide explanation

Within fifteen days as of receipt of a written application, the person suspected of discrimination is required to provide a written explanation concerning his or her activities to the person who believes that he or she has been discriminated against on the basis of an attribute specified in subsection 1 (1) of this Act.

§ 8. Shared burden of proof

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

(24.09.2009 entered into force 23.10.2009 - [RT I 2009, 48, 323](#))

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

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

§ 9. Exceptions to prohibition on discrimination

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

(2) Differences of treatment on grounds of age shall not constitute discrimination, if, within the context of law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, vocational training and social insurance objectives, and if the means of achieving that aim are appropriate and necessary.

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

- 1) grant of preferences on grounds of representing the interests of employees or membership in an association representing the interests of employees if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary;
- 2) grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work.

§ 10. Occupational requirements

- (1) A difference of treatment which is based on an attribute related to any of the grounds specified in subsection 1 (1) of this Act shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such an attribute constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.
- (2) In the case of occupational activities within religious associations and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.
- (3) This Act shall thus not prejudice the right of religious associations and other public or private organisations, the ethos of which is based on religion or belief, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

§ 11. Taking of measures regarding disabled persons

- (1) Grant of preferences to disabled persons, including measures aimed at creating facilities for safeguarding or promoting their integration into the working environment, shall not constitute discrimination.
- (2) Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.
- (3) Upon determining whether the burden on the employer is disproportionate as specified in subsection (2) of this Act, the financial and other costs of the employer, the size of the agency or enterprise and the possibilities to obtain public funding and funding from other sources shall also be taken into account.

§ 11¹. Equal treatment of part-time employees and employees who have concluded employment contracts for specified term

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

(3) “Comparable employee” means an employee working for the same employer, who is engaged in the same or a similar work, due regard being given to qualification and skills of the employee. Where there is no comparable employee employed at the same employer, the comparison shall be made by reference to the applicable collective agreement. Where there is no collective agreement, an employee engaged in the same or similar work in the same region shall be deemed to be a comparable employee. (28.01.2009 entered into force 01.07.2009 - [RT I 2009, 11, 67](#))

Chapter 3

Implementation and Promotion of Principle of Equal Treatment

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

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

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

§ 13. Implementation and promotion of principle of equal treatment in field of education and training
Educational and research institutions and other agencies and persons organising training shall, upon determination of the content of instruction and organisation of instruction, take account of the need to promote the principle of equal treatment.

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

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

Chapter 4

Gender Equality and Equal Treatment Commissioner

§ 15. Gender Equality and Equal Treatment Commissioner

- (1) The Gender Equality and Equal Treatment Commissioner (hereinafter Commissioner) is an independent and impartial expert who acts independently, monitors compliance with the requirements of this Act and the Gender Equality Act and performs other functions imposed by law.
- (2) The Commissioner shall be appointed to office by the Minister of Social Affairs for five years.
- (3) The activities of the Commissioner shall be financed from the state budget.
- (4) The Commissioner shall be serviced by the Office. The structure of the Office shall be approved by the Commissioner.
- (5) Advisers and other officials appointed by the Commissioner shall assist the Commissioner with his or her work. Upon the temporary absence of the Commissioner, an official appointed by him or her shall substitute for the Commissioner.
- (6) The organisation of the activities of the Commissioner and his or her Office shall be provided for in the statutes established by the Government of the Republic.

§ 16. Competence of Commissioner

The Commissioner shall:

- 1) monitor compliance with the requirements of this Act and the Gender Equality Act;
- 2) advise and assist persons upon submission of complaints regarding discrimination;
- 3) provide opinions concerning possible cases of discrimination on the basis of the applications submitted by persons or on his or her own initiative on the basis of the obtained information;
- 4) analyse the effect of Acts on persons divided on the basis of the attributes specified in subsection 1 (1) of this Act and on the situation of men and women in society;
- 5) make proposals to the Government of the Republic, government agencies, local governments and their agencies for amendments to legislation;
- 6) advise and inform the Government of the Republic, government agencies and local government agencies on issues relating to the implementation of this Act and the Gender Equality Act;
- 7) publish reports on implementation of the principle of gender equality and equal treatment;
- 8) cooperate with other persons and agencies to promote gender equality and equal treatment;
- 9) take measures to promote equal treatment and gender equality.

§ 17. Opinion of Commissioner

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

(24.09.2009 entered into force 23.10.2009 - [RT I 2009, 48, 323](#))

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

(3) An applicant for an opinion shall submit to the Commissioner an application which sets out the circumstances which indicate that discrimination has occurred.

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

(24.09.2009 entered into force 23.10.2009 - [RT I 2009, 48, 323](#))

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

(6) In the case of an opinion provided on the Commissioner's own initiative or with the consent of the person who submitted an application, the Commissioner shall communicate the opinion to the person responsible for compliance with the principle of equal treatment in a situation on which the opinion is based for information or as a recommendation.

(24.09.2009 entered into force 23.10.2009 - [RT I 2009, 48, 323](#))

§ 18. Refusal of Commissioner to provide opinion

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

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

§ 19. Disclosure of results of investigation relating to application

Without the consent of the applicant, the Commissioner may disclose to the public only the content of an application concerning which proceedings are conducted.

§ 20. Termination of authority of Commissioner

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

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

§ 21. Extended inability of Commissioner to perform functions

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

§ 22. Restrictions on activities of Commissioner

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

Chapter 5

Resolution of Discrimination Disputes

§ 23. Resolution of discrimination disputes

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

§ 24. Compensation for damage

(1) If the rights of a person are violated due to discrimination, he or she may demand from the person who violates the rights termination of the discrimination and compensation for the damage caused to him or her by the violation on the bases of and pursuant to the procedure provided by law.

(2) A person whose rights are violated due to discrimination may demand that, in addition to the provisions of subsection (1) of this section, a reasonable amount of money be paid to the person as compensation for non-patrimonial damage caused by the violation.

(3) Upon determination of the amount of compensation, a court shall take into account, *inter alia*, the scope, duration and nature of the discrimination.

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

§ 25. Expiry of claim for compensation for damage

A claim provided for in § 24 of this Act expires within one year as of the date when the injured party becomes aware or should have become aware of the damage caused.

Chapter 6

Implementing Provisions

§ 26. Transitional provision

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

§ 27 – 33 (omitted from this text)

§ 34. Entry into force of Act

This Act enters into force on 1 January 2009.

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

