

**CIVIL SERVICES AND STATE ADMINISTRATIONS (CSSA)**

**COUNTRY REPORT: ESTONIA**

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**Ms Tiina RANDMA**

**Head, Department of Public Administration and Social Work**

**School of Social Sciences**

**University of Tartu**

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## ESTONIA

### A. PUBLIC SERVICE CHARACTERISTICS

#### 1. LEGAL STATUS OF PUBLIC SERVANTS

##### ◆ Legal provisions defining the status of public servants

###### 1.1

The legal basis for the existence and status of public servants is provided by:

- the **Constitution** of the Republic of Estonia (translation added);
- the **Public Service Act** (and its amendments) (translation added) and its implementation acts.

According to the Estonian **Constitution** accepted by the referendum held on 28 June 1992, the offices in state agencies shall be filled by Estonian citizens, on the basis of and pursuant to procedures established by law. These offices may, exceptionally, be filled by citizens of foreign states or stateless persons, in accordance with law. The right of some categories of civil servants to engage in enterprise and to form commercial associations (§ 31), as well as the right to belong to political parties and some types of non-profit associations (§ 48) may be restricted by law. (§ 30)

The **Public Service Act** (PSA), adopted by the Parliament of Estonia (*Riigikogu*), on 25 January 1995 (came into force on 1 January 1996), specifies the status of public servants as follows: A public servant is a person who performs remunerative work in a state or local government administrative agency (§4). An administrative agency is an agency which is financed from the state budget or a local government budget and the function of which is to exercise public authority (§2). A person who is in a service relationship with the state is a state public servant. A person who is in a service relationship with a local government unit is a local government servant (§ 4).

An Estonian citizen who has attained 21 years of age, has at least a secondary education, has legal competence and is proficient in Estonian to the extent established by or pursuant to law may be employed in the service as a state official (§ 14). Employment in a state office is considered to be an employment relationship in an elected or appointed office, on the staff of an institution exercising legislative, executive or judicial power, state supervision, control or national defence (§ 1).

State administrative agencies in which employment is considered to be public service are determined by the PSA § 2 (2).

The PSA § 12 (1, 2) enacts the special cases of application of PSA. It constitutes that PSA shall not regulate service in the regular armed forces and shall not extend to the members of the *Riigikogu*, the President of the Republic, the members of the Government of the

Republic and to the members of a local government council, except for some paragraphs (see PSA §12)

## **1.2**

The PSA § 5 classifies public servants as officials, support staff or non-staff public servants. In conformity with § 7 the support staff are clerical staff employed under employment contracts in support staff positions on the staff of an administrative agency; their employment is regulated by the Labour Contracts Act (the labour code).

The support staff is categorised by clerical staff (e.g. bookkeepers, typists), service staff, skilled workers and craftsmen, operators of equipment and machinery, and unskilled workers (e.g. janitors, cleaners).

The PSA § 13 provides the application of labour laws to public servants:

Labour laws shall extend to officials insofar as PSA or laws specifically regulating the public service do not provide otherwise. The Employment Contracts Act shall not extend to officials. The Employment Contracts Act and other labour laws shall extend to support staff insofar as PSA or laws specifically regulating the public service do not provide otherwise.

## **1.3**

The PSA § 21 provides that an official shall be employed in the service in a vacant office on the staff of an administrative agency for an unspecified period of time, except in the cases provided for in sub-section (2):

- an adviser or assistant to the Chairman or Deputy Chairman of the *Riigikogu*, an adviser or consultant to a faction or temporary committee of the *Riigikogu*, for the term of office of a given membership of the *Riigikogu*, but for not longer than the expiry of the term of office of the Chairman or Deputy Chairman of the *Riigikogu*, or the termination of activities of the faction or temporary committee of the *Riigikogu*;
- an adviser to the President of the Republic, for the term of office of the President of the Republic;
- an adviser or assistant to the Prime Minister or a minister, for the term of office of the Government of the Republic or the minister, respectively.

## **1.4**

According to § 12 the PSA shall extend, insofar as not otherwise provided by or on the basis of the Constitution or specific laws, to:

- 1) the Auditor-General;
- 2) the Legal Chancellor;
- 3) judges;
- 4) police officials;
- 5) border guard officials;
- 6) custodial officials;
- 7) the Public Prosecutor.

The provisions of the PSA shall extend to officials who are not mentioned in this section, unless otherwise provided by laws specifically regulating the public service (e. g. customs officials, foreign service). In the case of overlapping of the legal norms, the principle *lex specialis derogat legi generali* must be applied. If the special statute in the public service

does not include the corresponding provisions, they must be found, if not excluded, in the PSA. The special statutes may also complete the general PSA. In this case the general norms must be applied with the exceptions provided by special statutes.

In the next paragraphs the special statutes and the main differences between general public service and service under special statutes will be covered. From 1.5 on, the focus will be on the state public servants as regulated by the PSA and specified by the State Public Servants' Official Titles and Salary Scale Act (translation added).

1. The **State Audit Office Act** (SAOA, translation added) was adopted on 10 January 1995, and came into force on 6 February 1995.

An Estonian citizen who is not older than 60 years of age and is knowledgeable of the fundamental issues of public administration and economic management may be appointed as Auditor-General (§ 9 (3)). The Auditor-General shall be appointed to and released from office by the Estonian Parliament on the proposal of the President of the Republic for a term of five years (SAOA § 9 (1)).

The heads of departments which perform audits and the chief auditors must have an academic degree and training appropriate for the functions of the department.

The Auditor-General shall notify the President of the Republic of his/her resignation from office at least three months in advance. The grounds for the termination of the authority of the Auditor-General are provided in SAOA § 16.

An annual remuneration amount for employees and engaged persons of the State Audit Office shall be prescribed in the budget of the State Audit Office. It is based on the salary conditions for employees of agencies and organisations subject to a budget, which thereby increases the monthly salary rate of employees of the State Audit Office by up to two times as compared with the salary rates of ministry employees of a corresponding category (SAOA § 36). Supplementary funds of up to 25 per cent of the annual remuneration amount shall be prescribed for payment of additional remuneration and rewards and for consultation and expert analysis.

All social guarantees prescribed for state public servants extend to employees of the State Audit Office. The SAOA (§ 37, 39, 40) provides the following additional exceptions: reimbursement of travel expenses, benefit upon death or disability of an official of the State Audit Office and release of officials of the State Audit Office from training exercises for reservists.

Officials of the State Audit Office are ensured state pensions from the state budget with the following exception (SAOA § 38): The pension for a retired official of the State Audit Office is 60 per cent of the official's last salary. The right of an official of the State Audit Office to a pension is granted after 15 years of employment as an official of the State Audit Office. After five years of employment as an official of the State Audit Office, the right to a pension is also granted to an official who prior to employment in the State Audit Office was employed for not less than ten years as a public servant in a state agency or local

government agency, as an auditor or in a research or teaching position. However, no pension is paid during the time the person continues to be employed.

2. The **Legal Chancellor Activities Organisation Act** (LCAOA, translation added) was adopted on 5 May 1993, and came into force on 24 May 1993.

The Legal Chancellor must be an Estonian citizen. The Legal Chancellor must have higher education in law, high professional qualifications and a corresponding practical work experience, and he/she must be fully proficient in the official language (§ 4). A person who is convicted of an intentionally committed criminal offence or who is not suited to work as the Legal Chancellor due to his/her state of health shall not be appointed as the Legal Chancellor (§ 5). The Legal Chancellor shall be appointed to office by the *Riigikogu* on the proposal of the President of the Republic for a term of seven years (§ 3).

The Legal Chancellor shall notify the President of the Republic of his/her resignation from office at least four months in advance. The grounds for the termination of the authority of the Legal Chancellor are provided in LCAOA § 10.

According to the LCAOA § 33 the salary of the Deputy Legal Chancellor-Adviser is equal to the salary of the secretary-general of a ministry. The work of advisers to the Legal Chancellor and of specialists of his/her office is remunerated pursuant to procedures prescribed for employees of budgetary agencies and organisations. Funds for the remuneration of consultation and expert analyses to the extent of 20 per cent of the annual salary fund shall be prescribed in the budget for the Office of the Legal Chancellor.

3. The **Police Service Act** (PoSA, translation not available) was adopted on 14 May 1998, and came into force on 15 June 1998.

An Estonian citizen who has attained 19 years of age and has at least a secondary education, a command of the Estonian language provided by laws, and the personal and moral qualities may be employed in the service as a police official. In addition, the candidate must have the level of physical training and state of health that enables the performance of the duties of a police officer. The precise requirements are enacted by the regulations of the Government of the Republic (§ 8).

In addition to the provisions of the Public Service Act (PSA), it is prohibited to take an individual into the service under the following circumstances (§ 9):

- he/she has no capacity to act or limited capacity to act;
- he/she has not served in the defence forces;
- he/she is a suspect, accused or defendant in criminal proceedings;
- he/she gets a pension, remuneration or another kind of regular pay from another state.

The director of the National Police Board shall be appointed to office by the Government of the Republic on the proposal of the Minister of Internal Affairs (§ 12). The police officials shall be appointed according to the PSA § 20 (1).

In addition to the provisions of the PSA, the service of the police official shall be terminated in the event that he/she refuses to give an oath of office required or attains a certain age. Also, the PoSA provides the possibility of transferring a police official without his/her consent. Such a regulation is exclusive in Estonian public service. The conditions and procedure of transferring are explicitly defined (PoSA § 15-17).

According to the PoSA § 19, a special salary scale with ten ranks shall be elaborated for the police officers. It is allowed to differentiate the salary grades within the ranks dependent on the official's category, qualification, region or institution.

The additional social guarantees of the police officials are:

- benefit upon death, disability, disease or injury (§ 21);
- reimbursement of material loss (§ 22);
- free health examinations (§ 23);
- free use of public transport (§ 24);
- free uniform (§ 26);
- guarantee of accommodation (provided only when it is possible and necessary) (§ 25).

The PoSA also provides special regulations on working hours, rest time and holidays of police officials.

4. The **Border Guard Office Act** (BGOA, translation not available) was adopted on 30 June 1994, and came into force on 31 July 1994.

Border guard officials must be Estonian citizens of at least 19 years of age, who have served in the defence forces, have the respective personal and moral qualities, a good command of the Estonian language, the level of education, physical training and state of health to enable them to perform the duties of border guard officials (§ 23 (1, 3)).

An individual cannot be appointed as a border guard official under the following circumstances (§ 23 (4)):

- he/she is under preliminary investigation;
- he/she has been punished for intentional crime;
- he/she serves a sentence for intentional crime;
- he/she has not served in the defence forces.

The list of the restrictions should be completed with limits that come from the PSA.

According to the BGOA § 20 (3), border guard officials have the same rights, benefits and conditions for securing a pension as contractual servants in the defence forces under the Defence Forces Service Act (translation not available) or other relevant acts.

5. The **Execution Procedure Act** (EPA, translation not available) was adopted on 21 June 1993, and came into force on 31 July 1993.

The status of prison officials is regulated mainly by the PSA. The EPA provides some additional social guarantees: free uniform (§ 14), housing provided by the employer (§ 15), reimbursement of material loss (§ 16), release from service in defence forces and training exercises for reservists (§ 17) and reimbursement of travel expenses (§ 18). Prison officials are not allowed to participate in strikes, pickets or other acts of collective pressure related to the service.

The salary scale of prison officials shall be elaborated by the Government of the Republic (§ 10 (5)).

6. The **Public Prosecutor's Office Act** (PPOA, translation not available) was adopted on 22 April 1998, and came into force on 20 May 1998.

A person may be appointed as Public Prosecutor under the following circumstances (PPOA § 15): he/she is at least 21 years of age, has higher education in the field of law, a command of the Estonian language at the level provided by laws, and the high moral and personal qualities and abilities needed to perform the duties of Public Prosecutor.

A person may not be appointed as Public Prosecutor if:

- he/she has been convicted for intentional crime;
- he/she has been released from the public service as a result of the committed disciplinary offence;
- he/she has been dismissed from service as a notary public;
- he/she is closely related by blood (parents, brothers, sisters, children) or by marriage (spouse, spouse's parents, brothers, sisters, children) to an official or the immediate superior who has direct control over the corresponding office;
- he/she cannot perform the duties of Public Prosecutor because of the state of his/her health.

These limitations are completed with those arising from the PSA. The State Prosecutor shall be appointed to service by the Government of the Republic on the proposal of the Minister of Justice. The Public Prosecutor shall be appointed by the Minister of Justice on the proposal of the Competition and Evaluation Committee (§ 16 (1, 3)).

According to the PPOA (§ 45, 47-49) the Public Prosecutor shall be released on his/her own initiative, or in the case of bankruptcy, in the event that a certain age has been attained or that a disciplinary offence has been committed.

The Public Prosecutor's remuneration shall be the multiplication of the highest salary grade in the salary scale and the multipliers provided by the PPOA § 22.

The additional social guarantees of Public Prosecutors are: a free uniform (§ 27), reimbursement of material loss (§ 24) and additional pay for advising and monitoring interns, e.g. students and assistant prosecutors (§ 23). The PPOA also provides for the old-age pension of the Public Prosecutor (§ 25) and the disability pension of the Public

Prosecutor (§ 26).

7. The **Customs Act** (translation added) was adopted on 17 December 1997, and came into force on 19 January 1998.

Customs officials are state officials and have the same requirements for employment in the service as state officials, but these requirements may be specified by the customs regulations (§ 11 (1)).

8. The **Foreign Service Act** (FSA, translation added) was adopted on 25 January 1995, and came into force on 1 January 1996.

The PSA and other legislation regulating state public service extend to diplomats, unless otherwise provided by the FSA. Diplomats serving in foreign states shall carry out their activities pursuant to the Vienna Convention on Diplomatic Relations (§ 4).

The diplomatic service rank of attaché may, pursuant to a resolution of the Evaluation Committee of the Ministry of Foreign Affairs, be conferred on a person who has been in the service of the Ministry of Foreign Affairs as an official for at least six months (§ 12).

Persons who meet the following requirements may be employed in the foreign service:

- the state of health allows employment in the foreign service;
- oral and written knowledge of at least two foreign languages, one of which must be French or English;
- higher education;
- not in a situation due to financial or other obligations which prevents performance of functions in the foreign service;
- employment as an official of the Ministry of Foreign Affairs for not less than six months.

Employment in the foreign service is by appointment pursuant to a resolution of the Evaluation Committee of the Ministry of Foreign Affairs.

The Permanent Under-Secretary and director-generals of departments of the Ministry of Foreign Affairs are appointed to office pursuant to procedures provided for in the Government of the Republic Act, and they must meet the requirements provided for in this Act. Other diplomats are appointed to office by the Permanent Under-Secretary of the Ministry of Foreign Affairs.

The bases for recall from a foreign mission according to the FSA § 20 (8) are:

- expiry of the duration of the assignment to the foreign mission;
- personal request of an official;
- request of the receiving state;
- appointment, relocation or election to a different office in the state public service;
- recall to the disposal of the Ministry of Foreign Affairs.

According to the FSA § 23, diplomats receive a salary and additional payments pursuant to legislation concerning state public service and according to exceptions provided for in the

FSA. The foreign service allowance shall be paid to diplomats during the time they are assigned to a foreign mission to the extent and pursuant to procedures established by the Government of the Republic. Upon employment in the foreign service and at the start of every succeeding year of service, diplomats shall be paid a representation allowance of up to two months' salary. The representation allowance is not subject to taxation.

The social guarantees provided by the FSA are: the provision of housing by the employer (§ 27), reimbursements to diplomats and their family members of expenses incurred for travel and removals, health insurance and education (§ 28), holidays of diplomats (§ 29) and social guarantees in performance of diplomatic duties (§ 30).

9. The status of judges will be examined in section 10.

◆ **Current status of implementation**

**1.5**

Most of the interviewees agreed that all basic laws have been implemented. However, they expressed a concern that the quality of existing laws and regulations needs to be improved and the overall regulation of the public service systematised. There are also a few grey areas in legislation which can be interpreted in different ways, but these cases are rare.

◆ **Arrangements where laws/regulations are not yet in operation**

**1.6**

All the relevant laws are in force.

## 2. RECRUITMENT, SELECTION AND DEPLOYMENT

### ◆ Selection procedures for entry

#### 2.1

The procedures of selection for entry into the public service are regulated by the PSA (chapter 2 - conditions for employment in service, procedure for employment of officials in service; chapter 7 - general rules, competition and evaluation committees, administration of competition and evaluation committee), by the Statutes of Competition and Evaluation Committee, the Order for Organising Competition and Evaluation, and the Evaluation Requirements for the Basic Categories of Posts (translations not available). These regulations provide a very precise procedure for arranging open (public) competitions.

#### 2.2

Higher officials (government officials, executive officers, advisers) as specified by the State Public Servants' Official Titles and Salary Scale Act (translation added) shall be appointed to a post on the basis of a public competition. An open competition is announced by the Secretary of State on the proposal of an institution. By the decision of the head of a state institution, a public competition may also be announced to fill other posts in the corresponding institution (PSA § 29).

The following officials may be appointed to a post without a public competition (PSA § 30):

- 1) officials of the Office of the *Riigikogu*, the Office of the President of the Republic, the Office of the Legal Chancellor, the Supreme Court and the State Audit Office;
- 2) officials appointed by the Government of the Republic;
- 3) advisers and assistants to the Prime Minister and ministers (§ 21 (2) 5)), or officials appointed by the Prime Minister;
- 4) temporary substitutes;
- 5) acting officials, in vacant posts to be filled by way of competition;
- 6) other public servants, by way of promotion.

In the case of public competition, the selection is made by the competition and evaluation committees. The number of members and the membership of a competition and evaluation committee shall be specified by the chairman of the committee (PSA § 95). A committee shall include officials, representatives of superior administrative institutions, trade union(s) of officials, members of parliament, researchers and independent experts.

Secretary-generals of ministries, director-generals of executive agencies and inspectorates, heads of departments of ministries, and officials who are to be selected or promoted to any of these posts are evaluated by the Competition and Evaluation Committee of Higher State Public Servants at the State Chancellery

A committee shall assess the suitability of applicants in terms of the requirements set for filling the post, shall interview, where necessary, the person authorised to make an

appointment to that post, and shall present one or more candidates for a post or decline to present a candidate.

The general procedures of selection and recruitment are provided by the regulations mentioned in 2.1 above. More precise procedures are in the competence of the organisations themselves, and are sometimes specified in the internal procedure rules. The way in which a vacancy is filled is often largely dependent on top managers' decisions. Their opinion may also be decisive for committees.

In selecting an official for a post, the selection is usually carried out by the head of the respective bureau or department. The best candidate(s) is (are) also interviewed by the personnel department and in some cases also by the (deputy) secretary-general. The selection procedure is not precisely defined where open competition is not mandatory -- in these cases a more detailed selection procedure and criteria are set by individual government units.

In several ministries the membership of the competition and evaluation committee is clearly fixed (the secretary-general, head of personnel department, immediate superior of the post-holder and between one and three department heads [the latter are also the same in every competition]). According to the interviewees, the inclusion of outside experts in the selection procedure is rare. Only a couple of committees have a permanent expert from outside. Several interviewees claimed that department heads (immediate managers) have the opportunity to influence decisions on selecting their subordinates. In some cases, the personnel department has a great role in the selection.

An official shall be employed in the service by appointment to the post. The head of an administrative agency or an official authorised by him or her has appointment authority. Officials who have appointment authority shall be provided by law (PSA § 20). This regulation shall not extend to persons elected or appointed to office by the parliament or to persons appointed to office by the President of the Republic (§ 18).

#### ◆ **Qualifications**

### **2.3**

As the Estonian public service is a post-based system, there are few restrictions for entering the public service. The main arrangement to enable employees from outside to enter the public service is the public competition. In addition, outside candidates are hired by using other recruitment methods, such as headhunting or hiring of former interns.

The interviewees claimed that there is basically no difference as to whether a person has acquired his/her qualifications in the private or public sector. Selection committees evaluate professional skills and previous success in any sector, and all relevant experience is taken into account.

The Evaluation Requirements for the Basic Categories of Posts describes how credit is given for service elsewhere:

Higher state officials (p. 5): Service experience of six months in a senior office or in a post

filled by competition if in a state or local government institution, or service experience of two years in another post (demanding higher education) in a similar profession or in an institution having a similar mission, is required.

Senior officials (p. 14): If a person does not have higher education, then service experience of six months in a junior office or in an office filled by competition if in a state or local government institution, or service experience of two years in another similar post which demanded previous specialist or vocational training, is required.

Junior officials (p. 18): If a person has not previously passed specialist or vocational training, then service experience of six months as an office worker in a support staff position if in a state or local government institution, or service experience of two years in similar work or individual training in a service post, is required.

## **2.4**

The evaluation of the professional suitability of a candidate is usually based on the job description and evaluation requirements of the vacant position (Order for Organising Competition and Evaluation).

Candidates always submit their *curricula vitae* and certificates of education and training. The first round of a selection is based on the analysis of submitted papers, on the basis of which formally eligible candidates are invited to recruitment interviews. All respondents claimed that they rely on recruitment interviews first of all. Recruiters tend to trust information provided in CVs and interviews. Sometimes additional information is obtained from the candidate's former employer(s), which is easy to obtain because of the small size of the country.

Other selection methods are rarely used and candidates' motivation, creativeness, initiative, personal characteristics and teamwork abilities are usually surveyed rather superficially. Work simulations and behavioural tests are carried out rarely in cases where private consulting firms carry out the selection. The use of psychological tests as a selection tool has diminished in recent years. The reasons for this are recruitment failures caused by previous test results, costs involved, and difficulties in getting appropriate testing materials. Personality tests are used most often, whereas IQ tests and tests of leadership abilities are used less frequently.

If a candidate is not Estonian by nationality, his/her specialist knowledge is often considered to be more important than his/her ability in the Estonian language. As foreign languages are becoming more important, the focus on language abilities is also gaining more attention. A few ministries use language experts for evaluating language skills, while others carry out parts of interviews in the foreign language(s) required. Sometimes, however, recruiters tend to believe the candidates' self-estimation of language or computer skills.

## ◆ Probation

### 2.5

Upon the appointment of a new official to a post, a person with employment authority may apply a probationary period of no longer than six months. A probationary period shall not apply to an official appointed to office by the Government of the Republic or by the Prime Minister, if a post is filled by way of promotion, upon the appointment to a vacant post of a substitute or acting official for a temporarily absent official, and in cases of the suspension of service relationship.

During a probationary period, the work results of the official and suitability to the requirements of the post shall be assessed. Before the end of the probationary period, the official has an assessment interview with his/her superior. In the case of unsatisfactory results, the official may be released during the probationary period pursuant to the PSA clause 117 (1) 1).

The requirement of assessment interviews is a relatively new arrangement (in effect from 1 January 1999). According to the new regulation, officials are assessed against formal performance appraisal criteria at the end of the probationary period. Previously only some superiors and personnel managers carried out specific assessment interviews at the end of the probationary period; most often an informal assessment was made.

## ◆ Transitional arrangements

### 2.6

Before 1 January 1996, all employment in state institutions was regulated by the Employment Contracts Act. Almost all of the employees who were in the service on 1 January 1996 became officials under the PSA (see PSA § 161-170). PSA §163 provides: "For two months after the date of entry into force of this Act, an official employed pursuant to the Employment Contracts Act shall be registered as employed in the service by appointment, retroactively, as of the date of entry into force of this Act."

To become an official, employees had to fulfil the requirements set for state officials (PSA § 14), except for the age and education requirements, and to sign the Oath of Office (see PSA § 28). Regular evaluation of those officials shall be held during the period October 1998 - 31 December 2000 (PSA § 178). For the evaluation, all of these officials should agree to the requirements of their basic category of post and also to the requirements of their individual post (PSA § 178).

### 2.7

Pre-transition public servants were impeded from continuing as public servants under the PSA if they were not Estonian citizens. Persons who were applying for Estonian citizenship were permitted to work as officials at the Taxation Board, the Police Administration and the Rescue Service Administration for three years after entry into force of the PSA. Persons who were not citizens of Estonia were permitted to work as officials in the Prison Administration for five years after entry into force of the PSA.

## ◆ **Mobility**

### **2.8**

The transfer of an official to another post or to another locality, or the assignment of functions beyond the scope of his/ her post, shall be permitted only with the consent of the official.

The transfer of public servants is not a common practice in the Estonian public service. There are no formal secondment procedures and secondments do not belong to general management practices.

### **2.9**

The majority of temporary secondments can be arranged only when the public servant is in agreement. At present there are no special legal mechanisms to allow for or stimulate secondments in order to improve public sector institutions' capacities to deal with EU accession. According to an official of the Office of European Integration, the issue has been under discussion and in the future such secondments will probably be practised more frequently.

## ◆ **Appeal**

### **2.10**

In the case of an official or candidate who was evaluated on the basis of a proposal for promotion, or of the evaluation by a competition and evaluation committee of the suitability of a candidate for an office to be filled by way of public competition, the candidate (or official) cannot demand re-evaluation by the committee (PSA § 4). It is possible to dispute the decisions in an administrative court.

An official has the right to file a complaint with an administrative court against directives, orders and resolutions issued and acts performed concerning service-related issues, within a period of one month as provided for in the Code of Administrative Court Procedure (PSA § 160).

### **3. CONDITIONS OF SERVICE, PAY AND CAREERS**

#### **◆ Employment system**

##### **3.1**

The Estonian public service system is a post-based system, although it contains a few elements of a career system (reserve of officials, additional remuneration for years of service). Only some branches of the administration are career-based: the foreign service (see the Foreign Service Act), police service, court system, border guard, customs, and some institutions in the administrative area of the Ministry of Defence.

##### **3.2**

There are three basic categories of officials in the Estonian public service system: junior officials, senior officials and higher officials. The official titles of the three basic categories of officials are specified by the State Public Servants' Official Titles and Salary Scale Act. The analysis for allocating different functions/positions to basic categories (and salary ranks) has been insufficient, which is why there can be differences between institutions.

#### **◆ Rights and duties of public servants**

##### **3.3**

Chapter 3 ("Rights of Public Servant") and chapter 4 ("Duties of Service") of the PSA state the primary rights and obligations of public servants.

Public servants have legally defined rights to the following:

- salary and bonus;
- compensation;
- fixed schedule of employment and vacation;
- vacation and vacation pay;
- temporary relief of employment conditions and transfer to another post for health reasons (including pregnancy) with the salary maintained;
- study leave, cancellation of study loan and compensation of study fees;
- accommodation (provided only when it is possible and necessary);
- support in the case of death or disability;
- retirement pension;
- membership in a trade union;
- appeal to court to protect one's rights.

There are also special rights of officials who are pregnant or who are raising a disabled minor or a child under the age of three.

The legally defined obligations of state public officials are:

- loyalty and service;
- obedience;
- return of business or property entrusted in the scope of official duties;

- professional secrecy: the official must both during the time of service and after resigning from service keep state and business secrets, data about other people's family and private life and other confidential information received in the course of service;
- application for a permit to participate in extra-official activities (membership in an organisation possessing arms, engaging in enterprise, working with another employer);
- assurance of economic independence;
- declaration of economic interests;
- political independence;
- dignified conduct.

Public servants also have other rights and obligations provided in different acts (e.g. the Republic of Estonia Holidays Act, the Working and Rest Time Act, Wages Act, the Public and National Holidays Act).

#### ◆ Career development and promotion

### 3.4

At present there are no such special arrangements. As the Estonian public service is a post-based system, progress in a career ladder can be (and in several cases has been) very fast.

### 3.5

As the Estonian public service is very small (see section 9) with only three basic categories of posts, the possibilities for promotion are limited. Although most state institutions would like to promote from inside the organisation, they often lack qualified candidates and have to recruit from outside the organisation. Criteria for promotion differ from one organisation to another, but they are mostly based on previous performance, communication and leadership skills, commitment and formal qualifications.

The PSA states that an official who has worked in his/her her post for at least six months and who has been proposed for promotion by a competition and evaluation committee may be promoted to a higher post. A substantiated proposal for the promotion of an official may be made by his/her superior or by a person or administrative agency authorised to appoint him or her to office. Written consent of the official to be promoted is required for promotion. If several officials are proposed for promotion to the same post, promotion shall be decided by the person or administrative agency authorised to appoint the given public servant to office. An official shall not be promoted during the period that a disciplinary punishment is in force (PSA § 83).

### 3.6

The concept of promotion is not clearly defined. Promotion to a post of the category of higher posts shall be organised through a competition and evaluation committee (see § 91). Usually an interview is used as a tool for evaluation.

The regular evaluation of officials is accomplished every three years. During that period, an immediate superior will conduct three appraisal discussions with his/her subordinates (every year), and among other proposals, the former has the right to propose an appraisee for promotion. Such a proposal, which is optional, is submitted to the head of the institution.

Every third year the superior will give his/her opinion and proposals to the competition and evaluation committee, which will decide on the official's suitability for the post. The evaluation committee has the right to propose the official for promotion. The proposal, which is not obligatory, is made to the head of the institution. The procedure of regular evaluation is common to all branches of the administration.

As the new procedure for organising regular evaluations is very recent (it came into force on 1 January 1999), it is difficult to foresee how the connection between evaluation and promotion will take shape in practice.

#### ◆ **Training**

##### **3.7**

The task of co-ordinating the training of state and local government officials has been assigned to the State Chancellery by law, and in the budget of the State Chancellery means are prescribed for the partial financing of training to be carried out in areas of state preference. According to the Adult Schooling Act (translation not available), public institutions must earmark 3 per cent of their payroll for training. As the funding is decentralised, training priorities are set by individual institutions. The Estonian Institute of Public Administration (EIPA), under the authority of the State Chancellery, is a public training institution for public servants. EIPA gathers and analyses information on training needs and opportunities for officials, performs research and methodological work necessary for the training of officials, arranges training and consultations for officials. Research and methodological work of EIPA is primarily financed out of the state budget, but also training in certain fields of state priority at the request of the State Chancellery. The training market is also open to all private companies.

There are three general "competency" training programmes for public servants in EIPA (approved by the Government Expert Committee on Public Service Training). These programmes are aimed at helping current public servants to meet the requirements for the basic categories of posts. These three programmes contain modules on law, public policy, European Union, management, public sector economics, public sector ethics, information management, etc.

EIPA has a language centre which is an independent unit of the Institute. The language centre offers different language courses and language training – mainly courses of English (7 different levels) and a few French classes. The courses of Russian language will be provided in the near future. The English courses are specified: oral communication, writing in English, conference communication and English of the European Union.

##### **3.8**

There is a general introductory module on the European Union provided by the Estonian Institute of Public Administration. EIPA also provides short training courses on daily problems in the EU and special courses for officials participating in negotiations with the EU. These courses are conducted in close cooperation with the Office of European Integration (OEI), as OEI is responsible for general training in EU matters. More specific training programmes concerning different EU policies are within the competence of

institutions (ministries) themselves and are usually conducted with the help of foreign assistance.

There is also a programme organised by OEI on “Continuous professional training in EU matters” as an open university course at Tallinn Pedagogical University. The centre also offers special (one-time) programmes for developing special skills for officials dealing with EU matters (e.g. negotiating).

### **3.9**

Training is not a mandatory requirement of career development. Promotion is based on performance assessment and general qualifications, which are not directly linked to training programmes. Usually participation in training courses is considered informally when decisions upon promotion are made. Several ministries encourage their officials to study independently and also to carry out in-house training, which is not considered a part of formal training.

#### **◆ Right to join a union and to strike**

### **3.10**

The Constitution guarantees the right to belong to trade associations and unions. As PSA § 58 states that an official, in his/her relationship with his/her employer or with an agency responsible for social welfare or care, has all the rights prescribed for a person employed under an employment contract, the right of an employee to participate in unions is also valid for public servants. Accordingly, public servants have the right to sign collective agreements with their employers and to protect their rights and legal interests by means not prohibited by law. Labour disputes shall be solved by negotiations moderated by the public conciliator or in the court. (Collective Labour Dispute Act § 21, translation added).

Strikes of public servants are not allowed in government institutions, in other state institutions and local government institutions, as well as in the defence forces and state defence institutions, in the courts, and in the fire and public safety rescue services.

### **3.11**

There is one central trade union for public servants: the State Trade Union of Civil and Local Self-Government Institution Employees (includes employees of many public institutions, e.g. police). In March 1999 the union’s representativeness was about 5 % of all public servants.

There is also a union of employees of other institutions financed from the state budget. Its members are teachers, university professors and employees in the cultural sphere.

#### **◆ Pay components**

### **3.12**

State public officials have the right to official pay (basic pay) and allowances.

The salary scale of state public servants is established by the State Public Servants’ Official Titles and Salary Scale Act. A salary grade is a number indicating the correlation between a

post and a corresponding salary scale. For state public servants (except officials appointed by the President of the Republic and the Parliament, officials of the Parliament Chancellery and officials of the Chancellery of the President of the Republic), a salary scale implemented by law is divided into 35 salary grades.

In addition to the official pay (basic pay), the following allowances shall be paid to the state public official:

- Additional remuneration for years of service:
  - from 5 years of service, 5 per cent of the salary rate;
  - for 10-15 years of service, 10 per cent of the salary rate;
  - from 15 years of service, 15 per cent of the salary rate.
- Additional remuneration for academic degrees:
  - for a master's degree, 10 per cent of the salary;
  - for a doctor's degree or equivalent, 20 per cent of the salary.
- Allowance for the command of foreign languages to a state public official who, to a degree required by the person or public office appointing him, commands at least three foreign languages whereas the use of these languages in office is necessary, for the third and every consecutive language an allowance of 10 % of the official pay will be paid but not exceeding 30 % of the official pay.
- Allowance for fulfilling complementary duties (duties that are not specified in the post description and which do not belong to the service duties).
- Additional remuneration for more effective work than required.
- Remuneration while working as a representative of the state in the council of a business association or foundation or in the executive body of a non-profit organisation.

Salary rates and bases for the payment of additional remuneration for the performance of supplementary functions or for more effective work than required shall be established by a regulation of the Government of the Republic. (PSA § 9 clause 3).

The Wages Act (§ 14-17) (translation added) regulates pay in cases of overtime work, work while on leave, work performed on a public holiday, and evening and night work.

### **3.13**

The legal basis for paying allowances is specified by the Remuneration of State Public Servants in 1999 (Government of the Republic Regulation no.10, which entered into force on 12 January 1999): Within the remuneration budget it is allowed to differentiate officials' salary within the grade by raising it by up to 30 %. Differentiation could be made in the case of an important service post or a supporting post on the bases of qualifications, special working conditions, region or other special indicators of the post. Additional remuneration for the performance of supplementary functions or for more effective work than required could be up to 50 % of the official's basic salary.

According to the Estonian Ministry of Finance, in 1998 the relationship between basic salary and allowances in a public servant's final wage was (% of the basic salary in take-home pay):

Ministries:

- Higher officials - 70 %
- Senior officials - 75 %
- Junior officials - 77 %
- Support staff - 70 %
- Average - 72 %

Executive agencies and inspections:

- Higher officials - 66 %
- Senior officials - 73 %
- Junior officials - 76 %
- Support staff - 73 %
- Average - 73 %

All governmental institutions together:

- Higher officials - 68 %
- Senior officials - 74 %
- Junior officials - 76 %
- Support staff - 73 %
- Average - 73 %

Bonuses and allowances vary from one ministry to another. Allocation of bonuses and allowances is decided by top management and is usually not based on any formal criteria.

### **3.14**

There are several fringe benefits that are available to all public servants (listed below). The interviewees claimed that some benefits (e.g. cars, housing) are assigned to a very few higher civil servants only. The increasing tendency in several ministries is to establish formal procedures on the provision of fringe benefits.

The fringe benefits are as follows:

- Reimbursement of travel expenses (PSA § 42).
- Holidays and holiday pay (PSA § 45). Holiday pay is granted to all public servants. In the case of at least three years of service, an official shall be granted one day of additional holiday for the third and each subsequent year, but not more than a total of ten calendar days. During the time a disciplinary punishment is in force, additional holidays may be decreased or withheld. (In general, holidays in the public sector are longer than in the private sector).
- Holiday benefits (PSA § 46). A public servant may be paid a holiday benefit of up to one month's salary in connection with his/her main holiday. If a holiday is carried over to the following working year, a holiday benefit may also be paid for the preceding working year.
- Reimbursement of educational expenses (PSA § 53).
- Study leave for professional development (PSA § 54). A state official shall be granted a study leave with pay for up to three months once every five years for professional development pursuant to the procedure established in the Adult Education Act.
- Housing provided by the employer (PSA § 55).

- Benefit upon death or disability of the public servant (PSA § 56).
- Old-age pension of the official (PSA § 57). An official shall be ensured a state old-age pension. Pensions shall be increased as follows:
  - 1) for 10 - 15 years of service, by 10 per cent;
  - 2) for 16 - 20 years of service, by 20 per cent;
  - 3) for 21 - 25 years of service, by 25 per cent;
  - 4) for 26 - 30 years of service, by 40 per cent;
  - 5) for more than 30 years of service, by 50 per cent.

### 3.15

There are no formal pay arrangements in place for public servants related to EU integration.

Some ministries (such as the Ministry of Agriculture) try to introduce special pay arrangements for those who deal with EU accession but these cases are rare. Sometimes officials dealing with EU matters receive one-time bonuses decided by the top management in each individual case.

#### ◆ Termination of service

### 3.16

Public service may be terminated on the following grounds (PSA §§ 113 – 129):

- expiry of term of service (§ 113)
- release from service on the initiative of the official (§ 114)
- closure of administrative agency (§ 115)
- redundancy (§ 116)
- unsuitability for office (§ 117)
- disciplinary offence (§ 118)
- long-term incapacity for work (§ 119)
- age (§ 120)
- double employment (§ 121)
- call-up for military service or alternate service (§ 122)
- entry into force of conviction by a court (§ 123)
- violation of employment rules (§ 124)
- supervisory or control relationship of a close relative by blood or marriage (§ 125)
- election as member of the *Riigikogu* or as President of the Republic (§ 126)
- taking up duties in another post in another administrative agency (§ 127)
- change in citizenship (§ 128)
- death (§ 129).

The procedures for termination of service are specified in PSA §§ 130-135:

An official may be released from service by the person or administrative agency authorised to employ him/her. An official shall be given at least one month's advance notice in writing of his/her release from service due to the closure of an administrative agency, redundancy, unsatisfactory results of an evaluation, or age. An official shall be given at least two weeks' advance notice in writing of release from service due to his/her long-term incapacity for work (§ 130 (1)). Advance notice may be waived only with the written consent of an official.

Upon release from service due to the closure of an administrative agency or to redundancy, an official shall receive compensation as follows, if he/she has been employed in the public service (§§ 153-156) for:

- less than 3 years, two months' salary;
- 3-5 years, three months' salary;
- 6-10 years, six months' salary;
- more than 10 years, twelve months' salary.

Upon release from service for health reasons, due to a long-term incapacity for work, call-up for military or alternate service, or on the basis of evaluation results, an official shall be paid one month's salary as compensation.

Upon release from service due to age or to a violation of employment rules through the fault of an administrative agency, an official shall be paid three months' salary as compensation.

### **3.17**

Severance pay is applicable to all categories of public servants. The circumstances for paying compensation upon release from service are brought out in the PSA (see the reply to 3.16 above).

### **3.18**

For this reason a reserve of officials has been created (PSA §§ 136 – 152). The purpose of the reserve of officials is to ensure that state and local government administrative agencies find candidates for official posts and that a person released from his/her post finds new employment as a state or local government official.

A register of officials in the reserve is maintained by the State Chancellery. Persons who shall be assigned to the reserve are:

- an official released from his/her post due to the expiry of his/her term of service, closure of an administrative agency, redundancy, long-term incapacity for work or health reasons;
- a person who is not employed in the service but who has successfully completed examination(s) for employment as an official before a competition and evaluation committee at the State Chancellery examining candidates for the reserve;
- a person not in service as an official who has been proposed for appointment to a post by a competition and evaluation committee but who is not been appointed to the post for reasons beyond his/her control.

A person assigned to the reserve shall be on the reserve list until appointment to a post or until removal from the reserve pursuant to PSA § 150 (grounds for removal), but for no longer than six consecutive months. Upon expiry of the term, the period of assignment to the reserve may be extended each month upon request of the person concerned. It is common knowledge that the reserve of public officials does not function well, and there have been several proposals to abolish the reserve completely.

## **4. PERSONNEL MANAGEMENT STRUCTURES AND CONTROL OF STAFFING**

### **◆ Coordination of personnel management**

#### **4.1**

In the Estonian public administration personnel management is decentralised. Every ministry and executive agency is responsible for recruiting, evaluating and organising the work of its officials, guided by the legal framework. Higher civil servants (as defined in PSA § 93) are appointed, evaluated and promoted centrally through the Competition and Evaluation Committee of Higher State Public Servants headed by the Secretary of State.

The supervision of public service is carried out by the ministries and by the State Chancellery in accordance with duties which the Government of the Republic has charged them with by law, as follows:

- the Ministry of Justice in the field of legal regulation of public administration and preparing the mechanism for legal regulation of public service;
- the Ministry of Finance in the field of regulating salaries for public servants, the budget and structural models for institutions;
- the State Chancellery in the field of co-ordinating training and evaluation of officials; the Bureau of Public Administration for coordination of public administration development, collection, analysis and distribution of information related to public administration, and for consultation with officials of other state administrative agencies.

#### **4.2**

The regulations governing personnel management are common to most of the ministries and executive agencies and other institutions listed in the PSA § 2. Only personnel management in the foreign service, military service, police service, court system, etc. is regulated by special laws specified in 1.4 above.

#### **4.3**

Officially there is no central co-ordinating body for public service's personnel management. Although the State Chancellery is legally responsible only for the field of co-ordinating training and evaluation of officials, it has also tried to promote personnel management generally -- through creating a network of personnel managers of state institutions, through seminars, workshops and information-sharing. research in the Estonian Institute of Public Administration, analysis of the composition of the Estonian public service, etc. Currently a uniform personnel policy for state public service is being elaborated. For all that, it is obvious that knowledgeable central personnel management activities (policy formulation) in Estonia are still very weak or lacking.

#### **4.4**

Co-ordinating and monitoring mechanisms for personnel management are not sufficiently developed. The most developed area within personnel management is training, which is centrally co-ordinated by the State Chancellery. There is also an interministerial Committee on Public Service Training (established in 1997) which discusses other personnel issues as well, but which meets only a few times a year and is not very productive.

#### ◆ Staff involvement in personnel decision-making

##### 4.5

The right to belong to trade associations and unions is guaranteed. A public institution and its personnel can sign a collective agreement to regulate these areas [decision-making related to public servants, their management and conditions of service]. The *State Trade Union of Civil and Local Self-Government Institution Workers* can represent public servants in cases where general management policies are under discussion in the *Riigikogu* or government. However, this right of unions is not ensured by law. Interviewees were not aware of cases where unions had been involved in decision-making related to public servants.

According to the PSA, the members of competition and evaluation committees should also include representatives of trade union(s).

The interviewees claimed that, in practice, individual staff members are sometimes included in working groups that develop new management procedures. Most often civil servants from personnel departments are involved in decision-making related to management issues.

#### ◆ Management and control of staffing

##### 4.6

The staffing process in the Estonian public service is decentralised. Only the selection and evaluation of higher state public servants are centralised -- the competition and evaluation committee of higher state public servants has the responsibility for their recruitment and promotion.

##### 4.7

The structure and the staff of a ministry and the State Chancellery shall be approved by the minister or the state secretary respectively. The statutes of ministries, in turn, must be approved by the government. It sets some limits to staffing of the ministries. The structure and the staff of administrative agencies operating within the competency of a ministry shall be approved by a regulation of the minister (PSA § 10).

Staffing ceilings are determined by the annual budget of the state institution. The Ministry of Finance monitors structures, vacancies and budgets of individual government units. Monitoring is also carried out by a superior institution (e.g. by the respective ministry over agencies) and by the State Audit Office.

Several interviewees argued that because of a growing number of functions related to EU accession, new jobs had recently been created. In other cases, it is difficult to create new jobs in state institutions. All interviewees claimed that the number and functions of positions in each particular institution are not based on a thorough analysis. Similarly, functions between ministries are divided vaguely and without a comprehensive approach.

#### 4.8

The salary that is saved by not filling positions can be used for paying allowances and bonuses to other officials.

#### ◆ Job evaluation and classification and job descriptions

#### 4.9

There are no legal requirements for carrying out general job evaluations and job classifications. It has been done in some cases in a few state institutions, but this has been at their own initiative (usually the initiative of a personnel manager or chancellor). There are no general criteria or procedures as to how to carry out job evaluations and classifications.

#### 4.10

The PSA § 59 states that service duties are fixed by job descriptions.

Usually job descriptions are written in co-operation between the personnel department, the official filling the post, and his/her immediate supervisor (department head). The procedure for updating job descriptions is not fixed and it therefore depends on the initiative of the personnel department and of the officials themselves.

#### 4.11

Common guidelines for the design of job descriptions for all branches of the administration are fixed by the Order for Organising Competition and Evaluation (p.6), if not provided differently by special acts. In some cases, government institutions have established their own procedures for designing job descriptions within their particular institutions. Each organisation is allowed to add its own special requirements to minimum requirements, which is also done in most cases.

Minimum requirements that have to be covered in job descriptions are the following:

- official title of the post and its position in the administrative structure of the institution;
- subordinate to whom, superior of whom;
- whom to replace, replaced by whom;
- service tasks and main areas of responsibility;
- service rights (limits to act, how the obtaining of information is guaranteed, possibilities for training, conditions for successful work granted by the institution, rights for organising personal work, etc.).

The basic job requirements may also be provided in job descriptions: education, experience, skills, personal characteristics, physical/ health condition, etc.

#### ◆ Management and control of pay and salary payments

#### 4.12

The State Public Servants' Official Titles and Salary Scale Act provides a unified pay scheme for the whole state public service. Deviations from those salary ranks can be legislated by regulations of the government.

Some branches of the state administration (e.g. foreign service, police service, court system) have different pay schemes provided by special laws. The salary scale, and titles of posts, of public servants of the Office of the *Riigikogu* shall be established by the leadership of the *Riigikogu*. The salary scale of public servants of the Office of the President shall be established similarly to the salary scale established for public servants of the Office of the *Riigikogu* (PSA § 9).

#### **4.13**

The State Public Servants' Official Titles and Salary Scale Act regulates salaries of public servants. The Ministry of Finance is responsible for the preparation of legislation on public service pay. There have been several working groups on salary issues in the Ministry of Finance which have also included officials from other ministries and outside experts.

#### **4.14**

At present the administration of salaries is not compatible and computerised throughout the entire administration. The Ministry of Finance has the general overview of salaries in different state institutions. Computerisation of salary administration is on the agenda of the government.

#### **◆ Appeal against personnel decisions**

#### **4.15**

An official has the right to file a complaint with an administrative court against directives, orders and resolutions issued and acts performed concerning service-related issues. The order for settling pre-court disputes is currently lacking.

In the case of periodical evaluation, an official who finds the evaluation decision to be unfair can demand re-evaluation (PSA § 104). An official also has the right to appeal a decision made by his/her immediate superior after an annual interview.

#### **◆ Evaluation of use of resources**

#### **4.16**

The Ministry of Finance monitors and analyses the use of public service resources. Public disclosure and scrutiny of the use of public service resources are carried out by the State Audit Office and through parliamentary inquiries.

#### **4.17**

There is no special audit inspection for controlling personnel costs. The Ministry of Finance keeps records and makes basic analyses of personnel costs. Personnel audit is a part of general audits carried out by the State Audit Office. In summary, personnel costs are not regularly and extensively controlled.

**4.18**

Salary payments are audited by the Ministry of Finance and the State Audit Office.

## **B. PUBLIC SERVANTS: PROFESSIONAL ROLE IN POLICY FUNCTIONS AND DECISION-MAKING; RELATIONS WITH THE PUBLIC AND WITH POLITICIANS**

### **5. LEGAL COMPETENCE, ABILITIES AND ACCOUNTABILITY MECHANISMS**

#### **◆ Legal basis for actions of public servants**

##### **5.1**

The Constitution of the Estonian Republic declares in its preamble that the state is founded on liberty, justice and law. In addition, § 3 states that “the powers of the state shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith,” and § 13 that “the law shall protect everyone from the arbitrary exercise of state authority.” These provisions have been interpreted to exclude discretion and to demand that all important regulatory initiatives are to be ensured through law by parliament.

Supplementary provisions in the Constitution concerning the principle of legality of administration can also be found in § 87 (6) stating that “the Government of the Republic shall issue regulations and orders on the basis of and for the implementation of law,” and § 94 (2) stating that “a minister shall direct a ministry, shall manage issues within its area of government, shall issue regulations and directives on the basis and for the implementation of law, and shall perform other duties assigned to him or her on the bases of and pursuant to procedure provided by law.” Therefore, regulations (general acts of administration) can be issued only in the case of the existence of a mandate in law. The norm in law, which contains a mandate for regulation, must clearly express its aim, content and scope. Also, the Administrative Chamber of the Supreme Court implied in its decision on 20.12.1996 that in the regulations the government (also ministers) must make reference to the mandating provision in law. This principle does not apply to regulations issued for organising specific internal aspects of public administration (e.g. structure, document administration, supervisory control).

However, parliament cannot mandate the government to regulate whatever it pleases. In this activity, the principle of reservation must be followed, by which generally only *intra legem* (within the scope of law) regulations are permitted. The principle of reservation has been interpreted in several decisions by the Supreme Court. The Supreme Court (decision on 12.01.1994) has stated that, based on the principle of the legality of administration, basic rights and liberties can be limited only by law.

The principle of the legality of administration also applies also to single Acts. An Act which limits rights or sets forth obligations, must be given in accordance with the law. A general law regulating this principle and other related issues is the drafting stage.

Discretion is allowed in the scope of the law, and general principles of administrative law

and the judiciary can control its use.

◆ **Requirements to carry out government policy and to obey orders**

**5.2**

In addition to service obligations described in laws, regulations, job descriptions and other regulations, the public servant is required to execute one-time service-related orders issued by his/her immediate superior or by the head of the administrative agency (PSA, § 60 lg 1). This provision guarantees the hierarchical structure of administrative agencies, where the subordinated official is subject to the head of unit or agency. Subordination is also determined in job descriptions. The principle of hierarchical subordination is generally enforced by oral and written orders of the direct supervisor.

This principle is strengthened with provisions for supervisory control in the Government of the Republic Act, where § 93 declares that “supervisory control shall be organised to ensure the legality and purposefulness of the activities of government agencies and of state agencies under their administration”, which “shall be exercised by way of subordination.”

**5.3**

According to the Public Service Act (§ 59 (2)), “a public servant is required to implement legislation and orders pertaining to the service and, without waiting for a special order, to perform functions arising from his/her office, except in the cases set out in subsections 62 (1) and 63 (1) of this Act.”

According to § 62 (1), it is prohibited to issue an order which is in conflict with law, exceeds the authority of the issuer of the order or requires acts which the recipient of the order has no right to perform. When in doubt as to the legality of an order, a public servant is required to immediately notify the issuer of the order and the issuer’s superior of the public servant’s doubts. If the order is repeated in writing, the order shall be executed, except in the cases set out in sub-section 63 (1) of this Act ([if the order] would be directed against his/her spouse, his/her or the spouse’s parents, brothers, sisters or children, or against other persons close to him/her; is not advisable for health reasons; does not allow the use of benefits prescribed for the raising of children; would require a higher qualification or different professional training than the given public servant has).

Although the Constitution prescribes the hierarchy of legal Acts, the official is not permitted to ignore a regulation on his/her own initiative, even in cases where this regulation or disposal appears to be in conflict with a superior legal Act. According to the Constitution (§ 15), only courts have reserved the right to declare the unconstitutionality of an Act.

◆ **Lines of accountability**

**5.4**

Estonian legislation (e.g. Public Service Act) does not make any distinction with respect to performing those tasks according to the categories of public servants. For example, the Public Service Act (§ 60 (1)) provides in general terms that “public servant is required to execute one-time service-related orders issued by his/her immediate superior or by the head

of the administrative agency”. While the legislation does not specify the authority to act independently in most cases, statutes of individual state institutions are more precise in the determination of lines of authority. Job descriptions provide the most detailed information concerning the degree of independence in decision-making.

In practice, the right and obligation to participate in policy-making is reserved for the most part for higher public servants. Senior civil servants are involved in policy-making in cases where their specialist knowledge is needed. Higher public servants also act independently in taking administrative decisions (this concerns also department heads). In service delivery, senior civil servants (and sometimes junior civil servants) also make independent decisions.

## 5.5

According to the Government of the Republic Act (§ 95), a minister is responsible for monitoring the legality and purposefulness of the activities of the structural units of the ministry, government agencies within the competency of the ministry and their officials, and other state agencies administered by the ministry. He/she must invalidate legal instruments and Acts of the secretary-general, heads of department of the ministry, director-generals of executive agencies and inspectorates, other officials of the ministry, and heads of state agencies specified in sub-section (1) which are not in conformity with the Constitution, other laws, or regulations and orders of the Government of the Republic, and regulations and orders of the minister.

A legal instrument or Act of an official may be invalidated on the grounds of lack of purposefulness if the legal instrument or Act is clearly not in conformity with state policies provided by law and implemented by the Government of the Republic or a ministry, or if it causes an unreasonable use of state assets or budget funds, or harms national interests in any other way. Legislation of specific application which has been issued and Acts applied in the administration of state service, and other legal instruments and Acts for which the conditions for issuance are provided by law or other legislation cannot be repealed or invalidated on the grounds of lack of purposefulness.

With regard to ministerial accountability, the Parliament may express a lack of confidence in the Government of the Republic, the Prime Minister, or a minister by means of a resolution in favour of which a majority of the membership of parliament votes (Constitution § 97). A member of parliament has the right to make inquiries to the Government of the Republic and its members, which must be answered at a session of parliament within twenty session days (§ 74). Parliament is permitted to make proposals to carry out or avoid certain activities, but the government is not obliged to follow these kinds of proposals.

The interviewees claimed that parliamentary inquiries on public service issues are very rare, and that there are more inquiries on specific cases of corruption. The Ministry of Finance is often targeted by parliamentary inquiries.

#### ◆ Ability to innovate

##### 5.6

There are no specific incentives to encourage public servants to offer new ideas.

The following incentives may be offered for outstanding performance (provision of new ideas is not explicitly mentioned): expression of thanks, granting of a monetary award, giving of a valuable gift, advancement to a higher salary grade for not more than one year (PSA § 79). In addition, according to Government Regulation no. 11 of 12.01.1999, the head of an administrative agency has the right to give justified, one-time, additional remuneration and premiums within the limits of the salary budget. In addition, the new performance appraisal system will hopefully create a good basis for encouraging public servants on different levels to come up with new ideas and for managers to apply these ideas in developing their organisations.

In general, the interviewees claimed that Estonian public servants are not eager to offer new ideas, and in many cases top officials do not expect them to do so. New ideas are sometimes offered in the process of law drafting. One government unit offers an annual award called the “Golden Pen” to the most outstanding and innovative official of the year. One interviewee was aware of a case where a person was promoted after offering a good new idea. Another interviewee remembered a situation where an official was asked to leave as a consequence of being too active in creating new ideas. Promoting innovativeness varies greatly from one institution to another.

#### ◆ Management practices

##### 5.7

According to the Government of the Republic Order no. 11 of 12.01.1999, the head of a government institution has the right to give additional remuneration for temporary additional responsibilities and for better performance than required within the salary budget limit. The upper limit for this kind of payment is 50 per cent of the salary level. Specific rules for this additional remuneration are set up by means of a collective agreement or internal salary instructions, and the practice among the various agencies appears to be quite different.

Line managers do not have many tools to reward good performance. However, increasingly decision-making on pay-for-performance is delegated to line managers. Although career opportunities in Estonian government institutions are limited, line managers can make proposals for promotion as a part of the assessment procedure. Some institutions use training courses (especially those given abroad) as an incentive for the best officials.

#### ◆ Management control

##### 5.8

Supervisory control is regulated in Chapter 7 of the Government of the Republic Act. A person exercising supervisory control has the right to issue a precept for the elimination of deficiencies in a legal instrument or Act, to suspend the application of an Act or the validity

of a legal instrument, or to invalidate a legal instrument.

The Government of the Republic monitors the legality and purposefulness of the activities of a ministry, the State Chancellery and the county governments. A minister monitors the legality and purposefulness of the activities of the structural units of the ministry, government agencies within the competency of the ministry and their officials, and of other state agencies administered by the ministry. Director-generals of the executive agencies and inspectorates of a ministry exercise supervisory control over the activities of the regional offices of the executive agency or inspectorate and of their officials, to the extent and pursuant to procedures specified by the minister. The Secretary of State and county governors exercise supervisory control over subordinate structural units. (see also 5.2 above). The authorities of heads of other structural units are regulated in by-laws.

The State Audit Office is obliged to provide methodological guidance on the conduct of internal audits. However, the functions assigned to the State Audit Office do not release ministries, other state agencies, state enterprises or other state organisations from conducting internal audits (State Audit Office Act § 7). In reality, the practice of performing the internal audit function differs among different institutions.

The government has formed a commission of experts with the purpose of assisting in the drafting of regulations concerning internal audit.

The evaluation of officials is regulated by PSA Chapter 7 (divisions: General Rules, Competition and Evaluation Committees, Administration of Competition and Evaluation Committees) and with Government Regulation no. 124 (02.05.1996). Competition and evaluation committees evaluate officials once every three years (evaluation period), officials presented for promotion, persons assigned to the reserve of officials, candidates for a post if the post is to be filled by means of public competition, and persons who are not in the service and who apply for assignment to the reserve of officials. The first period of evaluation of officials currently in office is determined to take place within the time period from 01.10.1998 to 31.12.2000.

The interviewees claimed that most of the control within institutions is carried out by top management and formalised internal control arrangements. Meanwhile, line managers' role to control is not formalised and they often do not carry out regular control over the quality of performance, productivity and expenditure within their units. Most line managers conduct informal control over their units. Expenditures are controlled by top management as a rule.

#### ◆ **Parliamentary accountability**

### **5.9**

Concerning the right of members of parliament to make inquiries to the Government of the Republic and its members, see replies to 5.5 above.

According to the Parliament Procedure Act § 17 (1), Parliament has the right to form parliamentary commissions for inquiries on issues of public interest, including the activities

of higher officials. This right has been used in practice several times. For example, in 1995 the parliament created an anti-corruption commission. The commission has the right to request relevant documents, invite public officials and demand from them written and oral testimonies and explanations.

According to the Response to Petitions Act, public agencies and officials are obliged to respond to letters of members of parliament within ten days. In the case of a need for additional inquiries, this period may be lengthened by one month.

As from July 1999 the Legal Chancellor, which is the institution accountable to parliament, will ensure the control of officials.

### **5.10**

There are no official parliamentary reports criticising the public administration. There have been very few parliamentary inquiries concerning the public service. It is not known if ministers have taken any action as a result of parliamentary inquiries. The interviewees claimed that it is often impossible to identify individual officials who have caused a particular problem. Usually ministers take the responsibility for mistakes and they do not investigate the problem any further.

#### **◆ Non-judicial accountability**

### **5.11**

In addition to judicial control, independent control over the administration can be executed by the Legal Chancellor and the State Audit Office.

Basic rules about the Legal Chancellor can be found in the Constitution. The Legal Chancellor is, in his/her activities, an independent official who reviews the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws. The Legal Chancellor analyses proposals made to him/her concerning amendments to laws, the passage of new laws, and the activities of state agencies, and, if necessary, presents a report to the *Riigikogu*.

Detailed regulation of the activities of the Legal Chancellor is provided in the Legal Chancellor Activities Organisation Act. Every person has the right to file a petition with the Legal Chancellor to review the conformity of an Act or other legislation of general application with the Constitution or the law (§ 12). If a body which passed legislation of general application has not brought the legislation or a provision thereof into conformity with the Constitution or the law within 20 days after the date of receipt of a proposal of the Legal Chancellor, the Legal Chancellor proposes to the Supreme Court that the legislation of general application or a provision thereof be declared invalid (§ 17). Bodies of legislative and executive powers, and local government bodies, are required to respond to inquiries of the Legal Chancellor within ten days after their receipt (§ 23).

Although neither the Constitution nor an Act referred to above currently requires responses to complaints of single acts and activities, in practice in some selected cases the Legal Chancellor has made non-binding proposals to administrative agencies to guarantee the

legality of its actions. Principally the Legal Chancellor has acted in the role of an ombudsman, which is not what current legislation foresees.

However, the new law on the Legal Chancellor entering in force on 01.07.1999 also gives a legal basis for the Legal Chancellor to act in ombudsman functions. According to § 20 of this law, every person has the right to file a petition with the Legal Chancellor to review the activity of administrative agencies violating the basic rights of the public. In the case of such a violation, the Legal Chancellor can in his/her decision propose the termination of the violation and compensation for damage or initiation of disciplinary actions against the official at fault.

The State Audit Office (Chapter XI in the Constitution) audits the economic activities of state agencies, state enterprises and other state organisations, the use and preservation of state assets, the use and disposal of state assets which have been transferred into the control of local governments, and the economic activities of enterprises in which the state holds more than one-half of the votes by way of parts or shares, or whose loans or contractual obligations are guaranteed by the state.

#### **5.12**

If the Legal Chancellor ascertains that an official has violated the Constitution or the law, he/she informs either an investigative body or another competent body thereof in writing and, if necessary, forwards to the body all information and documents at his/her disposal (Legal Chancellor Activities Organisation Act § 21).

The new law gives to the Legal Chancellor the additional right to propose the initiation of disciplinary actions against the official at fault and also determines charges for obstructing the investigations.

The State Audit Office is obliged to notify competent authorities of any damage caused to the state, violations of law or other serious deficiencies in economic activities and to monitor the ensuing investigation. Proposals of the State Audit Office for the elimination of violations of law and deficiencies in economic activities are subject to compulsory review by the corresponding directing body of the agency, ministry, or Government of the Republic.

Upon discovery of a violation of law with criminal elements, the State Audit Office submits all relevant materials to an investigative body, which is required to notify the State Audit Office of the results of a review of the materials submitted by the State Audit Office (State Audit Act § 31).

#### **◆ Judicial accountability**

#### **5.13**

According to the Constitution, every person whose rights and freedoms are violated has the right of recourse to the courts. Disputes arising between citizens and the administration (both central and local) are solved following proceedings on three levels in administrative courts or by special judges of administrative affairs in city and county courts (first level),

district courts (second level), and the Supreme Court (third level).

According to the Administrative Court Proceedings Code, every person who considers that his/her rights are being violated by any administrative agency or person can file a complaint about this particular decision or activity to the administrative court. This does not apply to decisions or activities which must be solved according to procedures of constitutional review or criminal and civil law matters.

A prescription is made whenever the administrative court finds that the complaint or protest concerning a decision or activity of an administrative agency is well founded.

The reform of the administrative court proceedings is currently in a drafting stage. It is based on the new Administrative Court Proceedings Code adopted by parliament on 25.02.1999 and should in the long run also reshape the structure of the administrative court system. The new code gives to the administrative court greater possibilities in defending citizens' rights (e.g. to invalidate acts, determine the procedure for compensation of damage). The basic idea behind the new rules is to make the proceedings more effective and to more clearly deploy the possibilities resulting from the inquiry procedure.

#### **5.14**

Complaints may be filed against an agency or official whose legal Act or activity has caused some violation of a citizen's rights. However, as officials do not act personally but as organs of the administration, court proceedings cannot be initiated against an official for actions taken in the course of his/her duties. There are some exceptions as concerns the criminal activity, whereas in the Criminal Court Proceedings Code there are regulations which determine personal responsibility of officials for certain criminal activity (see also 7.8).

#### **5.15**

Every person can challenge administrative Acts or activities of an administrative agency or official violating his/her rights.

Unions and associations can challenge administrative acts or activities of an administrative agency or official violating the rights of its members or other persons, but only in cases where this right is granted by law or through by-laws.

The right to challenge and protest is also given to institutions and officials within the administration where issues of state supervision are involved.

According to the Administrative Court Proceedings Code, the right is granted for exemption from the obligation to pay for legal aid to the court, and in this case, expenses are covered from the state budget (see also 10.13).

## 6. PUBLIC SERVANTS AND POLITICS

### ◆ Legal provisions defining the principle of professional independence of public servants

#### 6.1

The Estonian Constitution declares *expressis verbis* in § 3 that “the activities of the *Riigikogu*, the President of the Republic, the Government of the Republic, and the courts shall be organised on the principle of separation and balance of powers.”

There are no other general provisions in the Constitution requiring impartiality and professional independence of public servants. However, a special reference to the professional independence in their duties is made regarding the State Audit Office (§ 132), the Legal Chancellor (§ 139) and the courts (§ 146).

The declaration of independence and the requirement to act in accordance with the Constitution and the law can be found in Acts regulating the activity of the Legal Chancellor (Legal Chancellor Activities Organisation Act § 2)), procurators (Procuracy Act § 2 (2)), state auditors (State Audit Office Act § 10 (1)), judges (Status of Judges Act § 15 (4)), and police forces (Police Service Act § 10).

In addition, the Public Service Act imposes a restriction in § 70 on political party membership, where state officials, except advisers and assistants to the Chairman and Deputy Chairmen of the *Riigikogu*, advisers and consultants to factions of the *Riigikogu*, and advisers and assistants to the Prime Minister and ministers are not permitted to belong to the permanent directing body or permanent control or audit body of a political party. It also requires in § 59 that a public servant perform his/her duties in an accurate, timely and conscientious manner and without self-interest. The duties of a public servant are determined by laws, regulations and job descriptions, and by other legislation.

### ◆ Political affiliation and activities of public servants

#### 6.2

According to the Estonian Constitution, the rights of some categories of civil servants to engage in enterprises and to form commercial associations (§ 31), as well as to belong to political parties and some types of non-profit associations (§ 48), may be restricted by law. This regulation can be found in § 70 of the Public Service Act (see 6.1).

According to § 5 of the Political Parties Act, the following officials cannot be members of a political party:

- 1) the Legal Chancellor and his/her advisers;
- 2) the Auditor-General, his/her deputy, and chief auditors;
- 3) judges;
- 4) prosecutors;
- 5) police officials;

- 6) members of the defence forces in active service;
- 7) border guard officials or border guards in active service.

The President of the Republic is required to suspend his/her membership in a political party for the duration of his/her term of office.

#### ◆ **Contacts with political parties/parliamentary organisations**

### **6.3**

The Code of Ethics of Public Service requires the political impartiality of public servants.

A restriction on membership is imposed only on certain groups of public servants (see 6.2). Others have restrictions on certain activities, such as belonging to the permanent directing body or permanent control or audit body of a political party (see 6.1). The interviewees were not aware of cases where political interests had directly intervened regarding the work of officials. Often officials have working relationships with different interest groups (such as trade unions) and different political parties through parliamentary committees and expert commissions, which is considered as joint decision-making, with the participation of both politicians and officials.

#### ◆ **Role of public servants in policy-making**

### **6.4**

The Code of Ethics of Public Service requires public servants to follow the legitimate will of politicians.

There are no specific provisions in Estonian legislation concerning policy advice. These functions may be assigned to officials as professional responsibilities (through legal Acts, job descriptions or service-related orders).

Under the category of public servant also belong advisors and assistants to ministers, whose main responsibility is to facilitate policy advice to the minister. In general, their conditions of service are the same as those of other public servants. However, there are special regulations in the PSA concerning procedures of employment of assistants and advisors. According to § 21 of the PSA, the following officials are employed in the service for a specified period of time: an adviser or assistant to the Chairman or Deputy Chairman of the *Riigikogu*; an adviser or consultant to a faction or temporary committee of the *Riigikogu* for the term of office of a given membership of the *Riigikogu* but for not longer than the expiry of the term of office of the Chairman or Deputy Chairman of the *Riigikogu* or the termination of activities of the faction or temporary committee of the *Riigikogu*; an adviser to the President of the Republic for the term of office of the President of the Republic; an adviser or assistant to the Prime Minister or a minister for the term of office of the Government of the Republic or the minister, respectively. Other officials are employed in the service for an unspecified period of time.

### **6.5**

Legal acts do not prohibit *expressis verbis* advice being given by other public servants, but

they also do not regulate its conditions. All interviewees agreed that it is quite common that non-political public servants assist in the preparation of a minister's statements for government and parliamentary discussions. It is also common that public servants are invited to offer their expertise in parliamentary committees and expert commissions.

◆ **Changes of officials on changes of government**

**6.6**

A public servant can be transferred and dismissed only on the basis of law, and this process is comprehensively regulated by the PSA (Chapter 2 - Employment in Service). A change of government does not constitute grounds for release from office, except in cases where an official is appointed for a specific term (see also 6.4).

Demotion is a rather unknown practice in the Estonian public service, and transfers are also very rare. In practice, there have been several cases of dismissal after elections (this concerns higher officials in particular). More often the dismissal is based on poor performance of officials rather than on political reasons, although the interviewees claimed that it is very difficult to objectively assess the performance of higher officials, as there are no specific criteria for such assessments.

**6.7**

The basic difference is that officials performing political functions are appointed for a specific term (see also 6.4 and 6.6 above). However, there have been rare cases where they have stayed in office with a new government.

Another difference is that those officials may be appointed to office without a public competition (§ 30).

## **7. STANDARDS OF CONDUCT; MECHANISMS FOR ENFORCEMENT; SANCTIONS**

### **◆ Regulation of administrative functions**

#### **7.1**

There is no general law in Estonia regulating the procedural aspects of administrative decision-making, but the Ministry of Justice is currently dealing with the preparation of the draft Administrative Proceedings Act. However, there are some provisions in laws which, among other issues, also concern procedural rules for making certain administrative decisions or for issuing Acts. For example, procedural standards and drafting standards of legal Acts of the government, a minister, or a county governor are dealt with in the Government of the Republic Act and for local governments in the Local Government Organisation Act.

The rights and obligations of public servants performing administrative functions are for the most part regulated by different regulations (government, ministry, local government), by-laws and/or internal agency rules, and job descriptions. Most government institutions have their own regulations and procedures for performing administrative functions and service delivery. All government institutions have their own rules of procedure which regulate administration within the institution.

#### **7.2**

There is no general law regulating comprehensively relations between public servants and the public. However, various references to different aspects can be found in several laws.

Most significant of these is the Responses to Petition Act, which lays down the terms for proceeding to answer letters and petitions sent by citizens and members of parliament. For example, answers to letters from the public must be answered within one month and from members of parliament within 10 days (§ 3). There are several laws requiring officials' impartiality and fairness in their activity (e.g. Procuracy Act). Deviations from this behaviour should be eliminated by the Anti-Corruption Act, which is expected to guarantee the good service of public servants by making them declare their economic interests and setting up restrictions on outside activities and other employment.

PSA requires in § 59 that a public servant perform his/her duties in an accurate, timely and conscientious manner and without self-interest. However, a public servant may refuse to perform those assigned duties if the performance would be directed against his/her spouse, his/her or the spouse's parents, brothers, sisters or children, or against other persons close to him or her.

The new version of the Anti-Corruption Act (27.01.1999) amended the Public Service Act and added as an annex the Code of Ethics of Public Service, which in several points lays down the standards of behaviour for public servants. It declares and demands legality, fairness, clearness, impartiality, efficiency and openness in the activities of the administration. For example, point 17 of the Code provides that "the public servant must be

polite and helpful in relations with people.”

In addition, most government institutions regulate relations with the public through their internal regulations and in-house rules. All government institutions also have their public relations officers (or offices). Some institutions have established their own service standards and requirements for officials in communicating with the public.

#### ◆ **Transparency in decision-making**

### **7.3**

The Estonian Constitution declares in § 44 that every person has the right to freely obtain information disseminated for public use. All state agencies and local governments, and their officials, have the duty to provide information about their activities, pursuant to procedures provided by law, to an Estonian citizen at his/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 himself or herself held in state agencies and local governments and in state and local government archives, pursuant to procedures provided by law.

According to § 46 of the Constitution, every person has the right to address state agencies, local governments, and their officials with memoranda and petitions. The procedure for responding is provided by the Response to Petition Act.

There are several other acts regulating the administration of information within public administration, such as the Databases Act, *Riigi Teataja* Act (*Riigi Teataja* is the official gazette), Personal Data Protection Act, Official Statistics Act, State Secret Act and Acts regulating the operation of registers. The parliament has also proceeded with a draft of the Freedom of Information Act, which is expected to enter into force in 1999.

All government institutions have established their Websites on the Internet, although most of them still provide quite basic information.

### **7.4**

Paragraph 44 of the Constitution creates basic guarantees for general freedom of information by declaring the citizens' right to obtain information from the administration. This right may be restricted in order to protect delicate personal data, business and state secrets, and information intended exclusively for internal use. The Public Service Act provides in § 67 that a public servant must maintain a state or business secret which becomes known to him/her due to his/her office, information concerning the family and private life of others, and other information received in confidence during the time of the service relationship and after release from the service (see also 7.3).

The right to access information about himself or herself held in state agencies and local governments and in state and local government archives may be restricted pursuant to the law to protect the rights and freedoms of others or the confidentiality of a child's parentage, and in the interests of preventing a criminal offence, apprehending a criminal offender, or ascertaining the truth in a criminal proceeding (Constitution § 44, see also 7.3 above).

Currently issues related to the protection of state secrets (State Secret Act) and personal data of individuals (Personal Data Protection Act) are satisfactorily regulated. Administration of electronic public and private databases are regulated by the Databases Act.

In future there will be a need to specify the concept of “information meant exclusively for internal use,” which will be provided by the Freedom of Information Act. This Act will establish the obligation of the administration to actively disseminate information and will also establish the Information Commissioner, with the aim of supervising the implementation of an Act.

### **7.5**

The requirement to give written reasons for administrative decisions can be found in several Acts concerning the proceedings for certain decisions. The general law about procedures in administrative agencies, as was mentioned in 7.1 above, is in the drafting stage. However, this principle outlines clearly the practice of administrative courts. Following the principle of legality and with the aim of ensuring the possibility to control the administration, an administrative court has declared invalid decisions without sufficient motivation, even in cases where no such requirement exists in the law.

The interviewees claimed that only an administrative head of a ministry can act on behalf of a ministerial administrative decision. The provision of information is thus very centralised and formalised, and an administrative head is held responsible for administrative decisions in his/her unit. Although most ministerial decisions must have the signature of an administrative head, individual public servants are increasingly mentioned as “contact persons” for certain issues.

### **7.6**

There are no such arrangements [for encouraging reporting by public servants of wrongdoings and maladministration in state administration]. In some cases public servants have reported “informally”, but in general Estonian public servants are not active in improving broader organisational problems.

#### **◆ Standards of conduct of public servants**

### **7.7**

According to the Public Service Act (§ 59 (1)), a public servant is obliged to perform his/her duties in an accurate, timely and conscientious manner and without self-interest.

The Code of Ethics of Public Servants is established as an annex of the PSA. This code declares as main principles legality, fairness, clearness, impartiality, efficiency and openness in the activities of the administration and demands that general interests prevail over personal and institutional interests.

The Estonian Institute of Public Administration provides a course on “Ethics for Bureaucrats” as part of core training for various public servants’ categories. The interviewees claimed that ethical behaviour is becoming an increasingly important issue in

organisational culture. Ethical issues are also evaluated in regular performance assessments.

### **7.8**

According to § 84 of the PSA, disciplinary offences are the wrongful non-performance or unsatisfactory performance of duties (including intoxication while in service), the wrongful causing of damage to property of an administrative agency or the wrongful endangerment of such property, and an indecent act (a wrongful act which is in conflict with generally recognised moral standards or which discredits an official or administrative agency, regardless of whether the act is committed in or out of service). Therefore, infringements of principles of the Code of Ethics can also be processed as disciplinary offences.

Only a person or administrative agency authorised to appoint the given official to office has the right to impose a disciplinary punishment, including release from office.

Examples of problematic professional activity, which are processed and punished based on the Criminal Code, are misuse of position, excess of authority (§ 161) , professional neglect (§ 162), bribery and corruption (§ 164-165), forgery (§ 166), etc.

Every person or institution who discovers this kind of situation is obliged to report it to the investigation institutions.

### **7.9**

The grounds for disciplinary offences are defined in § 84 of the PSA (see 7.8). According to § 85, disciplinary punishments are a reprimand, a fine not exceeding ten times the daily wage of an official, removal from service with suspension of salary for not more than ten consecutive scheduled working days, transfer to a lower salary grade by up to three grades for not longer than one year, and release from service. Paragraph 89 makes it possible to delete the punishment before the prescribed time, unless the official commits another offence, and if he/she proves to be a good employee.

§ 160 allows an official to request the cancellation by a court of a disciplinary punishment imposed on him/her if the official finds that he/she has been punished unlawfully, including a punishment which apparently does not correspond to the gravity of the offence and to the circumstances in which it was committed.

### **7.10**

There are no such formal institutional arrangements in place. Day-to-day ethical problems are solved on an individual basis.

### **◆ Mechanisms preventing incompatibilities and conflict of interest**

### **7.11**

According to § 69 of the PSA, it is prohibited for a state official to belong to the permanent directing body or permanent control or audit body of a commercial association, except the directing or supervisory body of an enterprise with state participation. Also, he/she may not receive income from an association or party over which he/she exercises supervision in performing his/her functions (§ 71). He/she may engage in an enterprise only with the

permission of the person or administrative agency who has appointed him/her to office, and if the enterprise does not hinder the performance of his/her functions or damage the reputation of his/her post. It is prohibited for a state official to exercise supervision over his/her own enterprise in performing his/her functions. The PSA also provides several restrictions on the conclusion of transactions by public servants (see PSA §76).

On 27.01.1999, the *Riigikogu* enacted a new version of the Anti-Corruption Act that establishes a legal basis for activities against corruption in the public service. Basically these activities can be divided into three groups – declaration of economic interests, restrictions on employment, and restrictions on certain activities. An official who is in danger of corruption must report this situation to his/her supervisor without delay.

Both the PSA and the Anti-Corruption Act require the declaration of economic interests of the public servant, which must contain data on real estate, vehicles, income sources, stocks and obligations, and any valuable presents given to the public servant.

#### **7.12**

State public servants who are released from office are not permitted to be employed by an institution or a profit-making association over which he/she has systematically exercised state control during the last three years. Moreover, he/she cannot receive any income from such an institution (Anti-Corruption Act, § 74).

Several interviewees expressed their doubts that in practice public organisations monitor carefully enough where their former employees are employed after leaving the public service.

#### **◆ Mechanisms for combatting corrupt activities**

#### **7.13**

Institutionally responsible for implementation of the Anti-Corruption Act are superior officials or institutions, the State Audit Office and the Select Committee of the Parliament on the Application of the Anti-Corruption Act.

There are also units of internal control within government institutions, which are responsible for forestalling and detecting cases where the danger or inclination for corrupt activity may exist. Internal control units also monitor different projects within government institutions.

#### **7.14**

There is no special investigative body for corrupt activities in Estonia. These functions are carried out mainly by the State Audit Office (State Audit Office Act), the State Defence Police (Police Act), the Procuracy (Procuracy Act) and the Select Committee of the Parliament on the Application of the Anti-Corruption Act.

#### **7.15**

The State Audit Office is a constitutional institution exercising economic supervision with the purpose of helping to preserve and to ensure the prudent use of state assets through

auditing. The State Audit Office audits the implementation of the state budget, the use and preservation of state assets allocated to the Bank of Estonia, other banks and credit institutions, the effectiveness and efficiency of the economic activities of state enterprises and other enterprises based on state ownership, the use and disposal of state assets transferred to the possession of local governments, the expediency and purposefulness of use of state subsidies, etc. State auditors' authority is provided in Chapter 5 of the State Audit Office Act (Organisation of Work of State Audit Office). For example, state auditors on duty may enter the territory and facilities of agencies, enterprises and other organisations under audit; demand production of source documents, accounting ledgers, balance sheets and reports, statistical records, budgets, contracts, directives, orders and other legislation, and relevant correspondence and operational documents; receive oral and written statements and certificates concerning matters relating to audits from the heads and other persons. etc.

Another institution dealing with corruption is the Defence Police. In addition to matters related to corruption, the Defence Police also has the responsibility to investigate terrorism and other activities directed against the constitutional order or the territorial unity of the Estonian Republic and to defend state secrets. The Defence Police operates under regulations provided by the Police Act and the Police Service Act. Supervisory authority over the activities of the police in general is given to the Procuracy, which is also the body prosecuting corruption cases in court proceedings based on the Criminal Court Proceedings Act.

The Select Committee of the Parliament on the Application of the Anti-Corruption Act was established based on § 17 of the Parliament Home Rule Act. Members of the committee have the right to request documents, written and oral explanations and to invite officials and private individuals for hearings.

#### **7.16**

There are no special investigation, prosecution or trial bodies for corrupt activities. This is carried out by general investigation bodies and courts.

## C. PUBLIC SERVICE DEVELOPMENTS AND CONSTRAINTS

### 8. PUBLIC SERVICE DEVELOPMENT

#### ◆ Government action on public service development

##### 8.1

In Estonia, it is possible to date the beginning of reforms back to the end of the 1980s. In August 1989 the Supreme Council of Estonia (*Ülemnõukogu*) adopted a decision that responded to the need for administrative reform in Estonia for the years 1990-1994. The main goal of the reform was to re-establish local self-government. During the first half of the 1990s the reform of the administration was mainly seen as territorial administrative reform and the focus was on local self-governments. Changes took place on different levels of the state (state, county, local self-government) or in individual domains (public service, public finance). The uniform and all-embracing strategy of public administration or public service development was missing.

On 1 January 1996, the Public Service Act and the Government of the Republic Act came into force, and provided a legal framework for the public service (the Constitution had been adopted on 28 June 1992, and the first elections of the Estonian Parliament *Riigikogu* were held on 20 September 1992). Still, the problems of public service development were obscured by more imperative matters and also by little consciousness of the subject.

In June 1997 the Expert Committee of Public Administration Reform was established (Government of the Republic Order no. 452). The chairman of the committee was the Minister of Regional Development (without portfolio). Participating in the work of the committee were ministers, members of parliament, officials, county governors, representatives of local self-governments and experts. Its task was to elaborate the integral conception of public administration reform in Estonia, including proposals for public service development.

In August 1997 the Committee of Administrative Reform of Ministers was established (Government of the Republic Order no. 620), chaired by the Prime Minister. The functions of the committee were to make proposals on public administration development, prepare political statements concerning reform and give opinions. The ministries and the State Chancellery were obliged to work out principles of development in their domains.

In cooperation between the two committees, a document called "Foundations of Public Administration Development" was prepared and approved by the Government of the Republic on 23 February 1999 (see also 8.3). Already before that, at the end of 1998, the Office of Public Administration was founded within the State Chancellery to coordinate the activities related to general public administration development and reform (at the moment the development of the public service is not an explicit task of the Office).

In general, it is possible to conclude that during the (second half of the) 1990s, the issues concerning the public service and its development have been under discussion (especially public service training, evaluation and remuneration), but results (in the form of concrete plans, programmes or strategies) have been limited.

At the same time, the debate on public service issues has become more and more professional and more knowledgeable.

## **8.2**

In its goals for 1997-1998, the previous Government of the Republic (which resigned on 25 March 1999 following the general elections held on 7 March 1999) made several commitments concerning the public service. As part of the general goal of reducing bureaucracy in state and local government administrations, the government promised to elaborate a new system of public service remuneration (which was not fulfilled) and a public service training strategy (approved on 19 January 1999). The previous government also promised to make extensive amendments to the PSA (it was amended several times, but mainly the provisions concerning evaluation), to work out public service expense norms and an effective system of internal audit. Some work was done to achieve these goals but no major improvement occurred.

In relation to European integration, the government promised to start long-term EU training for public servants and judges (the development of the EU Training Strategy for Estonian Civil Servants is currently in its final stage).

On 25 March 1999, the new government entered office -- the coalition of the Estonian Reform Party, Pro Patria and the Moderates (all previously in opposition). It is stated in the coalition agreement that the new government:

- will set the standards for the certification of all state officials and will improve the training system for state officials;
- will continue developing the public service as an open system.

## **8.3**

As mentioned in 8.1 above, in February 1999 the "Foundations of Public Administration Development" document was approved by the government. The document states that:

- The Estonian public service is a post-based system that may be combined with the elements of a career-based system if necessary. The public service system needs considerable improvement, based on the conceptual framework of the PSA which was enforced in 1996.
- The public service set uniform principles in state and local self-government services.
- In order to establish a professional body of public servants, public service training shall be improved. Division into basic categories of posts shall be reorganised according to levels of education and differentiation of functions and responsibilities.
- An explicit legal framework for transfers shall be created.
- Public personnel policy will be designed to respond to the needs and possibilities of a small state.
- The rights, duties and responsibilities of officials shall be balanced, and the competitiveness of the public service shall be ensured through salaries which are more comparable to those in the private sector and by means of other incentive mechanisms.

- The promotion system will be elaborated.

#### **8.4**

There are no uniform public service development programmes or reforms currently in operation. Improvement of the administration is primarily taking place in separate areas of the service and in individual government institutions.

Although the responsibility for public service development has not been determined in Estonia, the Department of Public Service and Personnel in the State Chancellery has taken the initiative and started the process of developing a general public personnel policy for the Estonian public service.

The most important current problem is probably the implementation of the evaluation of public servants (it is officially called evaluation and not performance appraisal). Officials who became public servants on 1 January 1996 shall be evaluated before 31 December 2000. Methodological guidelines for implementing and organising this evaluation and advice on conducting appraisal discussions are being worked out in the State Chancellery. Training programmes for superiors who will conduct the discussions and for personnel staff have started in the Estonian Institute of Public Administration.

Also, under the leadership of the Office of European Integration, the development of the EU Training Strategy for Estonian Civil Servants has reached its final phase (prior target groups, aims of EU training, content and methods of the training).

The new coalition government is actively working on administrative reform, but no specific plans or programmes have been issued yet. As administrative reform is on the agenda of all three parties which form the coalition, new developments in reforming public administration can be expected in the near future. It is obvious that the current government has a remarkably greater interest in implementing administrative reform than any previous government.

#### **8.5**

The previous government did not address the problem of corruption with specific programmes or plans. Still, during their governance the Code of Ethics of Public Service was adopted, the amendments to the Anti-Corruption Act were passed by the *Riigikogu*, and declarations of economic interests became a broadly accepted practice.

The new coalition considers the improvement of ethical behaviour and the reduction of corruption one of its main priorities (part of the coalition agreement). For that purpose, the coalition:

- 1) will make state audit more effective and extend its functions by giving to the State Audit Office the authority to supervise the effective use of funds given by the state budget to local governments and to evaluate the effectiveness of the public sector;
- 2) will take strong measures to remove corrupt and incompetent officials, and will improve the performance of internal audit; will adopt a mechanism for the use of ethics codes in the certification of officials;
- 3) will impose harsher penalties for bribery, profit concealment, tax evasion, and abuse of

office;

4) will demand greater accountability from public servants;

5) will reorganise the state procurement system by putting the State Procurement Office solely in charge of large state supplies. The State Procurement Office's authority to supervise state supplies will be increased. In order to reduce the state's administrative costs, a uniform procurement system has to be established, which includes the purchase of information technology, automobiles, office equipment and supplies.

#### ◆ **Staffing strategies to facilitate EU accession**

### **8.6**

The main document in relation to EU accession is the Government of the Republic Programme for European Integration (action plans for the period 1998 - 2003 and more detailed plans for 1999). One section of the programme is devoted to administrative capacity and to the need to enhance this capacity. Staffing needs are not explicitly expressed (more attention is paid to the training of civil servants).

All individual units of the administration have worked out their individual action plans for EU accession, especially in the key areas for implementing the *acquis communautaire*. These plans include staffing needs (e.g. how many new jobs and employees are needed, in which units, and how present officials will be trained).

### **8.7**

There are no central personnel management mechanisms in place. The staffing of posts related to EU accession is in the competence of individual institutions. The interviewees claimed that special mechanisms to ensure stability are rare. Mechanisms mentioned include introduction of flexible working hours enabling an official to combine his/her present work and EU-related projects, and development of allowances related to the tasks of EU accession.

#### ◆ **Resourcing public service development**

### **8.8**

The State Chancellery is dealing with general issues of the public service, especially with training and evaluation. The Ministry of Finance is responsible for general structural issues concerning the public service, and for the salary system of officials. The Ministry of Justice is responsible for the development of public law. However, there is no unit officially responsible for the overall development and reform of the public service.

### **8.9**

In Estonia, there are four main structures that are responsible for the design and implementation of policy related to European integration. In January 1996 the most important of these, the Office of European Integration, was founded as part of the State Chancellery (Government of the Republic Order no. 79 of 30 January 1996). By the same order, a committee of ministers (political supervision) and a council of higher officials (questions related to strategy implementation) were created. In addition, expert groups are working in the ministries. Also, the Committee of European Affairs, operating in the

Estonian Parliament since 1997, cooperates closely with the committee of ministers and develops relations with the European Parliament.

The scheme of European integration is decentralised. The Office of European Integration serves as a secretariat for the committee of ministers and the council of higher officials. Besides that, it is a coordinating body for EU accession (supervision of approximation of legislation, coordination of priorities, technical assistance and EU training). The Office is accountable to the Prime Minister and currently has a staff of 16 people.

In July 1998 the EU Secretariat of Information was founded by the government. The secretariat is coordinating the communication of information to the public on EU accession and cooperates closely with the Office of European Integration. Currently there are four people working in the secretariat.

#### ◆ External assistance and conditions

##### 8.10

General responsibility for coordination of foreign assistance lies with the Ministry of Finance. It is also a coordinating centre for the PHARE Programme. In fulfilling its duties, the Ministry of Finance: keeps the database on foreign assistance and foreign cooperation; assures the exchange of information between ministries and makes public the possibilities of foreign assistance and its receivers; collects all relevant data on possible foreign assistance; supervises the implementation of projects and programmes related to foreign assistance or foreign cooperation; advises ministries; collects and analyses information on the productivity of realised programmes of foreign assistance and foreign cooperation, etc.

A large portion of foreign assistance goes directly to the ministries. Foreign assistance comes from different sources:

- EU/PHARE programme; EU/TAIEX programme (public administration development; training);
- International funds, e.g. OSI (Open Society Institute, Budapest) and the Open Estonia Foundation (project funding);
- Bilateral assistance, mostly in the form of training, which often goes directly to the ministries (from Nordic countries [also 3+3 projects – Nordic Countries and Baltic states], Germany, United Kingdom, Netherlands, Canada, etc.);
- OECD/SIGMA Programme (general support, expert advice).

##### 8.11

There are no externally imposed conditions that directly affect public service development.

## D. NUMBERS AND TABLES

### 9. DATA

Data about the public service are not complete because official statistics have not been sufficiently developed and no statistical surveys were conducted in 1994-1995. More systematic data gathering began as from 1996, and by 1999 basic information about the public service is available.

#### ◆ Numbers and distribution of public servants

##### 9.1

Total labour force, 1994 -1997\*, in thousands (statistical data about employment in different sectors available as from 1995):

	Total labour force	Total employment	SA**	LSG***	PS****
<b>1994</b>	1068,8	692,6	-	-	-
<b>1995</b>	1061,7	656,1	95,8	63,0	497,3
<b>1996</b>	1053,2	645,6	88,2	69,1	488,3
<b>1997</b>	1102,7	648,4	81,0	68,6	498,8

\* 1993-1997 population aged 15 - 69; 1997: population aged 15 -74

\*\* SA -- number of people working in organisations financed from the state budget (total number of teachers, cultural and medical workers, etc. and public servants)

\*\*\* LSG -- number of people working in organisations financed by local self-governments

\*\*\*\* PS -- total employment in the private sector

##### 9.2

Data about the numbers of public servants in 1994-1995 are not available. The number of police officials, border guard officials, and fire and rescue workers are not included in 1996 because of a change in methodology.

The following data are based on the parliamentary inquiry to the Prime Minister in 1997.

	1996	1997
Ministry of Agriculture <sup>1</sup>	663	603

<sup>1</sup> All institutions under the governance of each ministry are included



Distribution of public servants by education:

	1996		1997	
		%		%
<i>Ministries, county governments and other institutions</i>	11968		15332	
Higher	5217	43,6	5816	38,0
Professional secondary	3214	26,9	4014	26,2
Secondary	3216	26,9	5423	35,4
Elementary	321	2,6	79	0,4
<i>Police officials</i>			4596	
Higher			1088	23,7
Professional secondary			1219	26,5
Secondary			2204	48,0
Elementary			85	1,8
<i>Total number of officials</i>	11968		19928	
Higher	5217	43,6	6904	34,6
Professional secondary	3214	26,9	5233	26,2
Secondary	3216	26,9	7627	38,3
Elementary	321	2,6	164	0,9

Distribution of public servants by age (1997):

	HO*	SO**	JO***	Total	%
<i>Ministries, county governments and other institutions</i>				15332	
... -21	1	23	98	122	0,8
21-30	317	1720	1825	3862	25,2
31-40	589	1900	1296	3785	24,7
41-50	836	2150	1096	4082	26,6
51-60	570	1549	608	2727	17,8
60-...	162	467	125	754	4,9
<i>Police officials</i>				4596	
... -21		66	20	86	1,9
21-30	72	990	865	1927	41,9
31-40	115	748	481	1344	29,2
41-50	143	506	206	855	18,6
51-60	76	141	80	297	6,5
60-...	22	43	22	87	1,9

<i>Total number of officials</i>				19928	
... -21	1	89	118	208	1,0
21-30	389	2710	2690	5789	29,1
31-40	704	2648	1777	5129	25,7
41-50	979	2656	1302	4937	24,8
51-60	646	1690	688	3024	15,2
60-...	184	510	147	841	4,2

\* HO – higher officials

\*\* SO – senior officials

\*\*\* JO – junior officials

Distribution of public servants by gender (1997):

	HO	SO	JO	Total	%
<i>Ministries, county governments and other institutions</i>				15332	
Male	1492	3125	2488	7105	46,3
Female	983	4684	2560	8227	53,7
<i>Police officials</i>				4596	
Male	351	1812	1404	3567	77,6
Female	77	682	270	1029	22,4
<i>Total number of officials</i>				19928	
Male	1843	4937	3892	10672	53,6
Female	1060	5366	2830	9256	46,4

Key areas	1996							
		by grade			by education			
	Total	HO	SO	JO	HE	PSE	SE	EE
Ministry of Agriculture	663	100	448	115	462	117	82	2
Ministry of Environment	402	111	264	27	263	57	82	
Ministry of Finance	2622	380	1374	868	1099	873	642	8
Ministry of Internal Affairs	1463	148	705	610	458	506	483	16

	1997															
		by grade			by education			by age						by gender		
	Total	HO	SO	JO	HE	PSE	SE	...-21	21-30	31-40	41-50	51-60	61-...	Males	Females	
Ministry of Agriculture	603	96	397	110	453	102	48	0	63	135	177	168	60	205	398	
Ministry of Environment	380	103	237	40	216	76	88	0	61	89	99	92	39	216	164	
Ministry of Finance	2809	393	1574	842	1264	853	692	15	757	712	802	451	72	914	1895	
Ministry of Internal Affairs including police officials	8555	892	4290	3373	1811	2415	3999	148	3288	2351	1715	848	205	5993	2562	

HO -- higher officials

SO -- senior officials

JO -- junior officials

HE -- higher education

PSE -- professional secondary education

SE -- secondary education

EE -- elementary education

### 9.3

Number and breakdown of vacant positions in 1996 and 1997. The data are based on statistics from the State Chancellery and the parliamentary inquiry to the Prime Minister in 1997. Information for 1994-1995 is not available.

	1996			1997		
	No. of positions	Public servants	Vacant positions	No. of Positions	Public servants	Vacant positions
Ministry of Agriculture	713	663	50	641	603	38
Ministry of Environment	436	402	34	442	380	62
Ministry of Finance	3093	2622	471	3229	2809	420
Ministry of Internal Affairs	1644	1463	181	10497	8555	1942
Ministry of Economy Affairs	420	360	60	427,5	378	49,5
Ministry of Defence	204	178	26	215	192	23
Ministry of Justice	2765	2437	328	3818	3221	597
Ministry of Social Affairs	1613	1412	201	1469	1296	173
Ministry of Education	170	132	38	169	141	28
Ministry of Culture	92	85	7	85	83	2
Ministry of Foreign Affairs	360	299	61	401	323	78
Ministry of Transport and Communications	523	423	100	519	400	119
County Governments	1107	1054	53	1155	1109	46
State Audit Office	100	76	24	95	76	19
Office of the Legal Chancellor	29	19	10	21	19	2
State Chancellery	140	130	10	138	130	8
Chancellery of the Parliament	255	213	42	219	213	6
	13664	11968	1696	23540,5	19928	3612,5

#### 9.4

Official data not available [working knowledge of foreign languages].

Currently language skills of public servants are being tested with the help of the Estonian Institute of Public Administration. English is the most common foreign language, German and French are less known. A great majority of people who work in EU-related work groups have fluent English. Language courses are very popular among all public servants.

#### ◆ Pay levels

#### 9.5

According to the State Public Servants' Official Titles and Salary Scale Act and the Government of the Republic Regulations nos. 10 & 11 of 12 January 1999, there shall be a uniform system of salary grades (from 1 to 35) for public servants. Salary grades for officials shall extend from 12 to 35, and those of support staff between 1 and 19. Salary grades for higher officials shall be from 17 to 35, those of senior officials from 15 to 28 and those of junior officials from 12 to 19.

Salary scale of officials:

Salary grade	Salary per hour (EEK)	Salary per month (EEK)
12	9,73	1650
13	10,62	1800
14	11,21	1900
15	12,39	2100
16	13,27	2250
17	14,16	2400
18	15,22	2580
19	16,40	2780
20	17,46	2960
21	18,88	3200
22	20,18	3420
23	21,83	3700
24	23,60	4000
25	25,55	4330
26	27,61	4680
27	29,85	5060
28	32,33	5480
29	35,40	6000
30	38,94	6600
31	43,07	7300
32	47,79	8100

33	54.87	9300
34	64.90	11 000
35	73.75	12 500

	Salary per hour (EEK)	Salary per month (EEK)
Higher officials	14.16 - 73.75	2400 – 12500
Senior officials	12.39 - 32.33	2100 – 5480
Junior officials	9.73 - 16.40	1650 – 2780

*1 EURO = 15.6466 EEK*

**9.6** Pay levels in different branches of the administration, including the key areas, are consistent with those in the whole public service, but there are different pay levels in:

The National Police Board in Harju county and Tallinn \*

Salary grades	1 - 10
Salary per hour	25.78 - 123.89 EEK
Salary per month	4200 - 21000 EEK

In other parts of Estonia, the grades of the salary scale for police officials extend from 18 to 29, the pay rates of which are in accordance with the pay rates of public servants.\*

Salary grades	18 – 29
Salary per hour	15.22 - 35.40 EEK
Salary per month	2580 – 6000 EEK

\* according to the Government of the Republic Regulation no. 30 of 26 January 1999

Security Police Board \*\*

Salary grades	1 - 10
Salary per month	5200 – 16000 EEK

\*\* according to the Government of the Republic Regulation no. 293 of 22 December 1998

There are differences in remuneration of officials of the Chancellery of the Parliament, the State Audit Office, Office of the Legal Chancellor and for diplomats (see 1.4 above).

**9.7** Minimum and average pay levels of employees in the private sector :

Minimum hourly pay	7.35 EEK
Minimum monthly pay	1250 EEK

\* Government of the Republic Regulation no. 270 of 8 December 1998

Average hourly pay	26.10 EEK in the 4 <sup>th</sup> quarter of 1998
Average monthly pay	4695 EEK in the 4 <sup>th</sup> quarter of 1998

\*\* Statistical Office of Estonia

Average monthly pay in Estonia was 4389 EEK in the 4<sup>th</sup> quarter of 1998.

#### ◆ Turnover rates among public servants

### 9.8

Turnover rates among public servants. Data are available for the period 01.01.1997 - 01.07.1997. The data are based on the parliamentary inquiry to the Prime Minister in 1997.

	Number of public servants who have left office	Turnover rates (%)
Ministry of Agriculture	67	11,1
Ministry of Environment	18	4,7
Ministry of Finance	156	5,6
Ministry of Internal Affairs	598	7,0
Ministry of Economic Affairs	19	5,0
Ministry of Defence	5	2,6
Ministry of Justice	242	10,3
Ministry of Social Affairs	64	4,9
Ministry of Education	11	7,8
Ministry of Culture	4	4,8
Ministry of Foreign Affairs	20	6,2
Ministry of Transport and Communications	82	20,5
County Governments	39	3,5
State Audit Office	4	5,3
Office of the Legal Chancellor	0	0
State Chancellery	16	12,3
Chancellery of the <i>Riigikogu</i>	10	4,7
		Average 6,8

**9.9** Data are not available [number of public servants replaced following changes of government].

Changes of government influence the replacement of public servants to some extent, especially the replacement of political officials, e.g. advisers and assistants. However, the statistics about these replacements are not available.

◆ **Redundancy and termination rates among public servants**

**9.10**

There were no uniform or comprehensive programmes for staff reductions in the Estonian public service from 1994 to 1997. Decisions on redundancy of public servants were made in institutions independently and there are no data available on these staff reductions. Staff reductions in individual institutions were largely caused by limits of allocations from the state budget.

**9.11**

The only data available concern the total number of officials in the state administration and local self-governments made redundant in 1997. According to data of the Department of Public Service and Personnel of the State Chancellery the number of public servants made redundant in 1997 was 238 (13,4 % of the overall number of released officials).

**9.12**

There are no data available for 1994-1996. According to the Department of Public Service and Personnel of the State Chancellery, the number of public servants in state administration and local self-governments whose service was terminated for reasons other than redundancy in 1997 was 1534. (officials of local self-governments are included).

**Release from the service:**

On the initiative of official	1110
Expiry of term of service	118
Closure of administrative agency	121
Unsuitability for office	48
Disciplinary offence	71
Age	31
Other reasons	35
<hr/> Total	1534

◆ **Training of public servants**

**9.13** No data available [public servants participating in government-funded and work-related training programmes].

**9.14** No data available [public servants participating in donor-funded training programmes].

**9.15** No data available [public servants participating in language training].

◆ **Disciplinary proceedings against public servants**

**9.16** No data available [public servants subject to formal disciplinary proceedings].

## E. THE JUDICIARY

### 10. DATA ON THE JUDICIARY

#### ◆ Branches; hierarchical structure; distribution of officials

##### 10.1

According to the Estonian Constitution (§ 148), the court system consists of:

- 1) county and city courts, and administrative courts;
- 2) circuit courts;
- 3) the Supreme Court.

The creation of specialised courts with specific jurisdiction must be provided by law, which is not currently the case. The formation of emergency courts is prohibited.

Appellation proceedings on the second level in circuit court and annulment proceedings on the third level in the Supreme Court are organised in civil, criminal and administrative law chambers.

There is no separate court for constitutional matters in Estonia. Original jurisdiction in constitutional review is reserved for the Constitutional Review Chamber in the Supreme Court of the Estonian Republic (justices are elected by the Supreme Court *in banc* on proposal of the Chief Justice for a term of five years, from among the civil, criminal and administrative law chambers, with at least one member from each chamber).

##### 10.2

According to the Estonian Constitution (§ 149), county and city courts, and administrative courts are the courts of first instance. Circuit courts are appellate courts and review judgments of the courts of first instance by way of appeal proceedings. The Supreme Court is the highest court in the state and reviews court judgments by means of annulment proceedings. The Supreme Court is also the court of constitutional review. Rules regarding court administration and rules of court procedure are established by law.

##### 10.3

	1994	1995	1996	1997
3. Supreme Court				
Adm. Law Chamber	-	4	4	4
Civil Chamber	-	6	6	6
Criminal Chamber	-	6	6	6

Const. Review Ch.*	-	5	5	5
<b>Total</b>	17/14	17/17	17/17	17/17
<b>2. Circuit Court</b>				
Adm. Law Chamber	-	-	-	5
Civil Chamber	-	-	-	17
Criminal Chamber	-	-	-	19
<b>Total</b>	42/39**	42/39	42/39	44/41
<b>1. County and City Courts</b>				
	118/119	118/119	128/119	140/125
<b>1. Administrative Court</b>				
	35/32	35/32	35/32	37/33

\* Justices are elected for a term of five years, from among the civil, criminal and administrative law chambers, with at least one member from each chamber.

\*\* positions/judges (here and later)

#### 10.4

	1994	1995	1996	1997
Prosecutors*	167/137	168/137	172/145	172/145

\* Prosecution is administered by the Ministry of Justice. Institutionally prosecutors do not belong to the judiciary, but procedurally they do. Attorneys form a separate self-government body, the Estonian Bar Association.

#### ◆ Integrity of judges

#### 10.5

According to the Estonian Constitution (§ 147):

“Judges shall be appointed for life. The grounds and procedure for the release of judges from office shall be provided by law. Judges may be removed from office only by a court judgment. Judges shall not hold any other elected or appointed office, except in the cases prescribed by law. The legal status of judges and guarantees for their independence shall be provided by law.”

The status and independence of judges is described in the Status of Judges Act (translation not available). The law regulates the following aspects for the judiciary – application process and appointment for the position of judge and assistant judge; selection of lay judge; rights, obligations and basic guarantees of independence of judges, assistant judges and lay judges; disciplinary action against judges; removal and release of judges from office; and salary and social guarantees of judges and assistant judges.

In addition, the Constitution provides for Supreme Court judges in § 150 that:

“The Chief Justice of the Supreme Court shall be appointed to office by the *Riigikogu*, on the proposal of the President of the Republic.

Justices of the Supreme Court shall be appointed to office by the *Riigikogu*, on the proposal of the Chief Justice of the Supreme Court.

Other judges shall be appointed to office by the President of the Republic, on the proposal of the Supreme Court.”

and in § 153 that:

“Criminal charges may be brought against a judge during his/her term of office only on the proposal of the Supreme Court, and with the consent of the President of the Republic. Criminal charges may be brought against the Chief Justice and justices of the Supreme Court only on the proposal of the Legal Chancellor, and with the consent of the majority of the membership of the *Riigikogu*.”

### 10.6

The Constitution provides in § 104 the requirement for enumerated constitutional laws to be passed and amended only by a majority of the membership of the *Riigikogu*. This requirement is also stipulated in the Courts Administration Act and the Court Procedures Act.

### 10.7

According to the Status of Judges Act, those without previous appointments in the judiciary must apply for a candidate position and complete a two-year (maximum) preparatory course within the judiciary or the Ministry of Justice. This process is concluded with an examination before the commission consisting of representatives of all court levels (three each), a scholar from the University of Tartu, and a representative of the Ministry of Justice.

Vacancies are announced in *Riigi Teataja* (the state gazette) and applications for appointment must be filed within one month with the Chief Justice of the Supreme Court. Justices of the Supreme Court are appointed to the office by the *Riigikogu*, on the proposal of the Chief Justice of the Supreme Court. Every Estonian citizen who is at least 30 years of age, has a legal education and is of high moral character may apply for the post of justice of the Supreme Court. Other judges are appointed to office by the President of the Republic, on the proposal of the Supreme Court *in banc*. This procedure also applies to the promotion of judges.

According to the Constitution judges are appointed for life.

### 10.8

	1994	1995	1996	1997
<b>3. Supreme Court</b>				
Adm. Law Chamber	6130 EEK*	8100.-	9190.-	15750.-
Civil Chamber	6130.-	8100.-	9190.-	15750.-
Criminal Chamber	6130.-	8100.-	9190.-	15750.-
<b>2. Circuit Court</b>				
Adm. Law Chamber	5360.-	6895.-	8040.-	13650.-

Civil Chamber	5360.-	6895.-	8040.-	13650.-
Criminal Chamber	5360.-	6895.-	8040.-	13650.-
Chairman of Court	6125.-	7875.-	9190.-	15750.-
<b>1. County and City Courts</b>				
Judge	4700.-	6035.-	7035.-	12075.-
Chairman of Court	5360.-	6035.-	7035.-	13650.-
<b>1. Administrative Court</b>				
Judge	4700.-	6035.-	7035.-	12075.-
Chairman of Court	5360.-	6035.-	7035.-	13650.-
Other key officials in the judiciary				
<b>Prosecutors</b>	2350.-	3200.-	3700.-	10500.-

\* 1 EURO=15.6466 EEK

#### 10.9

	1994	1995	1996	1997
<b>3. Supreme Court</b>				
<b>Total</b>	-	1	-	-
<b>2. Circuit Court</b>				
<b>Total</b>	2	1	-	4
<b>1. County and City Courts</b>				
<b>Total</b>	4	5	2	6
<b>1. Administrative Court</b>				
<b>Total</b>	2	2	1	-

#### 10.10

	1994	1995	1996	1997
<b>Supreme Court</b>	0*	0	0	0
<b>Circuit Court</b>	0	0	0	0
<b>County and City Courts</b>	0	0	0	0

\*There are no such cases [judges replaced as a consequence of changes of government].  
Judges may be removed from office only by a court judgment (Constitution. § 147).

#### ◆ Court proceedings

#### 10.11

	1994	1995	1996	1997
<b>3. Supreme Court</b>				
Adm. Law Chamber	81/19*	199/46	244/46	274/37
Civil Chamber	331/103	451/153	592/187	637/168
Criminal Chamber	957/172	709/180	761/243	982/264
Const. Review Ch.	11	4	4	3

**2. Circuit Court**

Adm. Law Chamber	139/120	332/279	722/689	523/427
Civil Chamber	686/527	764/676	1721/1645	1762/1641
Criminal Chamber	612/559	635/628	1698/1668	1901/1875

**1. County and City Courts**

Civil cases	17612/ 10813	18604/ 11680	19529/ 12407	20128/ 11765
Criminal cases	6199	5835/	6301/3196	6413/3509

**1. Administrative Court**

Based on Administrative Court Procedure Acts	1118/638	1509/1184	1542/1159	1767/1290
Based on Administrative Infringement Act	8777/	9139/	8967/	8236/

\* applications/judgments

**10.12**

	1994	1995	1996	1997
<b>3. Supreme Court</b>				
Adm. Law Chamber	-	-	-	-
Civil Chamber	-	-	-	-
Criminal Chamber	-	-	-	-
Const. Review Ch.	-	-	-	-
<b>2. Circuit Court</b>				
Adm. Law Chamber	-	-	1 month 15 days	1 month 20 days
Civil Chamber	-	-	2 months 3 days	2 months 10 days
Criminal Chamber	-	-	1 month 15 days	1 month 15 days
<b>1. County and City Courts</b>				
Criminal cases	-	-	3 months 23 days	3 months 26 days
Civil cases	-	-	4 months 10 days	4 months 9 days
<b>1. Administrative Court</b>				
	-	-	-	-

**10.13**

The Bar Association Act guarantees to the plaintiff the right to freely choose an attorney to represent him/her in court proceedings. In cases where an attorney is appointed by the

investigator or the court, expenses are covered by the state according to rules determined by the Ministry of Justice. Different procedural acts reserve the right to exempt from the obligation to pay for legal aid to the court, and in this case expenses are covered from the state budget (Administrative Court Proceedings Act § 70; Civil Court Proceedings Act § 59; Criminal Court Proceedings Act § 36).

As from July 1999 the Legal Chancellor will carry out ombudsman functions.

♦ **Training of judges**

**10.14**

	<b>1994*</b>	<b>1995*</b>	<b>1996*</b>	<b>1997*</b>
<b>Supreme Court</b>	-	-	-	-
<b>Circuit Court</b>	-	-	-	-
<b>County and City Courts</b>	-	-	-	-

\* No structured statistics available

Growing attention is paid to this subject and several training programmes were initiated in 1998 (no data available yet) and 1999 by the Estonian Law Centre. EC law is often dealt with in courses on specialised fields of law (e.g. courses on investment law, intellectual property law, environment law, labour law, competition law, etc.).