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1. Social protection & equal treatment

1.1 Access to services

- a) Social stratification based on wealth and socio-economic status has been increasing in Estonia and the level of people's pensions is not always adequate to avoid impoverishment in old-age.ⁱ Thus, access to different social services and the quality of such services are essential for the human rights of elderly people. In 2016 the new Social Welfare Actⁱⁱ, which obliged the local governments to guarantee several social services, came into force. However, many local governments still do not provide all of the required services, and/or have set unlawful barriers to the access of services. Moreover, also many of the state organised social services are not available for everyone. For example, the Chancellor has noticed that long waiting lists for special care services prevent people from getting the needed support on time, and there are problems with access to services meant for people with dementia.
- b) For a long time there has been a lack of suitable special care services for people with a severe, profound or permanent mental disorder. There is an especially dire lack of services for people who need 24-hour based care. Furthermore, if the person and their family/close ones would like to opt for special care services near their homes they may need to wait for years. This means that during the waiting time the care work falls on the family members who may therefore need to quit their jobs, and thus suffer from financial hardship. The lack of suitable services is often caused by the lack of monetary resources and suitable service providers. The Estonian legal system requires a person to contribute to the payment of some of the social services. The rules for determining the amount of contribution allow a personalised approach, but at the same time require from the local governments to take into account different circumstances, to go through a fairly complicated decision making process, and have a readiness to re-evaluate the decision. Local governments are sometimes unable to go through all the necessary procedures, and thus tend to leave the costs of the service disproportionately or entirely to the person or their family members which can leave the person without the needed service, or cause financial hardship. Problems with real and timely access to different social services often harm the most vulnerable – children with disabilities. The Chancellor also addressed this issue in the report to the UN in 2015.ⁱⁱⁱ

Recommendations for the State:

- Redesign pension regulations in a way that would decrease people's risk of impoverishment in old-age.
- Create a clear monitoring process to guarantee that all services, whether local (delivered by the local governments) or central (delivered by the state), are delivered to people in a meaningful way.
- Create and finance the needed services for people with dementia
- Guarantee the financing of the special care services, so that people can access the services within a reasonable time.
- Regulate the system of how the exact amount of co-payment is calculated and assure that the system takes into account people's different economic status.

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- Analyse how special care services are funded, find additional funds for services and make additional commitments to find missing service providers.
- Guarantee all necessary services and support for children with disabilities irrespective of their geographical location, and provide necessary data regarding this for better human rights monitoring.
- Harmonise different educational, social and health care services for children with disabilities into one functioning unison to avoid the unnecessary bureaucratic burden and unclear processes that delay the delivery of services that are necessary for the protection of their human rights.

1.2 Discrimination

The Estonian Equal Treatment Act^{iv} protects against discrimination on the basis of nationality (ethnicity), race, colour, religion or belief, age, disability or sexual orientation. According to the Equal Treatment Act, it is prohibited to discriminate against anyone on the basis of religion or belief, age, disability or sexual orientation only in situations related to employment (including vocational training). This means that it is very difficult for a person to protect their rights if they are discriminated against by a private person in a situation outside the field of work.

Recommendations for the State:

- Amend the Equal Treatment Act so that the law prohibits discrimination on the grounds of religion or belief, age, disability or sexual orientation also in areas other than work (for example, access to social welfare, social security and health care services; access to educational and other public products and services including housing).
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

1.3 Elderly people in the society

The Chancellor of Justice has received many applications concerning the treatment of elderly people. There has also been media coverage of age discrimination in employment, showing that stereotypes regarding age are widespread in society affecting not only people in age groups 60+, but also the middle-aged. However, it is often difficult to prove that unfavourable treatment (e.g. a person was not invited to a job interview although they met the selection criteria) took place because of the age, and proving of that can be very burdensome for the person. In addition to the employment context, the unfavourable treatment also appears in other fields of life. For example, data collection polls often exclude people who are 75 and older; there are very few initiatives that support and encourage elderly people to continue actively participating in the society (for example in the sports field); sometimes people over 65 years cannot participate in certain workshops/trainings. It is difficult to protect oneself against discrimination outside the employment context since the regulation does not provide enough protection against discrimination in other fields.

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Recommendations for the State:

- Amend the Equal Treatment Act so that it provides protection against age discrimination not only in employment but also in other areas of society (e.g. access to goods, services and housing, education, social services)
- Take effective measures to protect people from discrimination in employment. Such measures should include raising awareness among employers, supporting victims of discrimination in protecting their rights, and an effective follow-up.
- Collect data without direct or indirect age discrimination.
- Take measures to encourage the participation of older people in all areas of society.

2. Health care

Accessing primary care may become difficult in the long run due to a shortage of general practitioners willing to provide services under the current list-based and ownership-based system. Currently, the problem is acute mostly in rural areas, but similar worrying patterns can be detected also in cities. Many health care services are provided in larger towns to ensure quality and expediency. Therefore, people have to leave their place of residence to receive necessary health care services. Due to the unavailability of (accessible) transport services^v, health services may also become inaccessible for some people. There are still hospitals, general practitioners' offices, dentists and other healthcare facilities operating in older buildings that are not accessible for all. Consequently, a person might not have access to healthcare services. There is no action plan with clear timelines, benchmarks and budget allocations in place that would map existing accessibility barriers and would provide measures necessary to guarantee access to health care.

Moreover, the quality of services is not universal in all parts of Estonia, and some services (e.g. palliative care) are just not available at all in some geographical locations. In addition, there are services that remain inaccessible due to poor organisation. For example, there are problems with the availability of rehabilitation and speech therapy services that are organised in silos, which are forcing the person to move between service providers instead of one person supporting the rights-holder throughout their journey. Moreover, timely access to psychiatric care is not provided and children need parental consent to see a psychiatrist^{vi}.

The area of patient testaments (wills) is also causing problems in practice. In Estonia, patients can give end-of-life orders in the context of the provision of health care services, but as their consideration is not sufficiently regulated, a system has not been created through which a health care professional would see these orders easily and quickly.

Recommendations for the State:

- Amend the organisation of primary health care so that primary health care is reasonably guaranteed regardless of a person's place of residence.
- Ensure accessible transport services that support people's access to and from the healthcare provider and guarantee affordable accommodation for outpatients when needed.
- Guarantee a uniform quality of services by enhancing supervision and establishing common standards.

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- Reorganize rehabilitation treatment and therapy services so that a person's need for the service is assessed only once and they receive the necessary service from one place.
- Increase funding for psychiatric care and ensure the availability of specialists.
- Remove the parental consent requirement from the Mental Health Act.
- Redesign the use of patient testaments in practice.

3. Education

According to the law, the services of a special education teacher, a speech therapist, a psychologist and a social educator must be available to children in all schools^{vii}. Unfortunately, such support services are not available in all schools. There are also problems with finding necessary support persons for children with special needs. The legislation allows for a wide range of support measures to be used, e.g. a personalised curriculum, individual lessons, etc. However, the measures provided are not sufficiently implemented in practice. Applications to the Chancellor of Justice demonstrate that support services are not available to children in all kindergartens and schools. Furthermore, the lack of specialists is even more acute in schools that teach in Russian.

Schools and kindergartens for Russian-speaking and Estonian-speaking children are still operating side by side. However, there are some problems in educational institutions that teach predominantly in Russian that can impact children's right to education. For example, there are problems with teacher's Estonian language proficiency, the schools may not follow national curricula, students are not being offered sufficient support or the teachers do not have the opportunity to participate in trainings due to lack of language skills. As a result, Russian-speaking students are lagging behind in education. This in turn can hinder their equal opportunities for further studies and career choices.

Furthermore, there are also problems with providing education for children who stay with their parents in Estonia on a long-term visa and whose place of residence is not registered in the Estonian Population Register. Namely, the Pre-school Child Care Institutions Act and the Basic Schools and Upper Secondary Schools Act do not oblige the local government to organise the education of these children.

Recommendations for the State:

- Increase funding for support services, and monitor pre-emptively the quality of how these services are provided.
- Ensure that there is a structural support (e.g. working conditions) for specialists who are providing the necessary services.
- Ensure that schools provide support services according to the real needs of children.
- Ensure that children who are studying in schools that teach predominantly in Russian have equal access to education and career opportunities.
- Regulate in law the obligation to provide education for children staying in Estonia on a long-term visa and, if necessary, supplement the financing of local governments for students who do not have a residence registration in the Estonian Population Register.

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4. Children's Rights

The large number of applications and telephone calls received by the Chancellor of Justice concerning custody matters indicates serious problems in ensuring the best interests of the child after the parental separation. Thus, it is necessary to offer parents significantly more opportunities to use counselling services. Counselling and mediation should take place before the parties go to court. Counselling services have to be available everywhere in Estonia (not just in a few bigger towns) and also affordable for parents, or subsidised by the state where necessary. The state must make parental skills education available through offering more training and counselling for the development of parental skills. Promoting positive parenting practices and developing parental skills is necessary for better protection of children's rights.

Recommendations for the State:

- Provide parents with information and advice on custody matters and existing counselling opportunities (e.g. sharing the necessary information online).
- Improve the availability of family counselling and mediation services, as well as provide courts and local governments with information on service providers and funding opportunities.
- Ratify Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

5. Presumption of innocence in practice

Presumption of innocence is an important fundamental right enshrined in both the Estonian Constitution^{viii} and the Code of Criminal Procedure. Art 22 of the Constitution provides that no one may be deemed guilty of a criminal offence before he or she has been convicted in a court and before the conviction has become final. The requirement of presumption of innocence directly binds police officers, prosecutors, judges and other public officials. The European Court of Human Rights has ruled that no official may convey the conviction that a person is guilty of a criminal offense before the conviction takes effect. However, expressing doubts and informing the public about the content of the charges is generally considered permissible. However, the choice of words and expressions must be considered very carefully. Everyone has the right to a fair and impartial trial, and no one shall be condemned before the public. In practice, there are cases where compliance with the presumption of innocence is questionable.

Recommendation for the State:

- Ensure that the presumption of innocence is respected in practice when the state is planning or conducting proceedings (e.g. where, when and how to detain a person; when to conduct a search), and when informing the public.

6. Financial exclusion

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In Estonia, banks' risk management results in customers being selected more carefully and thus less commercially attractive or so-called higher-risk customers are not getting serviced. For example, banks are restricting Internet banking, card payments or ATM use of people who are debtors in enforcement proceedings, or people's bank accounts are shut down without a chance to reopen due to unusual transactions (in case of suspicion of money laundering). This puts people in a very difficult situation: without a bank account a person cannot pay for utilities, the kindergarten fee or make other similar payments that are integral and necessary part of everyday life. Closing accounts also restricts people's access to court as a state fee necessary for filing a complaint must also be paid via a bank transfer. A bank must ensure that a person can use basic payment services for the amount not seized in enforcement proceedings: it is not legal to restrict a person's right to make payments by a debit card, transfers in the Internet bank and withdraw money from an ATM.

The possibility to use a bank account significantly affects people's fundamental rights, because without an account it is impossible or very difficult to exercise property rights (art 32 of the Constitution), participate in business (art 31 of the Constitution), engage in self-fulfilment (art 19 of the Constitution), take care of one's family and children (§ 27 of the Constitution) or to apply to a court for the protection of their rights (§ 15 of the Constitution). Restrictions on a bank account further increase a debtor's financial exclusion and make it more difficult to re-pay the debt, which must be avoided in accordance with the Payment Accounts Directive and the European Commission's recommendations.

Recommendations for the State:

- Strengthen supervision of restrictions on bank payment services.
- Ensure that people have access to a bank account.

Written contribution of the Estonian Chancellor of Justice (NHRI) for the Universal Periodic Review (3rd cycle) of Republic Estonia, 15 October 2020

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ⁱ See OECD'S report: OECD (2019), Pensions at a Glance 2019: OECD and G20 Indicators (Summary), OECD Publishing, Paris, <https://doi.org/10.1787/491ba6a3-en>.

ⁱⁱ English translation of the Act is available here: <https://www.riigiteataja.ee/en/eli/530042020007/consolide>.

ⁱⁱⁱ See further points 7.2.3 and 7.3 in „Report of Chancellor of Justice of the Republic of Estonia on implementation of UN Convention on the Rights of the Child about fourth and fifth regular report of Republic of Estonia“: https://www.oiguskantsler.ee/sites/default/files/IMCE/CRC%20report%202015_Chancellor%20of%20Justice%20in%20Estonia_FINAL.pdf

^{iv} English version available here: <https://www.riigiteataja.ee/en/eli/503052017002/consolide>.

^v Problems with accessibility were pointed out by the Chancellor of Justice in the written submission to the UN regarding CRPD. The submission is annexed to this document. The Report of the Estonian Chamber of Disabled People and the data presented in “Strategy of Children and Families 2012–2020“ shows that accessibility to public services is not often ensured. According to the Strategy, only 20% of schools in Estonia are accessible and 80% of schools have guaranteed either partial access or no access at all; only 44% of nursery schools, 18% of municipality governments, 26% of youth centres, 27% of day centres and 22% of hobby centres are accessible.

^{vi} See the Mental Health Act: <https://www.riigiteataja.ee/en/eli/522012019010/consolide> and the Chancellor's Annual Report: <https://www.oiguskantsler.ee/ylevaade2020/lapsed-ja-noored>.

^{vii} See the Basic Schools and Upper Secondary Schools Act: <https://www.riigiteataja.ee/en/eli/530062020003/consolide>

^{viii} For the English translation of the Constitution see: <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.