



# The EU Mutual Learning Programme in Gender Equality

## Tackling sexual harassment

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Justice



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# Tackling sexual harassment in Estonia

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## 1. Country context

In the past 20 years a set of social topics has been studied from a gender perspective in Estonia and the scholarship has also found its way into public discussions (e.g. on prostitution, intimate partner violence, life-work balance, gender pay gap, women's participation in the decision-making process). One aspect of gender discrimination – sexual harassment – has been side lined both in scholarship and public debates. However, the sphere of public and digital harassment has not found special attention neither by the researchers, nor by the policy makers. Most importantly, it was not legally regulated until few months ago, i.e. July 2017 (see for more under next chapter).

### 1.1. Legal definition

The concept of sexual harassment was first established in Estonian legislation in 2004, with the adoption of the Gender Equality Act (SoVS § 3 lg 1 p 5). The Act was modified in 2009 and the concept of gender harassment was also added that had been included in the EU directive in 2002 already. The directive as well the Estonian Gender Equality Act defines sexual and gender harassment as forms of sexual discrimination as follows [RT I 2009, 48, 323 - entry into force 23.10.2009]:

*“sexual harassment” occurs where any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment (SoVS § 3 lg 1 p 5).*

#### 1.1.1. Recent changes in legal acts

In May 2017, Estonian Parliament's Law Commission voted to establish sexual harassment as a separate misdeed in the Estonian Penal Code. This far the only legal act that regulates sexual harassment was the Estonian Gender Equality Act (Draft Act no. 385). In Estonian Penal Code [RT I, 26.06.2017, 69 - entry into force 06.07.2017], sexual harassment is defined as an offence against political and civil rights, more precisely as an offence against Equality, accordingly:

### § 153. Sexual harassment

(1) An intentional physical act of sexual nature against the will of another person committed against him or her with degrading objectives or consequences is punishable by a fine of up to 300 fine units<sup>1</sup> or by detention.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 2000 euros.

In the press release 15.07.17 made by Ministry of Justice, it is explained that the pursuit of harassment is when another person, who may be a current or former family member or a colleague or acquaintance but also a totally alien person, traps, watches, or otherwise contacts the victim repeatedly, consistently or for a long time, seeking to contact him/her, what results in suffering, feeling scared, humiliated or otherwise disturbed significantly. So far, it has been possible to appeal to a civil court for restraining such an activity, the violation of which was followed by criminal sanctions. Now it is possible to turn to the police in the case of harassing persecution. It is important that activities that intimidate a victim or severely disturb his life must be repeated and against the will of the victim.

People can also turn to police in case of sexual harassment - if the act is physical and has sexual features, is an adversary to the victim and reduces human dignity. For example, if one person compresses himself against another person for sexual descent and rubs his lower body against another. Physical sexual nature does not relate to areas of a definite victim's body, but sexual harassment does not address the so-called prowling. Also, touching another persons' body unintentionally, will not fall under the new composition.

Sexual harassment is a misdemeanour, according to Penal Code punishable by fine or detention. Serious sexual acts are still punishable under either the provisions for harming health or the criminal offenses against sexual self-determination. Lighter acts, which, however, do not fit under the new section, are punishable as a violation of public order.

Amendments to the Penal Code and other laws, which came into force on July 6, 2017, relate to Estonia's accession to The Council of Europe Convention on preventing and combating violence against women and domestic violence (i.e. Istanbul Convention). Istanbul Convention was signed by Estonia 01.12.14. and is expected to be ratified it in September 2017. The purpose of the convention is to develop a comprehensive framework, policies and measures to protect and assist all victims of violence against women and domestic violence. In order to join the Convention, Estonian law was brought into compliance with the requirements of the Convention, and Penal Code's new offenses were created as the last major amendment.

It is important to note that the law defines pursuit as criminal offence, whilst sexual harassment is defined as misdemeanour.

In Estonia a person who experiences harassment can turn to the courts, but in the case of personal labour disputes the pre-court level of handling the case is the Labour Disputes Committee of the Labour Inspectorate. People can also turn to the

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<sup>1</sup> (1) For a misdemeanour, a court or a body conducting extra-judicial proceedings may impose a fine up to three hundred fine units. A fine unit is the base amount of a fine and is equal to 4 euros. [RT I, 12.07.2014, 1 - entry into force 01.01.2015]

Office of the Equal Treatment Commissioner (previously called Gender Equality and Equal Treatment Commissioner) for advice, opinions and recommendations, but the commissioner's opinions are not legally binding, that is, she or he cannot impose sanctions.

## 2. Practices

What comes to practices in terms of harassment, there is data collected on sexual and gender harassment that first of all concerns harassment in work related contexts. No data is gathered about cases that concern digital pursuit or harassment in public space, especially as this far (i.e. until 6<sup>th</sup> of July 2017) the cases were processed under other sections of Estonian Penal Code ( i.e. §141. Rape; § 142. Satisfaction of sexual desire by violence; §143. Compelling person to engage in sexual intercourse or other act of sexual nature; §143/1 Compelling person to satisfy sexual desire; § 143/2. Sexual intercourse or other act of sexual nature using influence; §144. Sexual intercourse with descendant; §145. Sexual intercourse or other act of sexual nature with child).

### 2.1. Public and –digital harassment

This far, i.e. during the period of 6<sup>th</sup> of July until 30<sup>th</sup> of August, there have already been about five cases (Tammiste and Kruusement 2017) that pressed charges to the police, based on the Penal Code's § 153. These cases concern for example physical touching while jogging in the park or touching in public transport.

#### 2.1.1. Initiatives in raising the awareness of children about online-security

- There are three online constables working in Estonia, the first one started working in 2015 and the last one started working in spring 2017. Two of them are working in Estonian speaking network environment, while one constable is patrolling in Russian-speaking environments. They mostly patrol in Facebook, Twitter, Mary and in local social media portals such as Rate, Odnoklassnik, V Kontakte and also in Forums, where children can share their concerns. Their job is also to give advice on citizens in case there are questions and follow webcams. For example, social media has been hit by panic, and a message from some suspicious men that flatter children or take pictures of them on the street is spreading very quickly.
- 07.02.17 - the International Day of Safe Internet was celebrated, during which discussions, quizzes, games, competitions and other events were organized in schools, kindergartens and youth centres throughout Estonia.
- Due to International Day of Safe internet, there were some special interview articles with online-constables who emphasised the increase in the incidence of cases where girls aged 12-14, with the first love found, have sent their nude images, which are later re-distributed.
- There is a webpage <http://www.targaltinternetis.ee/en/> (in English *smart in the net*) with lots of information on the activities carried out in the field of internet/media safety.
- It is possible for schools to invite an online constable to come to talk about safety in the internet, including digital sexual harassment. This opportunity is frequently used by the schools.

### 2.1.2. Research data on underage children (EU kids online Survey<sup>2</sup>)

- One in eight children, in age 9 to 16, has seen sex videos and received sexual messages, but most did not consider them to be harmful.
- Boys, especially teenagers, are more exposed to the network environment sex pics, while girls are a bit more likely to get nasty or offensive messages. However, the girls are more likely to lose their mind when experiencing the risk.
- 15% of children aged 11-16 have received person to person messages with sexual nature - either talking about sex or pictures of naked or sexy people"; 3% say they have such messages sent or posted.
- ¼ of the children who have got sexting messages, reported as being disrupted.
- About 40% these children block the sender or erased the message. Most of them considered this as a useful form to deal with the issue.
- 52% of the parents, whose children reported experiences of sexting, reported that their children have not had such experience. 61% of the parents who's children reported on meeting their online friend in real life, assumed their children have not had such an experience.

## 3. Policy debate

According to Estonian Violence Prevention Strategy 2015-2020, there are five areas of violence: violence between children; child abuse; domestic violence (intimate partnership violence); sexual violence; human trafficking. There is a roundtable that meets few times a year and consists of the representatives of the ministries (Ministry of Justice; Ministry of Education and Research; Ministry of Social Affairs), NGOs and other important groups of society dealing with violence. However, in this roundtable the pursuit of harassment, as well as digital harassment has not been under discussion.

The year 2017 was also remarkable because a case was made public in the media that concerned the sexual relationship between a PhD student and her supervisor. Although the media presented this as the first publicized case of sexual harassment, the student pressed charges to the police, based on the Penal Code's § 152 that covers violation of equality as a result of unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status which is punishable by a fine of up to three hundred fine units or by detention (RT I 2001, 61, 364). Although there were many articles about the case – every next one uncovering new facts about the case, no public debate followed – politicians did not make statements, not many opinionated articles were published etc.

<sup>2</sup> EU Kids online Survey (2017) Riskid ja turvalisus internetis: euroopa laste vaatenurk peamiste tulemuste eestikeelne kokkuvõte (Summary of main results in Estonia)  
[http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20II%20\(2009-11\)/EUKidsExecSummary/EstoniaExecSum.pdf](http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20II%20(2009-11)/EUKidsExecSummary/EstoniaExecSum.pdf) (retrieved 01.09.17)

## 4. Learning from Danish and French policies and measures

The Danish Ministry of Education has proposed initiatives that set a perfect example for the Estonian Ministry of Education to take over. The only action that might not be needed concerns establishing a hotline for sexually abusive behaviour. In Estonia we already have a [lapsemure.ee](http://lapsemure.ee) website as well as the hotline, however it is open only from 10 am until 6 pm.

Another element that could be applied concerns the legislation. In Estonia the term *digital sexual abuse* should be used in everyday official language and should be defined by Penal Code. The term is also missing from the Law Enforcement Act (this is the act that provides for the general principles of, bases for and organisation of the protection of public order).

It would be helpful to know more about, the role of school principals in Denmark. In Estonia the role of school in the related legal, as well as gender, areas, is questionable due to our society's lack of readiness to deal with gender issues.

In French paper, the authors emphasise that in the new law, i.e. Criminal Code, sexual harassment does not require repetition. In Estonia, the only section where repetition is required concerns § 157/3. Harassing pursuit, that is defined as repeated or consistent attempts to contact another person, watching him or her ... etc. [RT I, 26.06.2017, 69 - entry into force 06.07.2017]. Under the section of Sexual harassment, repetition is not required and this applies for both laws that define sexual harassment – Gender Equality Act and Estonian Penal Code.

However, the difference between French Criminal Code and Estonian legislation is that we now have two law regulating harassment and they apply for different spheres. The Gender Equality Act covers professional life, upon acquisition of education and participation in other areas of social life. The Penal Code covers harassment in public spaces.

The measures on French public transport do not seem to fit in the Estonian context. Estonia is a small country, with 1,3 million people. We have no metros and the biggest city is capital Tallinn, with less than 500 000 habitants. Of course it does not mean that there can be no public harassment cases, however these cases are not that spread. Therefore, the idea of a special emergency number does not seem necessary.

## 5. Conclusions and recommendations for fighting sexual harassment

It is only lately, that sexual harassment is defined as a crime, however, as written above, the state has already been dealing with the pursuit of harassment and digital harassment, mostly on the level of raising awareness among children. In other words the focus is laid on prevention.

The scientists have found out, the weak party in the system is the parents. The parents are not aware of the dangers and they do not know how to support their kids. One of the suggestions concerns educating the parents.

As it appeared from the interviews with the civil servants from the Ministry of Justice, although they were made responsible for preparing the act, they had not enough time for carrying out the analysis of the cases, data and research in the area. It would be helpful to form an international expert team on these matters, so that one would not have to “invent the bicycle”.

More clearance needs to be brought into terms of sexual harassment and pursuit of harassment. There are cases of pursuit of harassment without sexual aspect, and there are cases where it is present. It seems that different levels of policy makers, as well as researchers, are dealing with either one of them. Sexual harassment, as a term, is defined and regulated in both legal acts, however they apply to different contexts. Gender Equality act deals mostly with harassment at work, including gender harassment, whilst Penal Code deals with harassment in public sectors - pursuit of harassment and family violence, and rather does not define sexual aspect as the focal point. There is a danger that in case these two types of behaviour overlap – pursuit + sexual harassment, they might not be analysed sufficiently enough by the policy makers.

Another concern for Estonia is that although we have Gender Equality Act, there seems to be a hierarchy among laws and the latter falls into lowest hierarchy level.