



Office of the Chancellor of Justice

Mr Felipe González Morales  
UN Special Rapporteur on the Human  
Rights of Migrants  
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Our ref. 27.05.2019 No 5-2/1902301

### **Gender responsive migration legislation, policies and practices in Estonia**

Dear Mr Felipe González Morales

Since January 1, 2019 the Chancellor of Justice of Estonia performs the functions of protection and promotion of human rights on the basis of the UN General Assembly Resolution No 48/134 of 20 December 1993 “National institutions for the promotion and protection of human rights”.

On behalf of the Chancellor of Justice of Estonia we would like to give the following comments concerning gender responsive legislation, policies and practices.

1. The concept “gender responsiveness” is not directly defined in Estonian legislative acts.
2. Several legislative acts set forth the general principles of law. These require that the administrative authorities have to take into account the gender aspects when carrying out the administrative proceedings related to migration even if this requirement is not expressly specified in the law.

Article 12(1) of the [Constitution](#) of the Republic of Estonia prohibits discrimination inter alia on the grounds of gender. According to the Constitution it is the duty of the legislature, the executive, the judiciary, and of local authorities, to guarantee the rights and freedoms provided in the Constitution (Article 14 of the Constitution).

The implementation of the principle of gender equality is regulated by the [Gender Equality Act](#) (hereinafter the GEA). Article 9 concerns the promotion of gender equality. Article 9(2) of the GEA provides that upon planning, implementation and assessment of national, regional and institutional strategies, policies and action plans, the state and local government authorities have to take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society.

The principles concerning the conducting of the activities of the administrative authorities are regulated by the [Administrative Procedure Act](#) (hereinafter the APA). Administrative

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procedure has to be purposeful, efficient and straightforward and conducted without undue delay, avoiding superfluous costs and inconveniences to the persons (Article 5(2) of the APA). An administrative authority shall determine the form of procedural acts and other details of administrative procedure on the basis of the right of discretion unless otherwise provided by an Act or regulation (Article 5(1) of the APA). The right of discretion shall be exercised in accordance with the limits of authorization, the purpose of discretion and the general principles of justice, taking into account relevant facts and considering legitimate interests (Article 4(2) of the APA).

The Police and Border Guard Board (PBGB)<sup>1</sup> has informed the Office of the Chancellor of Justice that the Board has not particularly analyzed the need to carry out administrative proceedings in gender-responsive manner. However, some rules are established by the European Asylum Support Office<sup>2</sup> and their tools and materials are taken into account within the proceedings for international protection. Therefore, the case officer is usually of the same sex as the applicant for international protection.

The PBGB pointed out that there have not been situations in other proceedings related to migrants (e.g. applications for residence permits, residence rights, registration of the right to work, visa proceedings) that the gender specific aspects would have been raised or that the applicant would have asked that the interview would be carried out by the person of the same sex. However, if needed then the PBGB would be ready to make such arrangements. The personnel of the PBGB is constantly being trained to take into account the cultural and religious background and customs of the applicants.

The case officers of the PBGB are paying attention to the way the persons involved in the proceedings are communicating among themselves to notice any signs of dependency or if the person is a victim of trafficking or domestic violence. If necessary, the experts are involved to handle such situations safely. During the international protection proceedings the persons are interviewed separately.

The legislative acts set forth several provisions which are related to the gender of the participants of the proceedings.

Any searches or examination of the person have to be carried out by the person of the same sex (Article 15(1)(2) and Article 15(3)(3) of the [Act on Granting International Protection to Aliens](#) (hereinafter the AGIPA).

It is expressly stated in the AGIPA that gender specific acts may be considered as a form of persecution (Article 19(2)(6) of the AGIPA; please see also the general definition and examples of the grounds of persecution (Article 19(1) ja (2) of the AGIPA). When assessing the reasons for persecution, the Police and Border Guard Board has to take into account the concepts of race, religion and nationality recognized in a country and discrimination on the basis of political opinions or membership of a particular social group.

The PBGB pointed out that the Board does not collect statistics about the causes for applying for international protection. The PBGB is investigating the circumstances of every application, taking into account the personal circumstances of each applicant. Therefore it has not been regulated by internal rules which circumstances are considered as gender specific acts. In practice international protection has been given to three girls from Somalia because the cumulative effect of different circumstances (being a women, belonging to a national

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<sup>1</sup> Letter of 24.05.2019, No 1.2-5/16-2.

<sup>2</sup> Available at: <https://www.easo.europa.eu/practical-tools>.

minority, forced marriage). Also one woman with children from Azerbaijan was granted international protection because she was a victim of systemic domestic violence. There have not been cases where the PBGB would have established that the applicant for international protection was a victim of trafficking of human beings.

If criminal proceedings are initiated, then the victim has the right to request that his or her hearing is conducted by a person of the same sex when it comes to sexual violence, gender violence or a criminal offence committed in close relationship, except if the hearing is conducted by a prosecutor or a judge or if this would hinder the course of the proceeding (Article 38(1)(11) of the [Code of Criminal Procedure](#)). If it is necessary to undress a person in the course of a search, physical examination or taking of comparative samples, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists shall be of the same sex as the person (Article 64(2) of the Code of Criminal Procedure).

Gender responsiveness is partly related also to the obligation to take into account the special needs of the applicants for international protection and the persons to be expelled.

An applicant with special needs is, in particular, a vulnerable person, such as a minor, an unaccompanied minor, a disabled person, an elderly person, a pregnant woman, a single parent with minor children, a victim of trafficking, a person with serious illness, a person with mental health problems and a victim of torture or rape or a person who has been subjected to other serious forms of psychological, physical or sexual violence (Article 15<sup>1</sup>(1) of the AGIPA).

The administrative authority has to take into account the specific situation of a vulnerable person and the special needs arising therefrom in the international protection proceedings (Article 15<sup>1</sup>(1) of the AGIPA). An applicant for international protection is entitled to get support based on his or her special needs (Article 10(2)(5) of the AGIPA).

The PBGB has to take into account the special needs of the vulnerable persons and ensure regular monitoring of the detention of the persons with special needs (Article 36<sup>3</sup>(4) of the AGIPA).

The PBGB may give priority to examining an application of an applicant with a special need and to an application the examining of which is given priority for a well-founded need (Article 18(10) of the AGIPA).

Concerning the persons to be expelled, the administrative authority that is conducting the procedural acts is required to take into account the specific needs of vulnerable persons (Article 6<sup>7</sup> of the [Obligation to Leave and Prohibition on Entry Act](#) (hereinafter the OLPEA)). They may receive support with arranging the accommodation. If an alien who is staying in Estonia without a basis for the stay in Estonia has no sufficient finances, the PBGB or the Estonian Internal Security Service may organize accommodation of the alien if this is necessary for humanitarian considerations or for the protection of a vulnerable person and if the alien cannot use accommodation elsewhere (Article 13<sup>2</sup> of the OLPEA).

According to the data provided by the PBGB the Board is taking into account the tools elaborated by the EASO when assessing special needs. The officials of the PBGB pay attention to the possible special needs already when the application for international protection is received. In practice it is most likely that special needs are revealed during the personal interview. Also the personnel of the accommodation center of applicants for international protection has to inform the PBGB about the special needs of the persons. If

necessary, an expertise is carried out. The PBGB can involve an expert to participate during the interview. In practice their applications are given priority if it is necessary and possible. The priority is always given to unaccompanied minors and women whose pregnancy is in the late stage, because it would be difficult for them to participate in the proceedings later. If the person with special needs is detained, they are provided with necessary services.

The PBGB stated that special needs of the person are taken into account within the expulsion proceedings. For example, if necessary, the social worker, psychologist, doctor or other expert is involved to the team carrying out the expulsion of the person. If necessary, before the expulsion psychiatric aid or other help is made available to the person by the PBGB. The officials of the PBGB are constantly being trained to notice the special needs and vulnerability of the persons. If women or children are expelled, then at least one member of the accompanying crew is female.

Although it is not directly stipulated in the law, the gender aspects have to be taken into account when assessing the best interest of the child to decide whether the minor can be returned to his or her country of origin (Article 21 of the OLPEA).

According to Article 26<sup>5</sup>(2) of the OLPEA male and female persons to be expelled shall be accommodated in separate rooms in the detention center. Family members are accommodated together (Article 26<sup>5</sup>(3) of the OLPEA). These provisions are applied also to the applicants for international protection (Article 36<sup>3</sup>(1) of the AGIPA).

The Chancellor of Justice is always controlling the situation of the female detainees or applicants for international protection when carrying out the inspection visits to the detention center of foreigners or accommodation centers for persons applying for international protection. Also the personnel of monitoring teams is always comprised by taking into account the gender aspect.

According to the [Aliens Act](#) (hereinafter the AA) it is possible to receive a residence permit if the victim or witness of trafficking is participating in the criminal proceedings. An alien may be issued a temporary residence permit for participation in criminal proceedings for assistance in the ascertaining of the facts of the subject of proof of a criminal offence if he or she is a victim or a witness in a criminal procedure, the object of which is a criminal offence provided for in Articles 133-133<sup>3</sup>, Articles 138-140, Article 145<sup>1</sup>, Article 175 or clause 260<sup>1</sup>(1)(3) or (5) of the [Penal Code](#) (Article 203(1) of the AA). The residence permit is issued only if the person has facilitated the ascertaining of facts relating to the subject of proof of a criminal offence or has given consent for doing so and has broken off all the relations with the persons who are being suspected or accused of committing the respective offence (Article 203(2) of the AA). This person is entitled to some victim support services (Article 226 of the AA).

According to the data provided by the PBGB there have been only three applications for issuing a residence permit on such grounds (two applications concerned minor girls and one application adult man). In two cases the residence permits were issued, in one case the proceedings were ended.

3. The Office of the Chancellor of Justice has not been informed about the challenges or obstacles in the implementation of gender-responsive migration legislation or policies. Also the PBGB has not encountered situations where it would not have been possible to take into account the gender of the person if needed.

4. The gathered data is not sufficient to make recommendations about what has to be done differently to maximize the impact of these provisions. These questions remain under the attention of the Office of the Chancellor of Justice.
5. Other stakeholders can provide support with raising awareness about the need to take into account the gender aspects. For example, the non-governmental organizations who are working with the migrants could be able to communicate cases which have raised concern etc.

We hope you find this information useful.

Sincerely Yours,

A handwritten signature in blue ink, appearing to read 'Kertti Pilvik', enclosed in a light blue rectangular box. The signature is written in a cursive style with a large, sweeping flourish above the first letter.

Kertti Pilvik  
Head of International Relations and Organisational Development  
On behalf of the Chancellor of Justice