

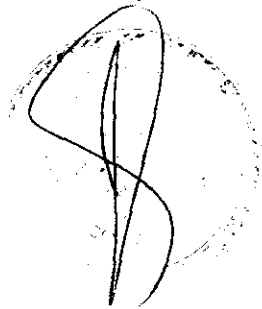
*Permanent Mission of Estonia
Geneva*

No. 10-6/422

The Permanent Mission of the Republic of Estonia to the United Nations and Other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and in response to the Latter's letter from 27 April 2012, has the honour to forward the reply of the Government of Estonia to the questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders.

The Permanent Mission of Estonia to the United Nations and Other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 15 May 2012



Enclosure: 5 pages

*Office of the High Commissioner for Human Rights
GENEVA*

Response of Estonia to the questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

- 1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.**

All extra-governmental activities are protected under the general legal framework, according to the constitutional rights to form non-profit associations (§ 48 of the Constitution) and to assemble peacefully and to conduct meetings without prior permission (§ 47 of the Constitution, and the Non-profit Associations Act and Public Meetings Act). Only a court may terminate or suspend the activities of, or fine, an organization, union or political party, for a violation of the law. Interference with violent dispersion of lawfully organized public meeting is punishable by a pecuniary punishment or up to one year of imprisonment (§ 158 of the Penal Code) and interference with the foundation of, joining or membership in a non-profit association, if the foundation or activities of the association do not violate the conditions or restrictions provided by law in the interests of the protection of the security of the state and the society, public order, morals or the rights of other people, and if joining or membership in the association does not violate the conditions or restrictions provided by law for persons in public service, is punishable by a fine of up to 300 fine units or by detention.

- b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.**

The guarantees are in compliance with article 20 of the Universal Declaration of Human Rights which provides for the freedom of peaceful assembly and association and prohibits being compelled to belong to an association.

- c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.**

All illegal interference with the freedoms of association and organization is punishable (see also answer in 1.a).

- 2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.**

Public order and safety are protected by the Police and Border Guard Act, specific acts for protecting public health and environment and municipal regulations. Disturbing the peace of other persons in a public place, or any other breach of public order is punishable by a fine of up to 100 fine units or by detention (§ 262 of Penal Code), and if committed by using violence, by offering resistance to a person protecting public order; by hiding of the face with a cover or mask or in any other manner which prevents identification; by using threat with a weapon or any other object used as a weapon, an explosive device or explosive substance; or by a group, by a pecuniary punishment or up to 5 years' imprisonment (§ 263). Acts of terrorism, financing and supporting it and preparation to acts of terrorism, and organizing mass disorders are also punishable (§§ 237-238). As concerns preventive administrative measures, the Police and Border Guard Act provides that restriction of persons' fundamental rights and other subjective rights in supervision proceedings shall take place only pursuant to law. A person shall be treated in supervision proceedings without defamation and without degrading his or her human dignity (§ 75).

- b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.**

The basic right to freedom of expression and opinion is guaranteed by the Constitution, § 45, providing for everyone "the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honor and good name of others. This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice. There is no censorship." Incitement of hatred and discrimination is punishable under the Penal Code (§ 151).

- 3. a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.**

The Penal Code and other punitive provisions are interpreted and applied without broadening the sense of the letter. The principle that the penal provision has to be clear and unambiguous is established by courts on constitutional basis.

- b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the**

administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

The right to defense and appeal are guaranteed. The court is independent and in general the trials are public. According to §9(3) of the Code of Criminal Procedure, investigative bodies, Prosecutors' Offices and courts shall treat the participants in a proceeding without defamation or degradation of their dignity. No one shall be subjected to torture or other cruel or inhuman treatment. Due to the general length of procedures, guarantees have been established to avoid unreasonable prolongation of procedures and to compensate the damages of persons who have been accused with no subsequent conviction.

- 4. a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.**

As concerns registered entities with legal capacity, the Non-profit Associations Act and Foundations Act constitute the legal basis for their establishment, registration and functioning. However, under the Obligations Act, all persons may pursue jointly a legitimate aim also without registration, when legal capacity is not claimed.

- b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.**

As mentioned above, establishment of non-profit entities is a constitutional right and dissolution of such entities is possible only in court proceedings. There are no requirements or limitations concerning the purpose of the entities if the purpose is lawful. The requirements of the referred acts concerning registration of the entities or their functioning are of purely administrative, formal or fiscal character. The requirements are in accordance with the standards set by the article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

- 5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?**

There are no sanctions for unassociated human rights defenders provided that the activities they exercise are not against the law. Furthermore, there are no specific regulations concerning specifically human rights defenders.

b) If such legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

Non-applicable.

6. Please indicate the measure taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

The Constitution guarantees everyone the right to freely obtain information disseminated for public use. All state agencies, local governments, and their officials have a duty to provide information about their activities, pursuant to procedure provided by law, to an Estonian citizen at his or her request, except information the disclosure of which is prohibited by law, and information intended exclusively for internal use. An Estonian citizen has the right to access information about him or herself held in state agencies and local governments and in state and local government archives, pursuant to procedure provided by law. This right may be restricted pursuant to law to protect the rights and freedoms of others or the confidentiality of a child's filiations, and in the interests of combating a criminal offence, apprehending a criminal offender, or ascertaining the truth in a criminal procedure. Citizens of foreign states and stateless persons who are in Estonia have the same aforementioned rights equally with Estonian citizens, unless otherwise provided by law (§ 44 of the Constitution). In addition, the right to address state agencies, local governments, and their officials with memoranda and petitions is guaranteed (§ 46 of the Constitution). The procedure for responding is further provided by law; in particular - the Public Information Act, the Response to Memoranda and Requests for Explanations Act, and the State Secrets and Classified Information of Foreign States Act. The Public Information Act, § 4, provides that in order to ensure democracy, to enable public interest to be met and to enable all persons to exercise their rights and freedoms and perform their obligations, holders of information are required to ensure access to the information in their possession under the conditions and pursuant to the procedure provided by law. Access to information shall be ensured for every person in the quickest and easiest manner possible. Upon granting access to information, the inviolability of the private life of persons shall be ensured. Access to information shall be granted without charge unless payment for the direct expenses relating to the release of the information is prescribed by law. Every person has the right to contest a restriction on access to information if such restriction violates the rights or freedoms of the person. To deny access to information which should be public by law, is punishable (§ 54¹). On the other hand, divulging state secret or disclosure of information obtained in the course of professional activities and relating to the health, private life or commercial activities of another person by a person who is required by law to maintain the confidentiality of such information, or illegal disclosure of sensitive personal data is punishable by a pecuniary punishment or up to 3 years' imprisonment (§§ 157-157¹ of the Penal Code).

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander of blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

Defamation and slander are prohibited under private law. Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, color, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person are punishable by a fine of up to 300 fine units or by detention; in aggravating circumstances by a pecuniary punishment or up to 3 years' imprisonment (§ 151 of the Penal Code). This provision implements the right to equality guaranteed by the § 12 of the Constitution, providing that 'everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, color, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

The prohibition of incitement of hatred and discrimination is in accordance with international standards, in particular with the UN Declaration on the Elimination of All Forms of Racial Discrimination and articles 10, 14 and 17 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

8. Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

Non-applicable.

