

# Rights of People with Intellectual Disabilities

Access to Education and Employment

Estonia

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## Acknowledgements

The EU Monitoring and Advocacy Program of the Open Society Institute and the Open Society Mental Health Initiative would like to acknowledge the primary role of the following individuals in researching and drafting these monitoring reports. Final responsibility for the content of the reports rests with EUMAP.

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	Edyth Dunlop	<i>Northern Ireland Union of Supported Employment</i>
	Hazel Morgan	<i>Foundation for People with Learning Disabilities</i>

We would also like to thank the following organisations for their invaluable contribution to the reports through their partnership throughout the process of developing the reports:

Bulgarian Association of People with Intellectual Disabilities, Open Society Foundation – Sofia (Bulgaria); Association for Promoting Inclusion (Croatia); Inclusion Czech Republic (Czech Republic); Open Estonia Foundation, EVPIT – Estonian Mentally Disabled People Support Organization; (Estonia); Association for the Psychosocial Health of Children and Adolescents (Greece); Salva Vita Foundation (Hungary); Latvian Centre for Human Rights and Ethnic Studies, Soros Foundation – Latvia (Latvia); Lithuanian Welfare Society for People with Intellectual Disability – Viltis (Lithuania); Federation of Societies of Persons with Intellectual Disabilities and their Families (Netherlands); Polish Association for Persons with Mental Handicap (Poland); Association Pentru Voi (Romania); YHD – Association for Theory & Culture of Handicap (Slovenia); League for Mental Health, Inclusion Slovakia (Slovakia); Foundation for People with Learning Disabilities (UK).

For this report on Estonia, we would like to also particularly acknowledge the following people and institutions for their contribution to the reports by being available for interviews, providing information or research, or reviewing and critiquing drafts of the report:

Keiu Talve, Mari-Liis Kannuke, Juta Männisalu, Tauno Asuja, Marileen Olenko, Silvo Loomet, Bianka Mättas, Kalev Märten, Estonian Ministry of Education and Research, Patients Representative Association of Estonia, Harju County Government, PRAXIS Centre for Policy Studies, Estonian Institute of Human Rights, Estonian Union for Child Welfare, Tallinn Pension Department, Office of the Chancellor of Justice, Foundation of Legal Services Bureau, Tallinn Education Department, Social Insurance Board, Ministry of Social Affairs, Karula Residential Care Home, Tallinn Employment Department, Youth Education Centre “Juks”, Tallinn Social and Health Service Department, Merimetsa Support Centre, Astangu Vocational Rehabilitation Centre, Tallinn I Boarding School, The Estonian Chamber of Disabled People, Tallinn Chamber of Disabled People, Estonian Mentally Disabled People Support Organisation.

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## Preface

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute monitors human rights and rule of law issues throughout Europe, jointly with local NGOs and civil society organisations. EUMAP reports emphasise the importance of civil society monitoring and encourage a direct dialogue between governmental and non-governmental actors on issues related to human rights and the rule of law. In addition to its reports on the Rights of People with Intellectual Disabilities, EUMAP has released monitoring reports focusing on Minority Protection, Judicial Independence and Capacity, Corruption and Anti-corruption Policy, and Equal Opportunities for Women and Men. Reports on the Regulation and Independence of the Broadcast Media are also forthcoming in 2005. EUMAP is currently preparing reports on Equal Access to Quality Education for Roma; publication is expected in 2006.

EUMAP reports are elaborated by independent experts from the countries being monitored. They are intended to highlight the significance of human rights issues and the key role of civil society in promoting governmental compliance with human rights standards throughout an expanding Europe. All EUMAP reports include detailed recommendations targeted at the national and international levels. Directed at Governments, international organizations and other stakeholders, the recommendations aim to ensure that the report findings directly impact on policy in the areas being monitored.

The present reports have been prepared in collaboration with the **Open Society Mental Health Initiative (MHI)**, part of OSI's Public Health Programs. MHI seeks to ensure that people with mental disabilities (mental health problems and/or intellectual disabilities) are able to live as equal citizens in the community and to participate in society with full respect for their human rights. MHI promotes the social inclusion of people with mental disabilities by supporting the development of community-based alternatives to institutionalisation and by actively engaging in policy-based advocacy.

Throughout Europe people with intellectual disabilities still face serious stigma, prejudice and significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is key to ensuring their social inclusion, and enabling them to live and work in the community as equal citizens. The EUMAP reports focus specifically on these two areas because of their importance to people with intellectual disabilities and because of the existence of international standards, and national law and policy, relating to these areas.

Monitoring of the rights of people with intellectual disabilities was based on a detailed methodology (available at [www.eumap.org](http://www.eumap.org)), intended to ensure a comparative approach

across the countries monitored. The reports cover the eight Central and Eastern European (CEE) countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), Bulgaria and Romania, expected to join in 2007, one candidate country (Croatia), and three older EU member States (Greece, the Netherlands, and the United Kingdom).

The preparation of reports on both member and non-member States highlights the fact that international human rights standards apply equally, and provides an opportunity to comment on general trends in the development and the policy application of these standards. The States selected represent a geographical spread and illustrate a spectrum of policy, practice and implementation.

Reports on each of the 14 countries monitored, plus an overview report resuming the main findings across all the countries, will be published separately. First drafts of each of the country reports were reviewed at national roundtable meetings. These were organised in order to invite comments on the draft from Government officials, civil society organisations, self-advocates, parents, and international organisations. The final report reproduced in this volume underwent significant revision based on the comments and critique received during this process. EUMAP assumes full responsibility for its final content.

## Foreword

This report is one of a series of 14 country reports prepared by the Open Society Institute's EU Monitoring and Advocacy Program and the Open Society Mental Health Initiative. The report presents an overview of the opportunities and challenges facing people with intellectual disabilities in accessing education and employment. It provides an important contribution to research on this group, one of the most vulnerable groups throughout Europe.

The initiative of producing this report fulfils important objectives. There is a clear need for comprehensive studies based on reliable research about the situation of people with intellectual disabilities in Europe. Without reliable information, the strategies and policies targeting this particular group of people are often inadequate in terms of meeting their real needs. The monitoring underlying the reports also aims to provide a comparative overview on the countries analysed. The present report goes far beyond previous reports that have brought this issue to the attention of European and national decision-makers.

Presenting a wider picture, this series of reports provides a thorough analysis of the situation of people with intellectual disabilities in their access to education and employment in eight new EU Member States (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), two accession countries (Bulgaria and Romania) and one candidate country (Croatia). To give a broader view of practice across Europe, Greece, the Netherlands and the United Kingdom have also been studied. The conclusions of the series of reports indicate that people with intellectual disabilities in Europe continue to face significant barriers as far as real access to education and employment is concerned. Discrimination also remains a major issue, despite measures taken at the national level and within a larger European context.

The reports also stand for the importance of civil society monitoring and the overall involvement of different stakeholders in dialogue regarding the human rights of people with intellectual disabilities. A local expert in each country prepared the monitoring report, while local NGOs were involved throughout the monitoring process, providing the basis for broad consultation wherever possible. A central goal of this monitoring is to promote greater awareness and discussion of the issues at stake for people with intellectual disabilities at the local, national, and international levels.

Across the countries monitored, common problems continue to block access to education and employment for people with intellectual disabilities. In many countries, data on the situation of this group is extremely limited or insufficiently disaggregated, making it difficult for Governments to develop policy tailored to their needs. What data there is, shows that while integration of children with intellectual disabilities in mainstream schools is generally increasing, a more fundamental process towards

inclusion, as presented in the 1994 Salamanca Declaration on Special Needs Education, has made little headway. Many children throughout the region are still segregated in special schools or denied an education altogether, leaving little hope that they will be able to find jobs as adults. In most countries monitored, there is only the most basic support for the transition from education to employment.

Existing incentive schemes in many countries, particularly hiring quotas, have not been successful in increasing the number of people with intellectual disabilities who have entered the work force. More specifically targeted programmes must be developed to meet the needs of this group. Throughout Europe, NGOs have piloted effective projects offering supported employment to people with intellectual disabilities, providing assistance such as job coaches, specialised job training and individually tailored supervision. However, this approach has not yet been adopted as Government policy and therefore the opportunities it offers cannot be extended to a much larger group of people.

The reports highlight numerous obstacles that people with intellectual disabilities face in accessing education and employment in various countries across Europe. Improved legislation still needs to be adopted and implemented nationally as well as at the EU level. Existing models of good practice in inclusive education and supported employment should be replicated on a more extensive scale. These reports should help domestic and European decision-makers to develop effective policies ensuring the inclusion of people with intellectual disabilities into society.

From the perspective of Inclusion Europe, the European Association of People with Intellectual Disabilities and their Families, this report makes a very important contribution to the present discussion on access to education and employment for people with intellectual disabilities. We only can encourage local, national and European decision-makers, service providers and disability and social NGOs to consider and follow the recommendations developed in this report.

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Director  
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# I. Executive Summary and Recommendations

## 1. EXECUTIVE SUMMARY

Throughout Europe, people with intellectual disabilities<sup>1</sup> face major stigma and prejudice and are confronted with significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is critical to ensuring that they can live and work in the community as equal citizens. There is a strong link between education and employment: without access to adequate education, people with intellectual disabilities cannot secure meaningful employment. This denial of access leads to life-long dependency, poverty and social exclusion adding to the stigma of intellectual disability. This monitoring report focuses specifically on the areas of education and employment, because of their importance to people with intellectual disabilities and because of the existence of both international standards and national legislation that specifically address them.

For people with intellectual disabilities in Estonia, access to inclusive education and to any kind of employment remains highly limited. Attitudes towards people with intellectual disabilities have improved over the last decade and the EU accession process has encouraged positive changes in terms of legislation and policy. However, Estonia does not have comprehensive anti-discrimination legislation. While the number of children with intellectual disabilities in the education system is increasing, most of these children are not able to receive education in an integrated environment. Most young people with intellectual disabilities do not receive the education or vocational training they need to later access employment, and the vast majority of people with intellectual disabilities has no employment or work of any kind, so these people are reliant on social benefits. To date, the Government has not adequately addressed the specific needs of people with intellectual disabilities in the labour market.

### *Background*

Estonia is party to most international human rights instruments related to education and employment, including those with provisions on people with disabilities. The Constitution does not explicitly prohibit discrimination on the grounds of disability. Estonia has not yet transposed the provisions of the EU Race Equality Directive or the EU Employment Directive into national legislation. National disability policy is based

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<sup>1</sup> The term “intellectual disability” (also described as “learning disability” or “mental retardation”) here refers to a life-long condition, which is usually present from birth or which develops before the age of 18. It is a permanent condition that is characterised by significantly lower than average intellectual ability and results in significant functional limitations in intellectual functioning and in adaptive behaviour as expressed in conceptual, social and practical adaptive skills.

on the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities. Any complaints of discrimination can be directed to the Chancellor of Justice, an independent body that has the special powers of an ombudsman and is authorised to issue binding decisions in cases of discrimination, in both the public and private sectors.

In Estonia, law and policy use terminology and definitions from the World Health Organization's ICD-10 to diagnose and classify intellectual disability. The term "person with special needs", which includes people with intellectual disabilities, has been recently introduced into Estonian legislation on education. There are different procedures for the diagnosis and assessment of intellectual disability for education (for children); for employment (for adults); and for access to social benefits (for adults and children). Counselling Committees are responsible for diagnosing intellectual disability for educational purposes, according to one of four levels: *mild*, *moderate*, *severe* and *profound* intellectual disabilities. The Medical Examination Commission of the Social Security Board and its regional units (hereafter, Medical Commissions) determine working capacity and also establish an individual's degree of disability (*moderate*, *severe* or *profound*), which in turn determines access to social welfare and other benefits for adults and children. People with *mild* intellectual disabilities are not eligible for these benefits.

There are detailed official statistics on people with disabilities in general. However, these statistics are not disaggregated on the basis of type or level of disability, which means that it is not possible to obtain information across all relevant sectors or, more specifically, on the total number of people with intellectual disabilities in Estonia. Most adults with at least a *moderate* level of intellectual disabilities are placed under guardianship by the courts. Without the consent of the guardian, a person whose legal capacity has been removed cannot sign a contract, including an employment contract. Adults with intellectual disabilities whose active legal capacity has been restricted in certain areas retain the right to work and to sign an employment contract, but their guardians must give their consent for the ward to be employed. If the active legal capacity of adults with intellectual disabilities is restricted in all areas – a condition equivalent to *plenary* guardianship – they lose the right to vote but can still work with the consent of a guardian.

### *Education*

The Constitution guarantees the right to education for everyone, and this right is supported by the Education Act. General legislation on basic and secondary education also regulates special education. Children with special needs, including children with intellectual disabilities, have the right to study at a mainstream school in the area where they live, provided the local authorities have ensured a suitable learning environment. Otherwise, the children have the right to attend the nearest school meeting their educational requirements. In practice, for children with intellectual disabilities, this right is often not realised; many mainstream schools will not enrol children with

intellectual disabilities on the grounds that they cannot provide the needed support services. Existing regulations do not define exactly what mainstream schools must do to adapt their conditions to meet the needs of children with special needs.

In Estonia, access to early intervention services is very limited, and intellectual disability is usually not diagnosed before the age of seven. This means that children with intellectual disabilities (and their families) do not receive the support they need for successful integration into a mainstream school. The assessments carried out by the Counselling Committees are multidisciplinary and involve parents or guardians. Based on their assessment of a child's level of intellectual disabilities, the Committees *recommend* a type of school for the child. They also recommend the type of class the child should be enrolled in – there are special classes for children with differing levels of intellectual disabilities – and the most appropriate curriculum he or she should follow. However, the parents or guardian of a child with intellectual disabilities must give their agreement for their child to be placed in a special school or a special class. Today, most parents want their child with intellectual disabilities to attend a mainstream school.

Education policy in Estonia has undergone systematic reform since the country regained its independence in the early 1990s. Estonia is one of the few countries to have specifically addressed the educational needs of people with disabilities during its EU accession process. The “Joint Inclusion Memorandum”, developed by Estonia and the European Commission, makes a number of recommendations for improving the inclusion of children with intellectual disabilities at all levels of education. Following Estonia's accession to the EU in 2004, EU Structural Funds are now being directed towards education and vocational training. However, the Government has not yet allocated these funds towards projects specifically aimed at people with intellectual disabilities. National educational policy recognises the importance of improving mainstreaming and life-long education for people with intellectual disabilities. However, the recommendations of key education policy papers – in particular, the “Learning Estonia” education strategy paper of 2001 – are yet to be implemented. The conclusions and recommendations on inclusive education from the “A School for All” project, organised and funded by the Nordic Council of Ministers, could be an important resource for further policy development.

Special, separate curricula are available for children with *mild* intellectual disabilities or *moderate* or *severe* intellectual disabilities. Children with *severe* and *profound* intellectual disabilities are educated in special “nursing” classes. Children with intellectual disabilities in mainstream classes can also follow an individual education plan. However, although this option is increasingly popular, many students with intellectual disabilities are not yet provided with the support they need to follow an individual education plan, mainly because mainstream schools lack the necessary specialists and support system. Teachers do receive training on working with children with special needs as part of their education, but research suggests that more instruction and support for teachers is needed.

Although Estonia recognises certain principles of inclusive education in law and policy, in practice, most children with intellectual disabilities still do not have the opportunity to receive an education in a mainstream setting. The number of children with special needs (in general) in mainstream schools increased significantly, by 25 per cent, from 1998 to 2002. In 2002–2003, 74 per cent of these children were integrated into special classes in mainstream schools and seven per cent into mainstream classes. There is no available data on the exact number of children with intellectual disabilities in mainstream education, though it is known that, from kindergarten to secondary level, their number continues to increase, in large part due to pressure from parents. In addition, some caution is required in interpreting the actual situation of children with intellectual disabilities, because many of those who are enrolled in mainstream schools in reality study at home. Although this arrangement permits some children to remain at home rather than having to live in a residential special school, it certainly does not fulfil the aims of inclusive education. There is no official data on the total number of children with intellectual disabilities receiving home schooling.

A number of important barriers still limit the extent to which the integrated education of children with intellectual disabilities can develop in practice. These barriers include lack of transportation, large class sizes, and opposition to integration from some teachers and parents of children without disabilities. The most important barrier, however, is the insufficient number of support specialists. In kindergartens, for example, in most cases the local authorities are not able to provide financial support for support teachers, and parents or guardians must themselves cover the cost of a support teacher. About half of all mainstream kindergartens have no access to support from a special educator, so there is a heavy burden on class teachers. Mainstream schools do not receive the funding required to meet the needs of children with intellectual disabilities. Legislative barriers are also significant; although the right to inclusive education exists on paper, existing rules and regulations do not provide the necessary mechanisms for its implementation in practice.

In 2002–2003, there were 5,166 students with special needs – mainly with intellectual disabilities – in special schools, which may be day schools or residential. Due to a lack of other alternatives, many children and young people with *severe* or *profound* intellectual disabilities have no other option but to study in residential special schools, far from their homes. The quality of education in such schools is rather low, due to limited resources: there is a lack of financing, qualified teachers and equipment. For the same reasons, the living standards in residential special schools are also low. It is also common for children with intellectual disabilities to be schooled at home, primarily due to the limited capacity of mainstream schools, which have yet to make the provision of the necessary support services for children with special needs a priority. A large majority of children with intellectual disabilities who appear on enrolment lists at mainstream schools are in practice schooled at home.



### *Transition from Education to Employment*

In Estonia, the vocational education system has recently been reformed, and an increasing number of young people are receiving vocational training. Recent legislative changes have facilitated the access of young people with special needs to vocational training institutions. In 2002–2003, there were nearly 300 students with special needs, many of whom had intellectual disabilities, studying in vocational educational institutions. The main constraints preventing mainstream vocational schools from accepting students with intellectual disabilities are the lack of qualified personnel and the prevalence of large class sizes. Young people with intellectual disabilities can also be prepared for entering the labour market at the Astangu Coping Centre, which offers “labour therapy” or vocational rehabilitation. The Employment Offices provide no employment services, such as vocational training, for people with intellectual disabilities who are unemployed. These Offices also fail to organise in-service training or re-training specifically for people with intellectual disabilities. In general, people with intellectual disabilities have few options for vocational training, re-training or advanced training in Estonia.

### *Employment*

The Constitution guarantees freedom of choice in employment and “special care of the State and local governments” for people with disabilities. There is no specific legislation on the employment of people with disabilities. The Employment Contracts Act does not protect the rights of people with disabilities. As yet, Estonia has not adopted specific legislation to comply with the EU Employment Directive.

People with disabilities who are age 16 or older, and who have been determined by the Medical Commission as having a reduced working capacity of between 40 and 100 per cent, are eligible for either an incapacity pension, if they worked previously, or a national pension. However, people with disabilities with a reduced working capacity of less than 40 per cent are ineligible for social benefits on the basis of their disabilities. The assessment procedures are based on a purely medical approach, and neither the person being assessed, nor his or her parents or guardian, are present at the assessment. Following the amendment of the Social Benefits for Disabled Persons Act, the criteria for establishing the degree of disability and working capacity have been set out more clearly. However, the Chancellor of Justice has received a number of complaints from people whose pensions have been reduced following reassessment of their degree of disability, in accordance with these new criteria. Most people with intellectual disabilities are fully reliant on State benefits, which are currently set at a very low level. Nonetheless, even if they could find employment, there is still often little incentive for them to start working, due to the relatively small difference between the minimum wage and pensions.

During the accession process, several Phare-funded projects sought to improve access to employment for people with disabilities in Estonia. The main aims of these projects were to improve rehabilitation and employment services, and to improve the

adaptation of workplaces for people with disabilities. Estonia does not have a quota system for the employment of people with disabilities. The primary way in which the Government encourages the employment of people who are “less competitive on the labour market”, including people with disabilities, is through tax concessions and active employment measures. However, these measures were not specifically designed for people with disabilities, and they do not meet the specialised needs of people with intellectual disabilities. In particular, the amount of the subsidies are too low to cover the costs of a job coach, and aids, such as instructions in simplified language, are not included under provisions for workplace modification. Generally, awareness of these measures is very low, and in some cases funding for subsidies is not actually available.

Very few people with intellectual disabilities have any kind of work or employment; in fact, only about 12 per cent of people with disabilities are in employment. Official data on the employment situation of people with disabilities is not disaggregated by type of disability. The data also systematically underestimates the total number of people with disabilities who are in the workforce or unemployed, because the figures do not include people with *mild* disabilities. Furthermore, many people with intellectual disabilities do not register as unemployed, and so they cannot benefit from employment services.

Supported employment services are the most important way in which people with intellectual disabilities can access employment on the open market.<sup>2</sup> However, in Estonia, there is no legal framework for supported employment as it is commonly understood, though a definition does appear in a Ministry of Social Affairs regulation. One small project to encourage the employment of people with intellectual disabilities, through use of employment subsidies, was carried out by the Tallinn City Board of Disabled People. The Estonian Mentally Disabled People Support Organization (EVPIT) also provides vocational counselling for adults with intellectual disabilities living in Tallinn. However, there is an urgent need for the Government to encourage the establishment of supported employment services for people with intellectual disabilities. In addition to inadequate State funding and inadequate support services, an important barrier for people with intellectual disabilities who wish to enter the workforce is their lack of preparedness for seeking employment – in particular their lack of vocational training.

There is no official data on the number of people with intellectual disabilities in sheltered employment. Sheltered employment is funded by the State through subsidies paid to both employer and employee. In 2004, there were 46 organisations offering State-funded sheltered employment to 511 people with disabilities throughout Estonia. Most of the organisations were social welfare institutions, such as social care homes and day centres. The “Juks” centre in Tallinn is the only sheltered employment centre

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<sup>2</sup> Supported employment is an employment option that facilitates competitive work in integrated work settings for people with disabilities. It provides assistance such as job coaches, transportation, assistive technology, specialised job training and individually tailored supervision.

specifically for people with intellectual disabilities, and it presently offers work and training for 30 people with intellectual disabilities.

## 2. RECOMMENDATIONS

### General recommendations

#### *International standards*

1. Estonia should ratify Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); and International Labour Organization Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons).

#### *Legislation*

2. Estonia should transpose into national legislation all the provisions of the European Union's Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Equality Directive); and Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (Employment Directive).

#### *Public awareness*

3. Public institutions, in collaboration with NGOs representing people with intellectual disabilities and their families, should work to counter the stigma of intellectual disability by organising information days, seminars and other, similar events, to raise awareness of, and increase knowledge about, people with intellectual disabilities.

4. The Government should, in particular, take steps to raise the awareness of employers with regard to the skills and abilities of people with disabilities and their value as employees on the open labour market. In addition, the Government should better inform employers about governmental programmes and employment services for people with disabilities.

#### *Data collection*

5. With appropriate attention to the protection of personal privacy, the Government should ensure that comprehensive data on people with disabilities, disaggregated by type of disability, is regularly collected and published, across all relevant sectors. In particular:

- The Ministry of Education and Research should establish and maintain a system for the consistent collection and public dissemination of data on the number of

children and young people with intellectual disabilities in the education system, the types of schools and classes they attend at each level, and the number who are schooled at home.

- The Ministry of Social Affairs should collect comprehensive data on the employment of people with intellectual disabilities, including data on supported and sheltered employment.

6. The Government should carry out a “mapping” of past and present projects that target, or have targeted, people with intellectual disabilities – or, more generally, people with special needs. A database should be created with all relevant information about the projects, as well as their results, with the aim of spreading knowledge of best practices.

## **Recommendations on education**

### *Legislation*

7. The Ministry of Education and Research should elaborate regulations, or propose amendments to the Education Act, that clearly specify the conditions required for children with intellectual disabilities to attend mainstream schools, with the intention of promoting the maximum degree of integration, and equality of access, for children with intellectual disabilities.

8. In line with Article 3 of the Salamanca Statement, which calls for all governments to embrace inclusive education, the Ministry of Education and Research, in cooperation with the Ministry of Social Affairs, should introduce specific legislation that unequivocally enshrines the right for children with intellectual disabilities to receive individually tailored support services at mainstream schools, including support teachers, personal assistants, and transport to and from school. The legislation should also ensure the right of a child with intellectual disabilities to attend a mainstream school near to their place of residence.

### *Early intervention services*

9. The Government should ensure that children with intellectual disabilities (and their families) are able to access quality early intervention services throughout the country. In particular, intellectual disability should be diagnosed as early as possible, so that pre-school children with intellectual disabilities can be provided with the support they need for their later integration into mainstream education.

### *Inclusive education*

10. The Ministry of Education and Research should closely monitor the progress of inclusive education for children with intellectual disabilities in Estonia. In particular, it should ensure that children with intellectual disabilities enrolled in mainstream schools are not, in practice, educated at home.

11. The Ministry of Education and Research and the Ministry of Social Affairs should ensure that there is adequate funding to pay for the special needs of children and young people with intellectual disabilities who are included into mainstream education. In particular, the costs of employing support teachers or personal assistants in mainstream schools should be covered.

12. The Ministry of Education and Research and local authorities should ensure that the principle of fully informed parental choice is respected within school placement procedures. In particular, these officials should work to develop the capacity of mainstream schools, to attend to the special needs of children with intellectual disabilities, so that insufficient capacity is no longer a barrier to their integration at mainstream schools.

13. The Ministry of Education and Research should carry out a survey determining the number of children schooled at home and the quality of home schooling. The ministry should ensure that children with intellectual disabilities have the opportunity to attend a school close to home, if their parents so choose.

### *Financing of Education*

14. The Ministry of Education and Research should ensure that local governments fulfil their obligation to enable people with intellectual disabilities to obtain an education. This should include covering the additional costs related to their disabilities, such as transport to and from school and a personal assistant at school. If local governments are not implementing existing laws, a system of supervision must be introduced.

15. The Government should clarify the areas concerning people with special needs that are financed by the Ministry of Education and Research or the Ministry of Social Affairs, to ensure better coordination of services.

16. The Ministry of Education and Research should promote the equalisation of funding amongst schools, ensuring that rural schools in different regions of Estonia are able to provide the same quality education for children with intellectual disabilities as urban schools.

17. The Ministry of Education and Research should increase the annual funding provided to mainstream schools for each child with intellectual disabilities by a higher expenditure “index” (adjusted to the severity of disability), to bring funding for children with intellectual disabilities at mainstream schools in line with the funding provided at special schools.

### *Teacher training*

18. The Ministry of Education and Research should develop training programmes, together with a system of certification, for specialised support teachers for children with intellectual disabilities.

## Recommendations on transition from education to employment

19. The Ministry of Education and Research should continue its involvement in “Transition”, a sub-project of the larger “A School for All”, with the Nordic Council of Ministers. As there are no transition support systems for going from basic school to vocational school, or from vocational school to work, the Ministry should develop a system to offer support in such transitions, to ensure coping in vocational school or at the workplace.

20. The Government should develop supported and sheltered living arrangements, to assist young people with intellectual disabilities who have recently completed school and have yet to enter the labour market in developing independent living skills.

### *Vocational training*

21. The Government should ensure that vocational training for people with intellectual disabilities is carried out in an inclusive environment and not in special institutions.

22. The Government should encourage vocational schools and employment agencies to work together to prepare people with intellectual disabilities for the real needs of the labour market.

23. The Government should encourage employment agencies to provide life-long vocational training and retraining for people with intellectual disabilities.

## Recommendations on employment

### *Legislation*

24. As a priority, legislation should be introduced on supported employment, and the Government should then provide adequate funding to supported employment projects.

25. The Government should initiate legislation to define and support the functioning of social enterprises.

### *Policy*

26. The Government should fully implement the recommendations of the 2004 Phare project “Enhancing employment opportunities for people with disabilities in Estonia”.

27. The Government should develop action plans to tackle the barriers to employment outlined in the “National Action Plan on Poverty and Social Inclusion”, with special emphasis on people with intellectual disabilities.

*Assessment of capacity for employment purposes*

28. The Ministry of Social Affairs should reform the assessment procedures for degree of disability and working incapacity as follows:

- The participation in the assessment procedure of the person with intellectual disabilities under assessment – and, where appropriate, of his or her parents or guardian – should be made obligatory. All information and documentation collected under the assessment procedure should be made available, and, if necessary, explained in lay terms, to the person under assessment and his or her parents or guardian.
- The central focus of the assessment should be the potential, capabilities and needs of a person with intellectual disabilities, replacing the present focus on deficiencies and on what a person with intellectual disabilities *cannot* do.
- The participation of social workers in the Medical Examination Commission of the Social Security Board and its regional units should be obligatory.

29. The Government should discontinue using the term “incapacity for work” in all policy and legislation, and replace it with terminology that is more positive in connotation, such as “needs for work” or “rehabilitation plan”.

*Employment services*

30. The Employment Office should establish a database of people with disabilities, registered at the employment office, to be made available to employers interested in employing people with disabilities.

31. The Government should ensure that employers of people with intellectual disabilities have access to support services, such as consultancy services, which assist them in understanding and anticipating the different needs of people with disabilities in the workplace.

32. The Government should ensure that additional State subsidies are made available to fund the adaptation of the workplace for people with disabilities, such that employers are more motivated to hire people with disabilities.

33. Government bodies, local authorities, NGOs and private industry should work together to increase the numbers of people with intellectual disabilities integrated into the workforce. A network of cooperation between employment offices, pension boards, rehabilitation and vocational education institutions should be established.

*Active employment measures*

34. The Government should introduce active employment measures that support the return of the unemployed to the labour market and that *specifically* target people with disabilities.

*Supported employment*

35. The Government should provide funding for supported employment services, accessible to people with intellectual disabilities throughout the country. This should include continuous counselling, both for employers and people with intellectual disabilities working on the open labour market.

36. The Government should provide employment subsidies for employers to hire job coaches for people with intellectual disabilities. It should also increase the employment subsidy for employers who hire adults with severe intellectual disabilities or multiple disabilities.

*Sheltered workplaces*

37. The Government should, while making the establishment of supported employment services its main priority, ensure adequate financing for the purchase of equipment and the adaptation of the workplace for people with intellectual disabilities in sheltered workplaces.

*Rehabilitation*

38. The Government should ensure that rehabilitation plans for people with intellectual disabilities focus on the individual's ability to work and their vocational training. Rehabilitation should be more focused on the future employability of people with intellectual disabilities and should prepare them psychologically for the world of work, while also providing them with a vocation.



## II. Country Overview and Background

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*Estonia is party to most international human rights instruments related to education and employment, including those with provisions on people with disabilities. The Constitution does not explicitly prohibit discrimination on the grounds of disability. Estonia has not yet transposed the provisions of the EU Race Equality Directive or the EU Employment Directive into national legislation. National disability policy is based on the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities. Any complaints of discrimination can be directed to the Chancellor of Justice, an independent body that has the special powers of an ombudsman and is authorised to issue binding decisions in cases of discrimination, in both the public and private sectors.*

#### 1.1 International standards and obligations

Estonia is party to a large number of international standards on human rights, the rights of people with disabilities and the right to education and employment.

Estonia acceded to the International Covenant on Civil and Political Rights (CCPR)<sup>3</sup> and the International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>4</sup> in 1992. Estonia ratified the UN Convention on the Rights of the Child (CRC) in 1991.<sup>5</sup> Following the UNESCO Conference on Special Needs Education, Estonia signed the Salamanca Declaration in 1994, which states that “schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions”.<sup>6</sup> Estonia signed the UNESCO Declaration on “Education for All” in Dakar in 2000.<sup>7</sup> Estonia has incorporated the principles of the UN Standard Rules on

<sup>3</sup> International Covenant on Civil and Political Rights (CCPR), 23 March 1976, 999 U.N.T.S. 171, available on the UNHCR website at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (accessed 5 May 2004).

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights (CESCR), 3 January 1976, 993 U.N.T.S. 3, available on the UNHCR website at [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm) (accessed 5 May 2004).

<sup>5</sup> International Convention on the Rights of the Child (CRC), 2 September 1990, 44 U.N. GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), available at <http://www.unicef.org/crc/crc.htm> (accessed 26 November 2004).

<sup>6</sup> UNESCO, Salamanca Statement and Framework for Action, Spain, 1994, Framework for Action, Salamanca, available on the UNESCO website at [http://www.unesco.org/education/pdf/SALAMA\\_E.PDF](http://www.unesco.org/education/pdf/SALAMA_E.PDF) (accessed on 20 June 2004). art. 3, (hereafter, UNESCO, *Salamanca Statement*).

<sup>7</sup> Ministry of Education and Research, *Education for All (EFA) Estonian Action plan*, November 1998, Tallin, available in Estonian at [http://www.jti.ee/et/civic/unesco/hk\\_ert\\_tv-kuvarile.pdf](http://www.jti.ee/et/civic/unesco/hk_ert_tv-kuvarile.pdf) (accessed 26 November 2004). Also available in English on the website of the Ministry of Education and Research at <http://www.hm.ee/> (accessed 2 December 2004).

the Equalization of Opportunities for Persons with Disabilities<sup>8</sup> (hereafter, UN Standard Rules) into a parliamentary resolution of the same name, the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities<sup>9</sup> (hereafter, Estonian Standard Rules), which guides national disability policy.

Estonia ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1996<sup>10</sup> and has signed but not ratified Protocol No. 12 to the ECHR.<sup>11</sup> Estonia ratified the Revised European Social Charter (RESC) in 2000<sup>12</sup> and is bound by Article 15 on the right of physically and mentally disabled persons to vocational training, rehabilitation and social resettlement.

Estonia has ratified six of the eight fundamental conventions of the International Labour Organization (ILO).<sup>13</sup> Estonia has not ratified the ILO Convention Concerning Vocational Guidance and Vocational Training in the Development of Human Resources 1975 (No. 142) or the ILO Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) 1983 (No. 159).<sup>14</sup>

<sup>8</sup> UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, United Nations General Assembly, 48<sup>th</sup> session, Resolution 48/96, annex, 20 December 1993, available on the UN website at <http://www.un.org/esa/socdev/enable/dissre00.htm> (accessed 20 June 2004), (hereafter, UN Standard Rules).

<sup>9</sup> Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, passed as a parliamentary resolution on 16 May 1995 in session of Government, Agenda, art. 11, (hereafter, Estonian Standard Rules).

<sup>10</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, E.T.S. 005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 October 2004).

<sup>11</sup> Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to enter into force on 1 April 2005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm> (accessed 20 January 2005).

<sup>12</sup> Revised European Social Charter (RESC), 1 July 1999, C.E.T.S. 163, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm> (accessed 22 October 2004).

<sup>13</sup> The International Labour Organization (ILO) has identified the Organization's eight fundamental conventions: Convention concerning Forced or Compulsory Labour, 1930 (No. 29); Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87); Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (No. 98); Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100); Convention concerning the Abolition of Forced Labour, 1957 (No. 105); Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111); Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138); Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182). Estonia has yet to ratify ILO Conventions No. 111 and 138.

<sup>14</sup> List of ILO Conventions ratified by Estonia, ILO website, accessed at [www.ilo.org/ilolex/cgi-lex/ratifce.pl?Estonia](http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?Estonia) (accessed on 2 December 2004).

## 1.2 Domestic legislation

The Estonian Constitution establishes that the activities of the *Riigikogu* (Parliament), the Government and the courts shall be organised on the principle of separation and balance of powers<sup>15</sup> and that anyone whose rights or freedoms are violated may have recourse to the courts.<sup>16</sup> Article 12 of the Constitution establishes an explicit ban on discrimination: “Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.”<sup>17</sup> This article does not specifically include disability as a prohibited ground for discrimination, though this would fall under the term “other grounds”. Article 28 states that persons with disabilities are under the special care of the State and local governments.<sup>18</sup>

The constitutional principle of non-discrimination, worded in general terms, is repeated in other Estonian laws.<sup>19</sup> However, there is no specific anti-discrimination legislation in Estonia. A draft anti-discrimination law, proposed back in 2002, has never been adopted, because its second reading was suspended in the Parliament due to lack of agreement as to whether it should be a single act or several specialised laws.<sup>20</sup> In 2003, another discussion was initiated, where it was decided that a single law should cover all grounds of discrimination.<sup>21</sup> To date, therefore, Estonia has not complied with the European Union’s Council Directive 2000/78/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or

<sup>15</sup> Constitution of the Republic of Estonia RTI 1992, 26, 349 (hereafter Constitution).

<sup>16</sup> Constitution, art. 15.

<sup>17</sup> Constitution, art. 12.

<sup>18</sup> Article 28 of Constitution states that “[...] An Estonian citizen has the right to state assistance in the instances of old age, incapacity to work, loss of a provider, or necessity. The categories and extent of assistance, and the conditions and procedure for the receipt of assistance shall be provided by law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by law. [...] Families with many children and persons with disabilities shall be under the special care of the state and local governments.”

<sup>19</sup> This includes: art. 5 of the Advertising Act RT I 1997, 52, 835 (entered into force 1 January 1998, last amended 1 March 2005); art. 10 of the Republic of Estonia Employment Contracts Act, RTI 1992, 15/16, 2412 (entered into force 1 July 1992, last amended 1 January 2005); art. 6 of the Public Service Act, RTI 1995, 16, 228 (entered into force 1 January 1996, last amended 1 May 2004); art. 5 of the Wages Act RTI 1994, 11, 154 (entered into force 1 March 1994, last amended 29 October 2004). See: Vadim Poleshchuk, *Report on Measures to Combat Discrimination in the 13 Candidate Countries (VT/2002/47): Country report on Estonia*, May 2003, Migration Policy Group and MEDE European Consultancy, available on the MPG website at <http://www.migpolgroup.com/uploadstore/ESTONIAFinalEN.pdf> (accessed 2 December 2004), p. 7, (hereafter, Poleshchuk, *Country Report on Estonia*).

<sup>20</sup> Poleshchuk, *Country Report on Estonia*, p. 5.

<sup>21</sup> Poleshchuk, *Country Report on Estonia*, p. 6.

ethnic origin<sup>22</sup> (hereafter Equality Directive). According to the European Commission's *2004 Annual Report on Equality and Non-discrimination*, there are currently "no specific proposals for implementation".<sup>23</sup>

The main legislation on people with disabilities is the Social Benefits for Disabled Persons Act 2002 (first passed in 1999), which aims to "support the ability of persons with disabilities to cope independently, [and achieve] social integration and equal opportunities through partial compensation for the additional expenses caused by the disability".<sup>24</sup> The act provides a definition of disability<sup>25</sup> and establishes the social benefits available for people with disabilities, as well as the eligibility criteria for these benefits.<sup>26</sup>

Since 1995, the Estonian Standard Rules<sup>27</sup> have provided the framework for Government policy and legislation on disability affairs.<sup>28</sup> Action plans<sup>29</sup> have been created to put the Estonian Standard Rules into practice. The Estonian Standard Rules have also been incorporated into amendments of laws.<sup>30</sup> Some new services have been provided for people with intellectual disabilities, such as a personal assistant, but

<sup>22</sup> European Union Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available on the European Commission website at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l\\_180/l\\_18020000719en00220026.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf) (accessed 2 December 2004).

<sup>23</sup> See: DG Employment and Social Affairs, *Annual Report on Equality and Non-discrimination 2004*, DG Employment and Social Affairs, European Commission, available on the commission website at [http://europa.eu.int/comm/employment\\_social/news/2004/jul/annualrep2004\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2004/jul/annualrep2004_en.pdf), (accessed 6 December 2004), p. 24.

<sup>24</sup> Social Benefits for Disabled Persons Act, RTI 1999, 16, 273 (entered into force 1 January 2000, last amended 1 January 2005), art. 1(2).

<sup>25</sup> Social Benefits for Disabled Persons Act, art. 2.

<sup>26</sup> Social Benefits for Disabled Persons Act, chapter 2.

<sup>27</sup> In May 1995, the Government approved a paper on the Estonian disability policy. This policy document was largely based on United Nations Resolution 48/96 – "The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities."

<sup>28</sup> Estonian Standard Rules, Rule No. 7.

<sup>29</sup> National Action Plan for Social Inclusion (NAP) for 2004–2006, available (in English) on the website of the Ministry of Social Affairs at [http://www.sm.ee/eng/HtmlPages/Estonia\\_NAP04-06\\_ENGL/\\$file/Estonia\\_NAP04-06\\_ENGL.doc](http://www.sm.ee/eng/HtmlPages/Estonia_NAP04-06_ENGL/$file/Estonia_NAP04-06_ENGL.doc).

<sup>30</sup> These include: the Basic Schools and Upper Secondary Schools Act, RT I 1993, 63, 892 (entered into force 10 October 1993, last amended 1 September 2004); the Child Protection Act RT 1992, 28, 370 (entered into force 1 January 1993, last amended 1 May 2004); the Deserved Years Retirement Pension Act RTI 1992, 21,294 (entered into force 1 July 1992, last amended 1 May 2004); the Education Act RTI 1992, 12, 192 (entered into force 30 March 1992, last amended 19 November 2004); the Pre-school Child Care Institutions Act RTI 1999, 27, 387 (entered into force 27 March 1999, partly 1 January 2000, last amended 5 July 2004) hereafter Pre-school Child Care Institutions Act; and the Social Welfare Act RTI 1995, 21, 323 (entered into force 1 April 1995, last amended 9 February 2005).

mostly the rules are used by NGOs for work in interest protection. Nonetheless, implementation has been very weak.

### *Anti-discrimination bodies*

To date, no specific anti-discrimination body with adequate powers has been established in Estonia.<sup>31</sup> However, to a certain extent, this role is fulfilled by the Chancellor of Justice, who, since 1999, has had the special powers of an Ombudsman.<sup>32</sup> The Chancellor of Justice is an independent official, responsible for reviewing legislation and ensuring its conformity with the Constitution and other sources of legislation.<sup>33</sup> As of 1 January 2004, the Chancellor of Justice acquired the competence to deal with cases of discrimination arising between persons in private law,<sup>34</sup> in addition to dealing with complaints about public bodies.<sup>35</sup> The Chancellor of Justice also acquired the competence to conduct a conciliation procedure in cases of discrimination on the grounds of: sex, race, nationality (ethnic origin), colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation, or other attributes specified by law.<sup>36</sup> The decision of the Chancellor of Justice is binding and must be carried out by all parties involved.<sup>37</sup>

<sup>31</sup> Poleshchuk, *Country Report on Estonia*, pp. 22–23.

<sup>32</sup> Poleshchuk, *Country Report on Estonia*, p. 23.

<sup>33</sup> According to Article 15: “Everyone has the right of recourse to the Chancellor of Justice to review the conformity of an Act or other legislation of general application with the Constitution or the law”. The Legal Chancellor Act 2003, RT I 2003, 23, 142, (last amended 11 February 2003; entered into force 1 January 2004), art. 15.

<sup>34</sup> Legal Chancellor Act 2003, art. 1(5).

<sup>35</sup> According to art. 19(1) of the Legal Chancellor Act: “Everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by way of filing a petition to request verification whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties (hereinafter agency under supervision) adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration.”

<sup>36</sup> According to art. 35(1) of the Legal Chancellor Act, however: “Petitions concerning the activities of natural persons or legal persons in private law do not fall within the competence of the Chancellor of Justice if they concern professing and practicing faith or working as a minister of a religion in religious associations with registered articles of association; relations in family or private life and performance of the right of succession.”

<sup>37</sup> Legal Chancellor Act, art. 35(1).

## 2. GENERAL SITUATION OF PEOPLE WITH INTELLECTUAL DISABILITIES

*In Estonia, law and policy use terminology and definitions from the World Health Organization's ICD-10 to diagnose and classify intellectual disability. The term "person with special needs", which includes people with intellectual disabilities, has been recently introduced into Estonian legislation on education. There are different procedures for the diagnosis and assessment of intellectual disability for education (for children); for employment (for adults); and for access to social benefits (for adults and children). Counselling Committees are responsible for diagnosing intellectual disability for educational purposes, according to one of four levels: mild, moderate, severe, and profound intellectual disabilities. The Medical Examination Commission of the Social Security Board and its regional units (hereafter, Medical Commissions) determine working capacity and also establish an individual's degree of disability (moderate, severe or profound), which in turn determines access to social welfare and other benefits for adults and children. People with mild intellectual disabilities are not eligible for these benefits.*

*There are detailed official statistics on people with disabilities in general. However, these statistics are not disaggregated on the basis of type or level of disability, which means that it is not possible to obtain information across all relevant sectors or, more specifically, on the total number of people with intellectual disabilities in Estonia. Most adults with at least a moderate level of intellectual disabilities are placed under guardianship by the courts. Without the consent of the guardian, a person whose legal capacity has been removed cannot sign a contract, including an employment contract. Adults with intellectual disabilities whose active legal capacity has been restricted in certain areas retain the right to work and to sign an employment contract, but their guardians must give their consent for the ward to be employed. If the active legal capacity of adults with intellectual disabilities is restricted in all areas – a condition equivalent to plenary guardianship – they lose the right to vote but can still work with the consent of a guardian.*

### 2.1 Definitions

In Estonia, the word "deviation" has been used in legislation that refers to people with disabilities. However, in more recent legislation, the term "special needs" has come to replace "deviation". In amendments dated April 2004, the term "persons with special needs" was introduced into the following legislation: the Basic Schools and Upper Secondary Schools Act; the Deserved Years Retirement Pension Act; the Education Act; the Pre-school Child Care Institutions Act; the Social Welfare Act; and the Child Protection Act. The Basic Schools and Upper Secondary Schools Act defines "students with special needs" as "students with physical disabilities, speech impairments, sensory or intellectual disabilities, or mental disorders, and students who need special treatment due to behavioural problems".<sup>38</sup>

<sup>38</sup> Basic Schools and Upper Secondary Schools Act, art. 4(2): "schools for students with special needs are intended for students with physical disabilities, speech impairments, sensory or intellectual disabilities, or mental disorders, and for students who need special treatment due to behavioural problems."

The Social Benefits for Disabled Persons Act defines disability as “the loss of, or an abnormality in, an anatomical, physiological or mental structure or function of a person”.<sup>39</sup>

In Estonia, people with intellectual disabilities are referred to as “people with mental disabilities” in both legislation and in practice. The basis for medical treatment and medical intervention in defining intellectual disability is the World Health Organization’s *International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, (hereafter, ICD-10),<sup>40</sup> which uses the term “mental retardation” rather than “intellectual disability”.

## 2.2 Diagnosis of disability

There are different procedures for the diagnosis and assessment of disability for educational purposes (for children); for employment (for adults); and for access to social benefits (for adults and children).

For educational purposes, Counselling Committees are responsible for the assessment of children with special needs, including intellectual disabilities.<sup>41</sup> The Committees diagnose children with intellectual disabilities with one of four levels of intellectual disabilities: *mild*, *moderate*, *severe* or *profound*,<sup>42</sup> corresponding to the levels defined in the ICD-10.<sup>43</sup>

To determine eligibility for social benefits, the Medical Examination Commission of the Social Security Board assesses a person’s degree of disability, of which there are four categories. The three most severe degrees of disability qualify a person for social benefits: *moderate*, *severe* or *profound*.<sup>44</sup> People determined by the Commission to have *mild* disabilities are generally not eligible for social benefits. In their assessment of disability, the Commission takes into consideration not only the severity of a person’s disabilities but also their corresponding need for personal assistance. The degrees of

<sup>39</sup> Social Benefits for Disabled Persons Act, art. 2.

<sup>40</sup> WHO, *The International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, World Health Organization, Geneva, 1992, (hereafter, ICD-10). It has been translated into Estonian by Pavel Bogovski and Ilmar Laan (eds.), Ministry of Social Affairs, Tallinn, 1994.

<sup>41</sup> The Counselling Committees have the following competencies: “to assign to a child with special needs a curriculum or a form of study suitable for the needs of the child; refer a child with special needs to a sanatorium school, a school or a class for students with special needs with the consent of a parent (caregiver); postpone the obligation to attend school at the parents’ request”. Basic Schools and Upper Secondary Schools Act, art. 21(3).

<sup>42</sup> Social Benefits for Disabled Persons Act, art. 2(1).

<sup>43</sup> See: World Health Organization, *ICD-10 Guide for Mental Retardation*, WHO, Geneva 1996, available at [http://www.who.int/mental\\_health/media/en/69.pdf](http://www.who.int/mental_health/media/en/69.pdf) (accessed 2 December 2004), pp. 10–12.

<sup>44</sup> People with *mild* intellectual disabilities are not eligible for most social benefits.

disability differ primarily in the frequency of personal assistance, guidance or supervision that a person requires: at least once a week (*moderate*), once in every 24-hour period (*severe*) and 24 hours a day (*profound*).

### 2.3 Guardianship

In Estonia, a person with intellectual disabilities acquires the full legal status of an adult at the age of 18, just like the general population. However, when people diagnosed with *moderate*, *severe* or *profound* intellectual disabilities attain the age of 18, in almost all cases, the courts decide to restrict their active legal capacity<sup>45</sup> and appoint a guardian.<sup>46</sup> No official data is available on the number of people placed under guardianship, or their type or level of disabilities.

Only the courts can restrict a person's active legal capacity, in accordance with the conditions defined by the Code of Civil Procedure.<sup>47</sup> A diagnosis of intellectual disability, of whatever degree, by the Social Insurance Board does not automatically mean that a person's legal capacity will be restricted. The Civil Code differentiates between a person with restricted active legal capacity, such as a person with intellectual disabilities, and a person "without capacity to exercise will",<sup>48</sup> such as a person with a temporary mental disorder who retains full active legal capacity and is placed under "curatorship" rather than guardianship.<sup>49</sup>

In accordance with the Family Law Act, guardianship is decided by the courts<sup>50</sup> on the grounds of a petition initiated by the person to be placed under guardianship; a close family member, such as a parent, adult children or cohabitant husband or wife; or the

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<sup>45</sup> According to Article 8: "(1) Active legal capacity of a natural person is the capacity to enter independently into valid transactions. (2) Persons who have attained 18 years of age (adults) have full active legal capacity. Persons who are under 18 years of age (minors) and persons who due to mental illness, mental disability or other mental disorder are permanently unable to understand or direct their actions, have restricted active legal capacity. (3) If a guardian is appointed by a court to a person who due to mental illness, mental disability or other mental disorder is permanently unable to understand or direct his or her actions, the person is presumed to have restricted active legal capacity." General Part of the Civil Code Act, RTI 2002, 35, 216, art. 8 (entered into force 1 July 2001, last amended 27 December 2003).

<sup>46</sup> According to Article 1(4) of the Family Law Act: "Guardianship is also established for the protection of proprietary and personal rights and interests of an adult with restricted active legal capacity." Family Law Act RTI 1994, 75, 1326 (entered into force 1 January 1995, last amended 8 April 2004).

<sup>47</sup> Code of Civil Procedure RTI 1998, 43-45, 666, art. 258 (entered into force 1 September 1998, last amended 1 March 2005); see: U. Mereste, *The Lexicon of the Economy II*, Estonian Encyclopedia Publication, Tallinn, 2003, p. 360.

<sup>48</sup> See: General Principles of the Civil Code, art. 8(3)

<sup>49</sup> Family Law Act, art. 105.

<sup>50</sup> Family Law Act, art. 93.



institution where the person to be placed under guardianship is residing.<sup>51</sup> The person or institution initiating procedures to restrict a person's active legal capacity must clearly justify the reasons why this limitation is being sought; provide details of the circumstances that serve as the basis for establishing guardianship; and determine how guardianship would affect the interests of the ward.<sup>52</sup> The opinion of the person to be placed under guardianship must also be taken into account, as far as their level of intellectual disabilities permits,<sup>53</sup> and they must give their written agreement for guardianship procedures to be initiated.<sup>54</sup> For people with intellectual disabilities, the court will request a psychiatric evaluation before the court proceedings commence.<sup>55</sup>

The judgement of the court establishes what activities the person under guardianship (ward) may carry out without the permission of his or her guardian. The judgement also establishes whether the ward's active legal capacity is restricted or fully removed. If the ward's active legal capacity is *restricted* (equivalent to *partial* guardianship), the court's judgement sets out which transactions the ward may enter into without the consent of his or her guardian,<sup>56</sup> in cases that do not involve any direct civil obligations.<sup>57</sup> The restriction of active legal capacity has important consequences for legal advocacy and for other areas, such as family, employment and legal responsibility for damage caused.<sup>58</sup> However, legally, the restriction of a person's active legal capacity does not mean that the person's working capacity is also restricted.<sup>59</sup> A person with restricted legal capacity can still be an employee in the sense of the Employment

<sup>51</sup> According to Article 105(1) of the Family Law Act: "Curatorship is established by a guardianship authority for an adult with active legal capacity who due to mental or physical disability needs assistance in the exercise of his or her rights and duties."

<sup>52</sup> Code of Civil Procedure, art. 257.

<sup>53</sup> Code of Civil Procedure, art. 257(4).

<sup>54</sup> Code of Civil Procedure, art. 257(4).

<sup>55</sup> Code of Civil Procedure, art. 258(1).

<sup>56</sup> Code of Civil Procedure, art. 260(3).

<sup>57</sup> See: General Part of the Civil Code 2003, art. 10 and 11. In particular, according to Article 11(3): "A transaction entered into by a person with restricted active legal capacity without the prior consent or subsequent ratification of his or her legal representative is valid if: 1) no direct civil obligations arise from the transaction for the person [...]"

<sup>58</sup> In a case where a person with intellectual disabilities who has restricted legal capacity illegitimately harms other person(s), the guardian is held responsible for the act if the guardian cannot prove that she or he did all that could be reasonably done to prevent the harm. Law of Obligations, RTI 2001, 81, 487, art. 15(3) (entered into force 1 July 2002, last amended 1 January 2005).

<sup>59</sup> Regulation No. 3 of the Minister of Social Affairs of 3 January 2002 on Instructions for Determining the Percentage of the Loss of Capacity for Work, RTL 2002, 9, 92, art. 2(6) (entered into force 1 January 2002). Amended by the following regulations: No. 80 of 24 May 2002 (RTL 2002, 64, 972), entered into force 1 June 2002, hereafter, Regulation No. 3/2002 of the Minister of Social Affairs.

Contracts Act.<sup>60</sup> The person with restricted active legal capacity signs the employment contract,<sup>61</sup> but the oral or written approval of his or her guardian is required.<sup>62</sup>

If the active legal capacity of the ward is *fully removed* (equivalent to *plenary* guardianship), he or she cannot enter into any transactions without the consent of his or her guardian, and the ward also loses the right to vote.<sup>63</sup> However, he or she can still be an employee in the sense of the Employment Contracts Act, if his or her guardian signs the employment contract.<sup>64</sup>

## 2.4 Statistical data

The 2000 Population Census included detailed questions on disability, but the figures do not provide information disaggregated by type of disability. According to census data, in 2000 there was a total of 103,154 people with disabilities or long-term illness of all ages in Estonia – out of a total population of approximately 1.37 million.<sup>65</sup> This included 4,874 children with disabilities age 14 and under. Most of these people with disabilities or long-term illness – 97,929 out of the total – were living in private households. There were 5,225 people with disabilities or long-term illness living in institutions; this group included 288 children age 14 or under and 2,291 people age 60 and above.<sup>66</sup>

In the first half of 2002, social benefits for people with disabilities were paid to 4,580 children under 16 and 84,794 people age 16 and over. These people had been determined to have *moderate*, *severe* or *profound* disabilities. Approximately 45,000 adults with disabilities were receiving an incapacity pension.<sup>67</sup> People with *mild*

<sup>60</sup> According to Article 2(1) of the Employment Contracts Act: “A natural person who has attained eighteen years of age and has active legal capacity or restricted active legal capacity may be an employee [...]”

<sup>61</sup> According to Article 29 of the Employment Contracts Act: “All employees, including minors, enter into employment contracts with employers or the authorised representatives of employers in person. An employment contract is deemed to have been entered into when the parties have signed the contract or the employee commences work”.

<sup>62</sup> Code of Civil Procedure, art. 10.

<sup>63</sup> Code of Civil Procedure, art. 260(4).

<sup>64</sup> Article 2(1) of the Employment Contracts Act states: “A natural person who has attained eighteen years of age and has active legal capacity or restricted active legal capacity may be an employee [...]”; however, this is qualified by Art 10 of the Code of Civil Procedure, which reads: “Unilateral transactions made by a person with restricted active legal capacity without the prior consent of his or her legal representative are void.”

<sup>65</sup> Statistical Office of Estonia, information from the statistical database of the Statistical Office, available on <http://pub.stat.ee/px-web.2001/dialog/statfileri.asp> (accessed September 2004), (hereafter, Statistical Office database).

<sup>66</sup> Statistical Office database.

<sup>67</sup> Statistical Office database.

disabilities are not eligible to receive a pension or other State benefits to cover expenses due to their disabilities, so they are therefore not included in official statistics. It is not possible, statistically, to distinguish between the different types of disability, so there are no available official statistics on the total number of people with intellectual disabilities receiving social benefits.

The Statistical Office maintains detailed statistics on the number of people with disabilities assessed each year by the Medical Examination Commission of the Social Security Board. However, although information is available disaggregated by degree of disability and degree of working incapacity, data is still not available on type of disability.

Statistical information concerning the access to education of children and young people with intellectual disabilities is inadequate because, in order to prevent labelling of students, the information is produced according to the type of curriculum the child follows, not according to diagnoses. However, students studying according to a similar curriculum can have different types and levels of disabilities.<sup>68</sup>

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<sup>68</sup> Kai Kukk, Counsellor, Estonian Ministry of Education and Research, comments made at OSI Roundtable, Tallinn, June 2004. Explanatory Note: *OSI held a roundtable meeting in Estonia in June 2004 to invite critique of the present report in draft form. Experts present included representatives of the government, parents and non-governmental organisations.*

### III. Access to Education

#### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The Constitution guarantees the right to education for everyone, and this right is supported by the Education Act. General legislation on basic and secondary education also regulates special education. Children with special needs, including children with intellectual disabilities, have the right to study at a mainstream school in the area where they live, provided the local authorities have ensured a suitable learning environment. Otherwise, the children have the right to attend the nearest school meeting their educational requirements. In practice, for children with intellectual disabilities, this right is often not realised; many mainstream schools will not enrol children with intellectual disabilities on the grounds that they cannot provide the needed support services. Existing regulations do not define exactly what mainstream schools must do to adapt their conditions to meet the needs of children with special needs.*

*In Estonia, access to early intervention services is very limited, and intellectual disability is usually not diagnosed before the age of seven. This means that children with intellectual disabilities (and their families) do not receive the support they need for successful integration into a mainstream school. The assessments carried out by the Counselling Committees are multidisciplinary and involve parents or guardians. Based on their assessment of a child's level of intellectual disabilities, the Committees recommend a type of school for the child. They also recommend the type of class the child should be enrolled in – there are special classes for children with differing levels of intellectual disabilities – and the most appropriate curriculum he or she should follow. However, the parents or guardian of a child with intellectual disabilities must give their agreement for their child to be placed in a special school or a special class. Today, most parents want their child with intellectual disabilities to attend a mainstream school.*

##### 1.1 The right to education

Article 37 of the Constitution establishes the right to education for everyone, including non-citizens, children of residents in Estonia and illegal aliens.<sup>69</sup> This article states that “education is compulsory for school age children to the extent specified by law, and shall be free of charge in state and local government general education schools”.<sup>70</sup>

<sup>69</sup> “The rights, freedoms and duties of each and every person, as set out in the Constitution, shall be equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia”. Constitution, art. 9.

<sup>70</sup> Article 37 of Constitution states that: “(1) Everyone shall have the right to an education. Education shall be compulsory for school-age children to the extent specified by law, and free of school fees in state and local government general education schools. (2) In order to make education available, state and local governments shall maintain the necessary number of educational institutions. As determined by law, other educational institutions may be established, including private schools. (3) Parents shall have the final decision in choosing education for their children. (4) Everyone shall have the right to instruction in Estonian. Educational institutions established for minorities shall choose their own language of instruction. (5) The provision of education shall be supervised by the state.”

The most relevant legislation for the education of children and young people with disabilities includes:

- The Education Act<sup>71</sup>
- The Basic Schools and Upper Secondary Schools Act<sup>72</sup>
- The Pre-school Child Care Institutions Act<sup>73</sup>
- The Vocational Educational Institutions Act<sup>74</sup>
- The Private Schools Act<sup>75</sup>

The Education Act establishes that the State and local governments must guarantee everyone in Estonia the opportunity to comply with the compulsory education requirement and to acquire continuous education,<sup>76</sup> according to the conditions and procedures provided for by legislation.<sup>77</sup>

The Pre-school Child Care Institutions Act establishes that local authorities must create opportunities for the pre-school education of all children living in their administrative territory<sup>78</sup> – and for the development and growth of children with special needs in the pre-school nearest to their place of residence.<sup>79</sup>

The Basic Schools and Upper Secondary Schools Act regulates education for all students, including students with special needs, and provides a definition of “students

<sup>71</sup> Education Act, RTI 1992, 12, 192 (entered into force 30 March 1992, last amended 19 November 2004).

<sup>72</sup> Basic Schools and Upper Secondary Schools Act, RT I 1993, 63, 892 (entered into force 10 October 1993, last amended 1 September 2004).

<sup>73</sup> Pre-school Child Care Institutions Act, RTI 1999, 27, 387 (entered into force 27 March 1999, partly 1 January 2000, last amended 5 July 2004).

<sup>74</sup> Vocational Educational Institutions Act, RTI 1998, 64/65, 1007 (entered into force 25 July 1998, last amended 19 November 2004).

<sup>75</sup> The Private Schools Act RTI 1998, 57, 859 (entered into force 6 July 1998, last amendment 19 November 2004).

<sup>76</sup> The term “continuous education” is defined as: “life-long learning that enables both the individual and society to worthily cope with challenges that arise from fast and inconsistent developments and rely on the principle that learning is a life-long process, where the conscious awareness of and existence of a sense of purpose attached to such a process depends on the age and individual characteristic features of the learner. The internal motivation of the learner plays a crucial role in the development of continuous learning into a lifestyle.” Government of the Republic of Estonia Regulation No. 56 of 25 January 2002 on the National Curriculum for Basic Schools and Upper Secondary Schools, RT I 2002, 20, 116 (entered into force 25 February 2002, repealed 22 June 2002), art. 12.

<sup>77</sup> Basic Schools and Upper Secondary Schools Act, art. 4.

<sup>78</sup> Pre-school Child Care Institutions Act, art. 3.

<sup>79</sup> Pre-school Child Care Institutions Act, art. 18(1).

with special needs”.<sup>80</sup> According to the act, students with special needs can receive special education or support in special schools or in sanatorium schools.<sup>81</sup> The act also regulates the curricula used in basic schools and upper secondary schools, both for mainstream and special education.<sup>82</sup>

Importantly, in accordance with the Basic Schools and Upper Secondary Schools Act, children with special needs, including children with intellectual disabilities, are entitled to study at a mainstream school in the area where they live.<sup>83</sup> If the local authorities have not ensured suitable conditions for teaching children with special needs at a school in their area, children with special needs have the right to attend the nearest school meeting their requirements.<sup>84</sup> People with intellectual disabilities must request permission from the Counselling Commission if they want to continue their basic education beyond age 17.

In theory, the above provisions should provide the opportunity for children with special needs to attend mainstream schools. In reality, most children with special needs still cannot choose to study near their home, due to a lack of resources and a lack of readiness or willingness of the schools in general. The school, in cooperation with parents, decides whether the school has the capacity to provide adequate support for the education of a child. One particular problem is that existing regulations do not define exactly what mainstream schools must do to adapt their conditions to meet the

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<sup>80</sup> According to Article 4(2) of the Basic Schools and Upper Secondary Schools Act: “Schools for students with special needs are intended for students with physical disabilities, speech impairments, sensory or intellectual disabilities, or mental disorders, and for students who need special treatment due to behavioural problems.”

<sup>81</sup> According to Article 4(1) of the Basic Schools and Upper Secondary Schools Act: “Depending on the need of students to receive special education, special support, special treatment due to behavioural problems, or treatment, a basic school or a gymnasium may be a school for students with special needs or it may also be a sanatorium school.” According to Article 4(3): “Sanatorium schools are intended for students with health disorders, where students study and receive the necessary treatment.”

<sup>82</sup> According to Article 4(4) of the Basic Schools and Upper Secondary Schools Act: “In the case of special education, arising from a curriculum, the number of academic years may differ from that established in Article 2 of this Law. The specific number of academic years, list of subjects and number of lessons in schools for students with special needs and sanatorium schools shall be established by a regulation of the Minister of Education.”

<sup>83</sup> According to Article 19(1) of the Basic Schools and Upper Secondary Schools Act: “A school is required to ensure study opportunity for each child subject to the obligation to attend school who resides in the catchment area of the school.”

<sup>84</sup> According to Article 21(1) of the Basic Schools and Upper Secondary Schools Act: “Rural municipality and city governments shall allow children with special needs to attend the school of their residence under the conditions established by the Minister of Education and Research. If suitable conditions are not found, disabled children and children who need special support have the right to attend the nearest school which meets the requirements.”

needs of children with special needs enrolled there.<sup>85</sup> Furthermore, children with intellectual disabilities who appear to be registered in mainstream schools may, in many cases, actually study at home.

The Vocational Educational Institutions Act establishes special rules enabling people with disabilities to study in vocational schools.<sup>86</sup> In 1998, an additional regulation<sup>87</sup> about inclusion of students with special needs into vocational schools was passed. However, implementing this regulation is difficult, because vocational schools lack the knowledge, skills and experience of inclusion, and teachers' attitudes towards students with special needs are not supportive.

## 1.2 Structure and administration of schools

In Estonia, standard compulsory education takes place between the ages of seven and 17. Children must attend school until they acquire a basic education, or attain the age of 17.<sup>88</sup> To obtain a prolongation of compulsory school attendance, the parents of children with special needs must obtain the permission of the Counselling Committee.<sup>89</sup>

In accordance with the Education Act, the levels of education are classified as follows:<sup>90</sup>

- *Pre-school (or pre-primary) education*: for children up to the age of seven. Pre-school education is a system of knowledge, skills, experience and behavioural norms that creates the prerequisites for succeeding in everyday life and at school.
- *Basic education*: grades one through nine (ages 7-16). Basic education is the minimum level of compulsory general education prescribed by the national standard of education. The acquisition of basic education provides the prerequisites and grants the right to continue studies to acquire secondary education.
- *Secondary education*: grades 10-12 (ages 16-18/19). This level of education relies on completion of basic education. Secondary education is divided into *general secondary education* and *vocational secondary education*. Vocational secondary education relies on completion of general secondary education, but is not acknowledged by the State as higher education; it is considered an intermediate education between secondary and higher.

<sup>85</sup> E. Tiitus, "Erivajadusega õpilane tavakoolis ja suhtumine erivajadusega laste tavakooli kaasamisest", ("Students with Special Needs at Regular Schools, and Attitude Towards Engagement of Students with Special Needs into Regular Schools"), BA thesis defended in 2000, Tallinn Pedagogical University, p. 16 (hereafter, Tiitus, *Students with Special Needs*).

<sup>86</sup> Vocational Educational Institutions Act, art. 14(1).

<sup>87</sup> This act entered into force in 1998.

<sup>88</sup> Any child who reaches the age of seven by 1 October of the current year is subject to compulsory school attendance.

<sup>89</sup> Education Act 2003, art. 8(2).

<sup>90</sup> Education Act 2003, art. 14–18.

- *Further education:* ages 18/19 and above. Further education is offered in vocational schools, universities, colleges and further training centres. It offers general educational and professional knowledge, skills and experience. It also offers training in the behavioural norms and values that are required for successful performance of professions and are necessary for maintaining and expanding existing knowledge, skills, experience, and behavioural norms and values.

Basic and secondary education are together referred to as “general education”.<sup>91</sup>

As shown below, in Table 1, there are various public and private educational establishments in Estonia providing pre-school education. Crèches are for children up to the age of three. Most children (48,567 children in 2002) attend mainstream kindergartens up to the age of seven. Some of these kindergartens are connected to primary schools. Children with special needs are able to receive pre-school education in a mainstream kindergarten, either in *integrated* classes (also referred to as “adaptation” or “conciliation” groups), together with other children without special needs, or in special classes, consisting only of children with special needs. They may also attend a special kindergarten for children with special needs, including intellectual disabilities. There are six special kindergartens in Estonia, with a total of 253 children.

**Table 1. Types of pre-school educational establishments (as of 1 January 2002)**

Type of pre-school establishment	Number of establishments	Number of places	Number of children	Number of children per 100 places
Crèche	10	406	473	117
Kindergarten	533	45,412	45,956	101
Kindergarten-primary school	74	3,155	3,019	96
Special kindergarten	6	264	253	96
Children's centre (for children with special needs)	1	180	151	84
Total	624	49,417	49,852	101

Source: Ministry of Education and Research<sup>92</sup>

Basic education is provided in State, municipal and private schools. Mainstream and special schools are under the responsibility of the municipalities. Municipal and State schools must accept all students in their catchment area who are of compulsory school

<sup>91</sup> Information from the Education section of the website of the Ministry of Education and Research, available at <http://www.hm.ee> (accessed 16 June 2004), General Education (hereafter, Ministry of Education website).

<sup>92</sup> Ministry of Education website.



age, but in the case of children with special needs, the school must be able to provide adequate conditions if they are to accept such students. Children from outside the catchment area may also be accepted, if vacancies exist.

The education of children with special needs is regulated by the Basic Schools and Upper Secondary Schools Act 2003, which applies to all children. Children and young people who need special tuition, special assistance, special treatment conditions or therapy, can study at:<sup>93</sup> special schools,<sup>94</sup> sanatorium schools<sup>95</sup> or at home.<sup>96</sup> In accordance with the Basic Schools and Upper Secondary Schools Act, a Counselling Committee can also recommend special classes for children with intellectual disabilities.<sup>97</sup> These classes can be created by the Ministry of Education and Research in State or municipal schools in both mainstream and special schools, and there are four types:

- opportunity classes – for children with learning difficulties;
- supplementary learning classes – for children with *mild* intellectual disabilities;
- coping classes – for children with *moderate* intellectual disabilities;
- nursing classes – for children with *severe* and *profound* intellectual disabilities.<sup>98</sup>

Schools receive a per-student normative (annual funding) that, in the case of special and sanatorium schools, is adjusted upwards by an “index” for students with special

<sup>93</sup> Regulation No. 24 of the Minister of Education of 18 July 2000 on Home Schooling (RTL 2000, 84, 1234), entered into force 29 July 2000, art. 5(1) (hereafter, Regulation no 24/2000).

<sup>94</sup> According to art. 4(2) of the Basic Schools and Upper Secondary Schools Act: “Schools for students with special needs are intended for students with physical disabilities, speech impairments, sensory or intellectual disabilities, or mental disorders, and for students who need special treatment due to behavioural problems.”

<sup>95</sup> Sanatorium schools are intended for students with health disorders, rather than intellectual disabilities. Basic Schools and Upper Secondary Schools Act, art. 4(3).

<sup>96</sup> If the school cannot provide suitable conditions for a child with disabilities or a health disorder, the child has the right to study at home from school years one to nine. Basic Schools and Upper Secondary Schools Act, art 20. The procedures for acceptance at a school, transfer from one school to another, leaving school and expulsion, for students of basic schools and upper secondary schools, are governed by: Minister of Culture and Education Regulation No. 10 of 16 June 1994 on the Procedure of Reception, Transition, Departure and Rejection of Students of Basic Schools and Upper Secondary Schools, RTL 1994, 39 (entered into force 24 August 1994, amended by Minister of Education Regulation No. 62 of 5 July 2002, RTL 2002,81,1239, entered into force 27 July 2002), art. 1 (hereafter, Regulation No. 10/1994).

<sup>97</sup> There are also classes for children with physical and sensory disabilities, speech impairments, sensory disabilities and behavioural disorders. Basic Schools and Upper Secondary Schools Act, art. 21(1).

<sup>98</sup> Basic Schools and Upper Secondary Schools Act, art. 21(4).

needs, including students with intellectual disabilities.<sup>99</sup> (See Table 2, opposite.) Special and Sanatorium schools receive 1.9 times the normative for children with *mild* intellectual disabilities and 3.5 times the normative for children with *moderate* intellectual disabilities. Significantly, for children with intellectual disabilities in mainstream schools, even for students of special classes, normative funding is not adjusted upwards. Students of special classes in mainstream schools are financed on the same basis as other students without disabilities, even though upper limits for the size of special classes are lower than for mainstream classes.<sup>100</sup> Special classes are therefore mostly established in cities, where they are more likely to be filled, rather than at smaller schools or in rural areas.

**Table 2. Expenditure indexes for children with special needs in general education (not applied in mainstream schools)**

Category of student with special needs	Index (per student with special needs)
Classes for children with somatic, speech and sense disabilities	2.3
Classes for children with <i>mild</i> intellectual disabilities	1.9
Classes for children <i>moderate, severe, profound</i> intellectual disabilities and classes for children with complex disabilities	3.5
Classes for children with learning difficulties	1.3
Classes for children with educational difficulties	1.6
Studying in sanatorium schools	
Additional expenditures for students in home schooling programs (home schooling for health reasons)	4.4
Home schooling in psychiatric hospital	1.3
Home schooling in children's hospital	0.6
Remedial education	0.2

Source: Ministry of Education and Research<sup>101</sup>

<sup>99</sup> Government Regulation No. 49 of 17 February 2003, on the "State Budget Act 2003": appropriations from the State budget to a local government budget through the budget equalisation fund for running expenditures, RTI 2003, 16, 94 (entered into force 22 February 2003, repealed 20 June 2003).

<sup>100</sup> The upper limits are: 12 students per class, for classes for children with speech impairments, sensory and physical disabilities, and behavioural disorders; 16 students per class for children with mental disorders (in an opportunity class, which are classes for children with learning difficulties, or in a supplementary learning class); seven students per class for children with multiple disabilities (in a "coping" class or a "nursing" class), and 25 students per class for a sanatorium school. Basic Schools and Upper Secondary Schools Act, art. 26(1).

<sup>101</sup> Ministry of Education and Research, information from the website of the Ministry, available at <http://www.hm.ee> (accessed 2 December 2004).

### *Funding for vocational schools*

The per-student normative acts as an incentive for mainstream vocational schools to create special classes for children with special needs, as schools receive twice the amount of funding for students in special classes in vocational schools.

### **1.3 Assessment of disability for educational purposes**

Children with intellectual disabilities are usually diagnosed between the ages of seven and 14 – seldom are diagnoses made at pre-school age. In comparison with international practice, diagnoses of intellectual disability are made in Estonia at a very late age, therefore precluding the delivery of early intervention services at a sufficiently early age, when children with intellectual disabilities benefit most from such services. The State should work to identify children with intellectual disabilities at as early an age as possible, by pre-school age at the latest. In some cases, parents are reluctant to have their children assessed, as a diagnosis of intellectual disability almost automatically leads to placement in special schools, due to a lack of support for mainstreaming. The State should take steps to develop a support system that takes a child's individual development into account.

For educational purposes, and in accordance with the Basic Schools and Upper Secondary Schools Act 2003, Counselling Committees are responsible for establishing each child's special educational needs. Regional (county level) Counselling Committees are formed by order of the County Governor. Each Committee is made up of five members: a special education teacher, a speech therapist, a psychologist, a social worker and a representative of either the county or city government, as appropriate.<sup>102</sup>

The Counselling Committees have the following competencies:<sup>103</sup>

- to assign to a child with special needs a curriculum or a form of study suitable for the needs of the child;
- to refer a child with special needs to a sanatorium school or a school or class for students with special needs with the consent of a parent (caregiver);
- to postpone the obligation to attend school at the parents' request.

The Counselling Committees carry out multidisciplinary assessments of children with intellectual disabilities. The assessments consist of pedagogical, psychological and medical examinations. Parents are also engaged in this process.<sup>104</sup> In accordance with

<sup>102</sup> Basic Schools and Upper Secondary Schools Act, art. 21.

<sup>103</sup> Basic Schools and Upper Secondary Schools Act, art. 21 (3).

<sup>104</sup> M. Leemet, "Tallinna linna nõustamiskomisjon aitab määrata lapsele sobiva õppekava ja arengutasemele vastava õppevormi", ("The Tallinn Counselling Committee will help to find curriculum and study form that comply with abilities"), in *Sotsiaaltöö*, (magazine) March 2004.

the severity of the child's disabilities, the Counselling Committees diagnose children with intellectual disabilities with one of four degrees of intellectual disability (*mild, moderate, severe* or *profound*). The Committees also decide when a diagnosis should be reviewed; in general, diagnoses are reviewed every three years.

The type of school a child is *expected* to attend is correlated to the degree of disability with which they are diagnosed:

- Children with *mild* intellectual disabilities are generally expected to achieve the required educational standards at a basic level in adapted learning conditions. For this category of children, the Ministry of Education and Research foresees either integration into an educational programme at a mainstream school with some modifications (such as adapted organisation, time schedules and progress evaluation); or enrolment in a primary-level special educational programme in a special school.<sup>105</sup>
- Children with *moderate, severe* and *profound* intellectual disabilities are generally expected to attend special training programmes, either in special schools or in social and care institutions for children with *profound* intellectual disabilities.<sup>106</sup>

However, all children are equal before the law and, in accordance with the Basic Schools and Upper Secondary Schools Act, are entitled to attend a school if they reside in the school's catchment area.<sup>107</sup> Parents or guardians have the right to choose a school for their child.<sup>108</sup> The Counselling Committee determines the type of curriculum the child should follow, in accordance with the child's abilities.<sup>109</sup> The committee can place the child in a special school or special class only with the consent of the parents or guardian.<sup>110</sup>

Most parents of children with *moderate, severe* or *profound* intellectual disabilities want their child to attend a mainstream school. However, although parents have the legal *right* to send their child to a school if he or she resides in a school's catchment area, in practice, parents are unable to exercise this right due to the lack of support services, including support teachers, in most mainstream schools.

<sup>105</sup> Tiitus, Students with Special Needs, p. 18.

<sup>106</sup> Tiitus, Students with Special Needs, p. 18.

<sup>107</sup> According to Article 19(1) of the Basic Schools and Upper Secondary Schools Act 2003: "A school is required to ensure study opportunity for each child subject to the obligation to attend school who resides in the catchment area of the school."

<sup>108</sup> Constitution, art. 37.

<sup>109</sup> According to Article 21(3) of the Basic Schools and Upper Secondary Schools Act: "Children with disabilities shall be recommended a curriculum or school suitable for their abilities by a decision of a Counselling Committee, based on medical, psychological and pedagogical assessments."

<sup>110</sup> According to Article 21(4) of the Basic Schools and Upper Secondary Schools Act: "A student shall be admitted to a special school or special class on the basis of a written application submitted by the parent and according to the decision of the Counselling Committee."

In principle, the family of a child with special needs should receive information and support from the local authorities in the area of their residence. However, at present, assistance is mainly limited to a medical approach. In making the decision whether a child with special needs should study at a mainstream school, the medical staff and consultants on the Counselling Committee still play the most decisive role.<sup>111</sup> The Counselling Committee is competent to determine the curriculum and form of study only for school-age children, but not younger children. The appropriate local authorities should ensure that medical assistance to children with disabilities and their parents is coupled with pedagogical-psychological, social and economic support, as the future of children with special needs depends to a great extent on the support of their parents and their will (and ability) to help.<sup>112</sup>

#### 1.4 Early intervention services

Early intervention services for children with intellectual disabilities, from birth to age seven, simply does not exist in Estonia.<sup>113</sup> The inclusion of children with intellectual disabilities in mainstream kindergarten is possible only on the initiative of parents and with their financial investment. No laws or specialised services exist to include children with intellectual disability in mainstream kindergartens.

## 2. GOVERNMENT EDUCATION POLICY

*Education policy in Estonia has undergone systematic reform since the country regained its independence in the early 1990s. Estonia is one of the few countries to have specifically addressed the educational needs of people with disabilities during its EU accession process. The “Joint Inclusion Memorandum”, developed by Estonia and the European Commission, makes a number of recommendations for improving the inclusion of children with intellectual disabilities at all levels of education. Following Estonia’s accession to the EU in 2004, EU Structural Funds are now being directed towards education and vocational training. However, the Government has not yet allocated these funds towards projects specifically aimed at people with intellectual disabilities. National educational policy recognises the importance of improving mainstreaming and life-long education for people with intellectual disabilities. However, the recommendations of key education policy papers – in particular, the “Learning Estonia” education strategy paper of 2001 – are yet to be implemented.*

<sup>111</sup> Tiius, *Students with Special Needs*, p. 18.

<sup>112</sup> I. Viiralt, *The Child with Disability as the Focus of Families Research* (in Estonian), Tallinn Pedagogical University, Tallinn, 1996.

<sup>113</sup> Definition: Early intervention services and other support is provided to infants and young children and their families where the children have, or are at risk of developing, a condition or special needs that may adversely affect their development. The purpose of early intervention is to lessen the effects of the child’s condition and to maximise the child’s development and inclusion. Early intervention can be remedial or preventive in nature and the types of services range from identification (hospital or school screening and referral services) to diagnostic and direct intervention programs. Services and support can be provided in a range of settings.

*The conclusions and recommendations on inclusive education from the “A School for All” project, organised and funded by the Nordic Council of Ministers, could be an important resource for further policy development.*

## 2.1 The EU and Government education policy

During Estonia’s EU accession process, no Phare funds were allocated specifically towards education programmes targeting people with intellectual disabilities, even though Phare was the primary source of EU funding during the period.<sup>114</sup> The European Commission generally did not address the situation of people with disabilities during the accession process. However, the *Joint Inclusion Memorandum – Estonia*,<sup>115</sup> elaborated by the Ministry of Social Affairs and the European Commission in 2003, includes a special section on people with intellectual disabilities. This section notes that, while mainstreaming has improved, “intensified efforts are required to promote early intervention and provide mainstream day-care institutions and schools with the necessary competence and skills”.<sup>116</sup> In assessing access to education, the memorandum notes that:

There are increasingly better opportunities for all children, including those with special needs, to be prepared for school and acquire education according to their abilities. [...] The number of disabled pupils in mainstream education has been increasing in both general and vocational education (in the 2001/2002 school year three-quarters of disabled pupils attended mainstream schools).<sup>117</sup>

The memorandum outlines a number of challenges and policy responses, many of which are highly relevant to children and young people with intellectual disabilities. In particular, the following are highlighted as immediate priorities for improving access to learning opportunities:<sup>118</sup> to ensure access to pre-school education; to develop more flexible learning opportunities for students with disabilities; to develop teacher-training programmes to help teachers identify students with special needs; and to develop and make available support services and teaching aids for students with disabilities.

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<sup>114</sup> Ministry of Education website.

<sup>115</sup> Ministry of Social Affairs, *Joint Inclusion Memorandum – Estonia* (draft), Ministry of Social Affairs of Estonia and DG Employment and Social Affairs of the European Commission, Brussels, 2003, available on the website of the Ministry of Social Affairs, [http://www.sm.ee/est/HtmlPages/JIM\\_Estonia/\\$file/JIM\\_Estonia.pdf](http://www.sm.ee/est/HtmlPages/JIM_Estonia/$file/JIM_Estonia.pdf) (accessed 22 November 2004), (hereafter, *Joint Inclusion Memorandum – Estonia*).

<sup>116</sup> *Joint Inclusion Memorandum – Estonia*, p. 39.

<sup>117</sup> *Joint Inclusion Memorandum – Estonia*, pp. 31–32.

<sup>118</sup> *Joint Inclusion Memorandum – Estonia*, pp. 22–23.

Estonia's "National Action Plan for Social Inclusion", released in July 2004, does not outline a specific plan that would enhance inclusion in schools, but rather anticipates improvements to support systems, such as teachers, assistants and transportation.<sup>119</sup>

Since accession to the EU, Estonia is eligible for funding from EU Structural Funds. The "Estonian National Development Plan for the Implementation of EU Structural Funds – the Single Programming Document for 2004–2006"<sup>120</sup> (hereafter, Estonia SPD) establishes the priorities and measures under which projects will be selected and funded by EU Structural Funds<sup>121</sup> during this period. The Estonia SPD includes several measures relevant to education and vocational training, though there is no specific reference to people with disabilities.<sup>122</sup>

## 2.2 National education programmes

Estonia allocates a high proportion of its GDP towards education: almost seven per cent of GDP has been spent annually on education since the mid-1990s, and in 1999, education expenditure peaked at 7.5 per cent of GDP.<sup>123</sup> This compares with between four and six per cent in the European Union and other OECD countries.<sup>124</sup> Although this percentage has decreased in recent years (6.9 per cent in 2000 and 6.3 per cent in 2001 and 2002), in absolute numbers, expenditure on education has continued to increase.<sup>125</sup>

Between 1997 and 2000, a number of initiatives focused on strategic thinking about the education system in general, as well as about the broader context of a global

<sup>119</sup> *Estonia's National Action Plan for Social Inclusion*, July 2004, available on the website of the European Commission at [http://europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/nap\\_incl\\_2004\\_ee\\_en\\_version.pdf](http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/nap_incl_2004_ee_en_version.pdf) (accessed 2 December 2004), p. 26, (hereafter, *NAP Social Inclusion*).

<sup>120</sup> *Estonian National Development Plan for the Implementation of EU Structural Funds – Single Programming Document (SPD) for 2004–2006*, ratified by the Monitoring Commission of the Development Plan on 10 March 2004, available at [www.strukturifondid.ee/failid/ESTONIAN\\_SPD\\_2004\\_2006.pdf](http://www.strukturifondid.ee/failid/ESTONIAN_SPD_2004_2006.pdf) (in English) and at [www.hm.ee](http://www.hm.ee) (in Estonian), (accessed on 16 June 2004), Introduction, p. 5, (hereafter, *Estonia SPD*).

<sup>121</sup> EU Structural Funds consist of the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Guidance Section of the European Agricultural Guidance and Guarantee Fund (EAGGF Guidance Section) and the Financial Instrument for Fisheries Guidance (FIFG). Estonia has been determined as an Objective 1 area, in which EU Structural Funds are targeted for "promoting the development and structural adjustment of regions whose development is lagging behind".

<sup>122</sup> *Estonia SPD*, Measure 1.1 (p. 207) and Measure 4.3 (p. 259).

<sup>123</sup> H. Zelloth, *A Monograph on Estonian Vocational Education, Advanced Training and Employment Services, and their Systems and Structures*, Sõnasepp Publishing, Tallinn. 2003, p. 98 (hereafter, *Zelloth, Monograph*).

<sup>124</sup> *Zelloth, Monograph*, p. 111.

<sup>125</sup> *Zelloth, Monograph*, p. 111.

economy based on knowledge and information technology. These initiatives include the establishment of the Estonian Education Forum<sup>126</sup> and the drafting of education strategy and policy papers such as: “Learning Estonia” (*Õpi-Eesti*); “Vision of the Estonian Education System in 2010”; “Tiger Leap” (*Tiigrihüpe*) (1996–2000); and “Tiger Leap Plus” (2001–2005).

The Tiger Leap Foundation<sup>127</sup> began operation in 1997 with EEK 35.5 million (approximately €2.3 million<sup>128</sup>) allocated from the State budget. The foundation facilitates the access of pupils with special needs to general education by making information and communication technologies (ICT) available through a project called “ICT in the Education of Pupils with Special Needs”. It provides backing for support centres and counselling of children with special needs, their parents, teachers, officials in education and all interested parties. The educational special needs support centre for children with learning difficulties operates out of Tartu Kroonuaia School and provides training in ICT use throughout Estonia.<sup>129</sup>

In 1999 and 2000, the Ministry of Education and Research and the Estonian Education Forum, together with other NGOs and social partners, prepared the draft education strategy paper “Learning Estonia”. This paper focuses on the future development of the education system and the creation of a general support structure for teachers and students. The draft paper was approved at a Government meeting on 30 October 2001 but has yet to be adopted by Parliament. There is no information available as to why the discussion process has been suspended.

“Learning Estonia” establishes as its main goal that every person residing in Estonia should have the right to acquire a good education consistent with their abilities, irrespective of their gender, age, mental and physical health condition, social status, financial situation or place of residence.<sup>130</sup> To meet the compulsory education requirements, special forms of study and curricula that take account of students’

<sup>126</sup> The Estonian Education Forum is a policy NGO representing all the most important interest groups in educational policy in Estonia. It aims to support democratic processes and promote participation, partnership and social agreement in Estonian education policy. See: Estonian Education Forum home page, available at <http://www.haridusfoorum.ee> (accessed 22 November 2004).

<sup>127</sup> “Tiger Leap” is a national target programme with the overall objective to promote the educational system in Estonia in a rapidly changing world with the introduction of modern information and communications technology. The programme is primarily aimed at general education but also involves basic and vocational education. See: home page of the “Tiger Leap” programme, available at <http://www.tiigrihype.ee/eng> (accessed 12 September 2004).

<sup>128</sup> The exchange rate is calculated at €1 = EEK 15.65.

<sup>129</sup> Tiger Leap Foundation: <http://www.tiigrihype.ee/eng> (accessed 11 July 2005).

<sup>130</sup> Ministry of Education and Research, “Learning Estonia 2001”, available on the ministry website at <http://www.hm.ee> (accessed 16 June 2004), p. 4, (hereafter, Ministry of Education, *Learning Estonia 2001*).



individuality and special needs should be provided for by legislation.<sup>131</sup> “Learning Estonia” emphasises the need to enable life-long learning and create expectations for the life-long learning of all students. Curricula should be adapted to people with special needs, and it should take into consideration their disability. Furthermore, there should be no age limits for students with special needs. The period of study should be calculated according to attendance.<sup>132</sup> Implementation of the ideas presented in “Learning Estonia” is to be carried out by reforming the laws on education.

The policy paper “A Vision of the Estonian Education System in 2010” is part of the “Learning Estonia” education strategy.<sup>133</sup> A main premise of the paper is that, by the year 2010, education will have become the main precondition for national development in Estonia. The paper covers 18 main sections, including: students with special needs; life-long learning; “learning to learn”; “the teacher is the key”; innovation based on scientific research; and effective counselling. Its many ambitious objectives include: “secondary education for each person, higher education for many people”; “making Estonian professional qualification comparable to that of the European Union”; and “professional higher education constitutes a value.” The paper also sets out a vision of the Estonian Education System in 2010. According to this vision, students who are particularly talented or who are falling behind, students with disabilities, and students who come from “at risk” families, will be a special focus of attention on all levels of tuition – and appropriate forms of study and tuition will be provided according to individual curricula.<sup>134</sup>

### 2.3 Other international initiatives

The Nordic Council of Ministers and the Estonian Ministry of Education and Research carried out a joint project “A School for All”<sup>135</sup> in the Baltic Countries in 1999–2004. The main objective of the project was to give all children the maximum opportunity for optimal development. The project is being carried out within the framework of local education systems, where pupils’ participation in the local community is a fundamental

<sup>131</sup> The draft has not yet been adopted by the Parliament; it has only been approved at a Government meeting on 30 October 2001. There is no information on the reason for suspension of discussion. Minutes of meeting and text of the draft available at <http://web.riigikogu.ee/ems> (accessed 16 April 2004).

<sup>132</sup> Ministry of Education, *Learning Estonia 2001*.

<sup>133</sup> Ministry of Education and Research, “A Vision of the Estonian Education System in 2010”, available (in Estonian) on the ministry website at <http://www.hm.ee> (accessed 22 November 2004), (hereafter, *A Vision of the Estonian Education System in 2010*).

<sup>134</sup> *A Vision of the Estonian Education System in 2010*, p. 5.

<sup>135</sup> “A School for All” is a Nordic term that demonstrates that basic education must be organized to serve everyone’s needs equally, despite pupil’s abilities, possibilities and needs. L. Kaikkonen, K. Kukk and K. Kõiv *Supporting the transitions of students: A school and work for everyone*, Ministry of Social Affairs, 2003, p. 25 (hereafter, Kaikkonen *et al.*, *Supporting the transitions of students*).

principle.<sup>136</sup> The project period includes planning, coordination, evaluation and implementation of the programme. So far three sub-projects have been carried out: “Transition”, “Teacher Training” and “Learning Together”.

Within this initiative, the main project in Estonia was the “Supported Transition of Students with Special Needs”. This project aimed to advance inclusive education in Estonia, such that students with special needs would be able to study at mainstream general education schools and at mainstream vocational schools, and would thus be better qualified for entering the labour market.<sup>137</sup> Within the “Teacher Training” sub-project, the overall aim was to develop the knowledge and competency of teachers for special needs education within the framework of the professional development of participating teachers. The “Learning Together” sub-project has the overall aim of establishing a regional Pedagogical Psychological Counselling service, to secure teachers’ assistance in the individual planning of education for students with special needs in mainstream schools.<sup>138</sup> Such centres will provide teacher assistance in developing and implementing individual education plans for children with special educational needs at mainstream schools and in giving learning support to children. The project aims to establish a model for such services by starting in one selected area in Estonia: Võru, in southern Estonia. The Võru service started operating in September 2003 and ended in October 2004.

The final evaluation of the “A School for All” project was completed in the summer of 2004, and so far the project has attained the goals established for the three sub-projects.<sup>139</sup> The joint Steering Group and Co-ordination Group (project managers and Ministry of Education and Research representatives) has recommended the continuation of the “A School for All” project in Estonia.

### 3. EDUCATION IN PRACTICE

*Special, separate curricula are available for children with mild intellectual disabilities or moderate/severe intellectual disabilities, respectively. Children with severe and profound intellectual disabilities are educated in special “nursing” classes. Children with intellectual disabilities in mainstream classes can also follow an individual education plan. However, although this option is increasingly popular, many students with intellectual disabilities are not yet provided with the support*

<sup>136</sup> “A School for All” is a Nordic term that demonstrates that basic education must be organized to serve everyone’s needs equally, despite pupil’s abilities, possibilities and needs. Kaikkonen *et al.*, *Supporting the transitions of students*, p. 26.

<sup>137</sup> N. Öström, *Evaluation of “Development of a School for All” Nordic – Baltic Cooperation in Special Needs Education 2000–2004*, Copenhagen, 2004, p. 15, available at <http://www.norden.org/pub/uddannelse/uddannelse/sk/2004-737.pdf> (accessed 22 November 2004) (hereafter, Öström, *Evaluation of “A School for All”*).

<sup>138</sup> Öström, *Evaluation of “A School for All”*, p. 21.

<sup>139</sup> See: Öström, *Evaluation of “A School for All”*.

*they need to follow an individual education plan, mainly because mainstream schools lack the necessary specialists and support system. Teachers do receive training on working with children with special needs as part of their education, but research suggests that more instruction and support for teachers is needed.*

*Although Estonia recognises certain principles of inclusive education in law and policy, in practice most children with intellectual disabilities still do not have the opportunity to receive an education in a mainstream setting. The number of children with special needs (in general) in mainstream schools increased significantly, by 25 per cent, from 1998 to 2002. In 2002–2003, 74 per cent of these children were integrated into special classes in mainstream schools and seven per cent into mainstream classes. There is no available data on the exact number of children with intellectual disabilities in mainstream education, though it is known that, from kindergarten to secondary level, their number continues to increase, in large part due to pressure from parents. In addition, some caution is required in interpreting the actual situation of children with intellectual disabilities, because many of those who are enrolled in mainstream schools in reality study at home. Although this arrangement permits some children to remain at home rather than having to live in a residential special school, it certainly does not fulfil the aims of inclusive education. There is no official data on the total number of children with intellectual disabilities receiving home schooling.*

*A number of important barriers still limit the extent to which the integrated education of children with intellectual disabilities can develop in practice. These barriers include lack of transportation, large class sizes, and opposition to integration from some teachers and parents of children without disabilities. The most important barrier, however, is the insufficient number of support specialists. In kindergartens, for example, in most cases the local authorities are not able to provide financial support for support teachers, and parents or guardians must themselves cover the cost of a support teacher. About half of all mainstream kindergartens have no access to support from a special educator, so there is a heavy burden on class teachers. Mainstream schools do not receive the funding required to meet the needs of children with intellectual disabilities. Legislative barriers are also significant; although the right to inclusive education exists on paper, existing rules and regulations do not provide the necessary mechanisms for its implementation in practice.*

*In 2002–2003, there were 5,166 students with special needs – mainly with intellectual disabilities – in special schools, which may be day schools or residential. Due to a lack of other alternatives, many children and young people with severe or profound intellectual disabilities have no other option but to study in residential special schools, far from their homes. The quality of education in such schools is rather low due to limited resources: there is a lack of financing, qualified teachers and equipment. For the same reasons, the living standards in residential special schools are also low. It is also common for children with intellectual disabilities to be schooled at home, primarily due to the limited capacity of mainstream schools, which have yet to make the provision of the necessary support services for children with special needs a priority. A large majority of children with intellectual disabilities who appear on enrolment lists at mainstream schools are in practice schooled at home.*

### 3.1 Resources and support

#### 3.1.1 Curriculum and support

##### *Pre-school education*

Pre-school education is based on the standard national curriculum, the Framework Curriculum of Pre-primary Education.<sup>140</sup> Special kindergartens and kindergartens with special classes compile their own curricula. These are based on the standard Framework Curriculum, but they take into account the special needs that arise from children's disabilities. In integrated groups, children with special needs follow the standard national curriculum along with other pupils, but there are additional provisions for day planning, methodological and organisational measures, such as "study-support" – including speech therapy, remedial study, psychological support, physiotherapy and social pedagogy – and the use of a support person, who is usually paid by parents.<sup>141</sup>

##### *Compulsory education*

There are three different State curricula to support compulsory education:<sup>142</sup>

- national curriculum – the standard curriculum at basic schools and upper secondary schools;
- simplified (or supplementary) curriculum – for students with *mild* intellectual disabilities; 1.4 per cent of basic school students study on the basis of this curriculum;
- "coping" curriculum – for students with *moderate* and *severe* intellectual disabilities; 0.4 per cent of basic school students study on the basis of this curriculum.

Both the coping and simplified curricula are based on the national curriculum.

Children with *severe* and *profound* intellectual disabilities are also taught in nursing classes.

Each school has the right and obligation to further develop the national curriculum according to the specificity of the school and region, as well as the needs of the students. However, the Ministry of Education and Research must approve the specifications of each school. All students following the national curriculum should be capable of finishing their school by taking the national examination.

For children with special needs, the Counselling Committee is tasked with recommending the type of school and curriculum to be followed. Children with special

<sup>140</sup> Government of the Republic of Estonia Regulation No. 315 of 15 October 1999, on the Framework Curriculum of Pre-primary Education, RTL 1999, 80, 737 (entered into force 1 November 1999).

<sup>141</sup> Anonymous interview with an employee (educator) of a pre-school child care organisation in 2002.

<sup>142</sup> Ministry of Education website.

needs are increasingly enrolled in mainstream schools. Mainstream primary schools offer the same curriculum for all children – the national curriculum – while for children with special needs, they offer either the simplified or coping curricula. Children with special needs receive additional support at mainstream schools, as defined in the individual education plan issued by the Committee. The curricula for special schools for children with special needs are drawn up separately for different types of schools, observing the general objectives of the national curriculum for basic schools and upper secondary schools.<sup>143</sup>

There are no precise figures on the numbers of children with intellectual disabilities in mainstream and special schools. The Ministry of Education and Research does, however, maintain statistics on the numbers of children following the different types of special curricula. As shown below in Table 3, the simplified and coping curricula are applied to teaching children with intellectual disabilities in both special schools and in mainstream schools – in mainstream and special classes.

**Table 3. Students following the simplified and coping curricula and studying in nursing classes (2003–2004)**

Type of curriculum or class	Number of students			
	Special schools	Mainstream schools		Total
		Mainstream class	Special class	
Simplified curriculum	2,058	343	243	2,644
Coping curriculum	602	33	97	732
Nursing classes	157	–	57	214
Total	2,817	376	397	3,590

Source: Eurydice Database<sup>144</sup>

### *Individual Education Plans*

If the child's special needs do not require attendance at a special school or special class in a mainstream school, a fourth option is for the child to follow an individual education plan (IEP) at a mainstream school.<sup>145</sup> IEPs are mostly for children with behavioural challenges or for those whose physical disabilities prevent them from attending school.

<sup>143</sup> Ministry of Education website.

<sup>144</sup> Eurydice Database, Estonia, Section 10.8 Statistics, Children with Special Needs in General Education, 1996/97–2003/200, available on the Eurydice database website at <http://www.eurydice.org/Eurybase> (accessed 2 December 2004).

<sup>145</sup> Tiitus, *Students with Special Needs*, p. 80.

Although there is no special legislation on integration in Estonia, the IEP is regulated by the Order of individual study plan 2004,<sup>146</sup> and this plan can be applied only on the request or approval of parents. Children with special needs are entitled to apply for an IEP when they enter a mainstream school, for both regular or special classes. IEPs can be established for particular subjects or for the whole course programme<sup>147</sup> at all levels of general education – basic and secondary education.<sup>148</sup> The IEPs do not cover independent living skills or social skills. In special schools, children are taught according to the national curriculum, and an IEP can only be applied on the request of parents.

The IEP is a written document that concisely outlines the curriculum of a student with special needs. This curriculum takes into account a student's individual special developmental needs. It is prepared when a child with intellectual disabilities enters a mainstream school. The IEP should define the student's short-term and long-term study goals, the specific nature of special assistance required and the extent of the student's ability to participate in class work. It should also reflect the child's progress. IEPs are thought to speed up the learning process.

The national curriculum serves as the basis for the preparation of the IEP. The IEP should take into account the social background of the school and the character of the local municipality or city. If necessary, a group curriculum (the curriculum for a special class in a mainstream school) can be compiled, from which the IEP is developed.<sup>149</sup> In this case, the IEP effectively converts the school and class curriculum into an individualised curriculum. It must be accepted by the student, the teachers and local officials and should ensure the protection of both the student and the teacher, as well as providing options for rehabilitation.<sup>150</sup>

In acquiring an IEP, it is possible to receive additional support from a teacher for remedial education<sup>151</sup> (developing the student's psychological processes) and a speech therapist (mostly developing handwriting, rather than reading or communication skills) in individualised programmes.<sup>152</sup> This support may be a mobile service that is provided

<sup>146</sup> Regulation of the Minister of Education No. 61 of 26 December 2004 on Order of individual study plan (RTL 2004, 155, 2329).

<sup>147</sup> Ministry of Education website.

<sup>148</sup> Regulation no 17/1997 of the Ministry of Education and Research, Clause 2.

<sup>149</sup> Ministry of Education website.

<sup>150</sup> Tiitus, *Students with Special Needs*, p. 76.

<sup>151</sup> Government of the Republic of Estonia, Regulation No. 13 of 14 January 2002, Procedure for Determining Permanent Capability for Work, its Starting Time, Cause and Duration by Medical Examination for Incapacity for Work, RTI 2002, 6, 23 (entered into force 1 January 2002). Amended by the following Regulations: No. 34 of 28 January 2003, RTI 2003, 12, 62 (entered into force 7 February 2003) (hereafter Regulation No. 13/2002 of Government).

<sup>152</sup> Order No. 91 of the National School Board of 9 May 1995, on Affirmed rules of the job management of speech therapists, available (in Estonian) at the website of the Ministry of Education and Research at <http://www.hm.ee> (accessed 11 July 2005).

by special teachers, and it can be implemented either at school or in the child's home.<sup>153</sup> The IEP creates extra work for teachers who already have a considerable workload; moreover, there is no additional payment for taking on the added responsibility of implementing an IEP.

Individual education plans are becoming increasingly popular in Estonia. However, despite the possibility of receiving an IEP, many students with special needs are still not provided with special tuition that accompanies an IEP, and therefore they do not receive the teaching support that they need. The exact reasons for this problem are unclear, but it may be assumed that mainstream schools lack the necessary specialists and support system. In Estonia, counselling centres and pedagogic psychological services are still in their early stage of development.

### 3.1.2 Teacher training

All those providing educational services for people with disabilities are required to receive adequate professional training.<sup>154</sup> Modernised general teacher training curricula now also cover special needs, including intellectual disabilities. Teachers who have completed their training more recently are therefore acquainted with techniques for working with students with special needs in mainstream schools. However, teachers who graduated before the introduction of the new training curricula would not necessarily have received any training in special education. Education experts, including special counsellors, social pedagogues and speech therapists, are educated at Tallinn Pedagogical University and Tartu University.<sup>155</sup>

Universities provide special supplementary education courses for basic school teachers and remedial education teachers.<sup>156</sup> Long-term training is arranged by the Public Health and Social Training Centre.<sup>157</sup> This includes occupational therapist training, supplementary training for staff working with people with physical disabilities or in welfare institutions, and risk evaluation and case management courses. Many seminars,

<sup>153</sup> *Joint Inclusion Memorandum – Estonia*, p. 7.

<sup>154</sup> National Disability Concept *Standard Regulations*, Point 5.

<sup>155</sup> K. Kukk, *Educational special needs*, Conclusion, Ministry of Education and Research, Tallinn, 2004, p. 10 (hereafter, Kukk, *Educational special needs*).

<sup>156</sup> Here, one problem is the training of speech therapists for Russian-speaking students in Estonia. One solution could be to organise courses in cooperation with the University of St Petersburg. Kukk, *Educational special needs*, p. 25.

<sup>157</sup> The Public Health and Social Training Centre is administered by the Ministry of Social Affairs. It carries out social training, health service management and public health training and developmental activities aimed at improving the work and vocational skills of people. Homepage: <http://www.rahvatervis.ee/ava.html>.

schooling days and roundtable discussions have been organised for people with disabilities and for specialists working with people with disabilities.<sup>158</sup>

The strategy paper, “Learning Estonia”, in its “teacher is the key” component, elaborates the key role of teachers in implementing changes in the educational system.<sup>159</sup> The paper explains that teacher preparation, both primary and in-service training, should emphasise the acquisition of skills such as teaching children with different abilities, interests, nationalities, cultural backgrounds and special needs; using up-to-date information technology in school work; working as pedagogical teams; and communicating with parents and representatives of the local community.<sup>160</sup> However, the “Learning Estonia” strategy paper has not yet been approved by the Parliament and necessary legislative changes still need to be implemented. Similarly, Estonia’s “Joint Inclusion Memorandum” establishes as a priority area the development of teacher training programmes that help teachers to identify special needs and learning difficulties of students and that direct teachers to the relevant sources of advice and assistance.<sup>161</sup>

Research under the “A School for All” project, financed by the Nordic Council of Ministers, has shown that Estonian teachers need more incentive (whether in the form of increased salary or more recognition of their work) for self-education; they need additional training in inclusion of students with special needs; and they need concrete suggestions for the productive preparation of student transitions from school to work life.<sup>162</sup>

### 3.2 Inclusive education

Since regaining independence, Estonia has extensively reformed its educational system and, particularly in the past several years, has taken a more inclusive approach to the education of children with intellectual disabilities. As a participant in the Salamanca Conference on Special Needs Education, and a signatory to the Declaration that emerged from the Conference,<sup>163</sup> Estonia has committed itself to work towards inclusive education. This process entails a fundamental shift in attitudes – towards recognising the individual abilities of all pupils and students, and enabling education structures, systems and learning methodologies to meet the needs of all learners.

<sup>158</sup> The National Disability Concept, “Standard Regulations of Establishing Equal Opportunities for People with Disabilities”, implementation and execution document, summary by Eha Leppik, Oct 2003 (hereafter, National Disability Concept, *Standard Regulations*).

<sup>159</sup> Ministry of Education, *Learning Estonia 2001*, p. 10.

<sup>160</sup> Ministry of Education, *Learning Estonia 2001*, p. 10.

<sup>161</sup> *Joint Inclusion Memorandum – Estonia*, pp. 22–23.

<sup>162</sup> Ministry of Education, *Learning Estonia 2001*, p. 10.

<sup>163</sup> UNESCO, Salamanca Statement.



### 3.2.1 Pre-school education

Pre-school education is for children up to the age of seven. To ensure the successful integration of students with special needs into mainstream primary schools, there has been a call for the State to pay more attention to the pre-school education of these children.<sup>164</sup> One of the priorities for improving access to education established in Estonia's "Joint Inclusion Memorandum" was to ensure that children with disabilities have a "sure start" at school by increasing the availability of pre-school education and free childcare.<sup>165</sup>

The Pre-school Child Care Institutions Act establishes that the local authorities must create opportunities for the pre-school education of all children living in their administrative territory.<sup>166</sup> For children with special needs – including children with physical, speech, sensory, or intellectual disabilities, and children requiring special assistance or care – the local authorities are required to create opportunities for their development and growth in the pre-school nearest to their place of residence. For the most part, the local authorities only learn of the needs of a child with intellectual disabilities when parents take the initiative. Once the authorities are informed, they can give guidelines for making a diagnosis. As many areas, particularly smaller villages, lack special schools or classes, the recommended placement for children with intellectual disabilities is in larger nearby kindergartens or schools. In practice, however, these children generally do not attend kindergarten, but remain at home with a parent.<sup>167</sup>

Children with special needs, including children with intellectual disabilities, can be accepted into an integrated class, or a special class in a mainstream kindergarten, upon the written request of their parents or guardian and in accordance with the decision of the Counselling Committee.<sup>168</sup> The Committee will only place a child with special needs in an integrated class if it has established that the school can ensure adequate support for the child, and that suitable conditions have been created for the child's development. The head of the kindergarten is responsible for the creation of such conditions. In accordance with the Pre-school Child Care Institutions Act, local authorities may establish integrated classes or special classes upon the request of the head of the kindergarten.<sup>169</sup>

The inclusion of children with intellectual disabilities in mainstream kindergartens continues to be problematic. Although the Ministry of Education and Research claims

<sup>164</sup> Tiitus, *Students with Special Needs*, p. 78.

<sup>165</sup> *Joint Inclusion Memorandum – Estonia*, pp. 22–23.

<sup>166</sup> Pre-school Child Care Institutions Act, art. 3.

<sup>167</sup> Interview with Bianka Mättas, Tallinn, January 2005.

<sup>168</sup> Pre-school Child Care Institutions Act, art. 6 (6).

<sup>169</sup> Pre-school Child Care Institutions Act, art. 6; interview with a kindergarten educator (confidentiality requested), Tallinn, January 2002.

that inclusive education is functioning in Estonia, in practice, there is still no funding for early inclusion programmes. This results in a lack of adequate resources for schools to be able to successfully integrate children with intellectual disabilities. For example, transportation remains an important barrier, and many heads of kindergartens see no resolution to this problem. In some cases, the local authorities are unable to finance the transportation costs for children to travel to a kindergarten in another area where there are better opportunities for supporting the development of children with special needs, even though the costs of transport are the obligation of the municipality where the child lives. Local authorities also may not be able to finance the costs of the child's place in school. In such cases, mainstream kindergartens may be forced to accept a child with *profound* intellectual disabilities, without having the necessary conditions for the child's development.<sup>170</sup> The local authorities make the final decision. The Counselling Committee is not qualified to influence this decision, but each family is must rely upon its own resources. If parents do not accept the opportunities the local authorities offer, they must find and pay for a private solution themselves. The Government should take steps to ensure that local governments have the resources necessary to provide quality education for all children, as close to home as possible.

Lack of adequate support teachers is another important problem. In rural areas, usually two or three children with special needs are integrated into a class of over 20 children. There may be up to three such classes in a kindergarten.<sup>171</sup> In such an environment, the class teacher is unable to either adequately address the needs of the children without special needs in the group, or support the development of the children with special needs according to their abilities – to say nothing about meeting the individual needs of each child. Estonia has no established system of teacher support services at pre-school or other educational levels, though mainstream and special kindergartens often express a need for support teachers for children with intellectual disabilities. In some cases, the local authorities are able to provide financial support for support teachers, but this varies across the country. However, in other cases, where a child requires a personal teaching assistant to assist them in following the national curriculum, parents or guardians must hire the assistant themselves.

Integrating a child with intellectual disabilities into a mainstream kindergarten also requires the understanding and acceptance of the local authorities, the teachers at the school and parents of the other children.<sup>172</sup> Lack of acceptance can often be a real barrier for parents wishing to enrol their child in a mainstream kindergarten.

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<sup>170</sup> Interview with an educator in a pre-school child care organisation (confidentiality requested), Tallinn, January 2002.

<sup>171</sup> Interview with the head of a kindergarten (confidentiality requested), Tallinn, March 2004.

<sup>172</sup> Interview with Bianka Mättas, January 2005.

In 2002, the Ministry of Education and Research identified several problem areas in the pre-school education of children with special needs.<sup>173</sup> Importantly, the report highlights a lack of key support staff, including speech therapists (three-quarters of the positions were vacant)<sup>174</sup> and special educators. In 50 per cent of the mainstream kindergartens inspected, teachers and parents had no access to support from a special educator, who is needed to evaluate the assistance required by children with special needs and to help in the planning and implementation of appropriate teaching and behavioural support. Although there was close cooperation between parents and class teachers, due to the heavy workload of teachers, they could not provide support to all children in need of assistance.

The report also observes that individual action plans had only been written for a few children with special needs. According to the report's findings, given present conditions, such as the lack of support staff, only children with milder disabilities – including *mild* intellectual disabilities – can be integrated into a mainstream class, as usually the number of children per group is the highest permissible by law.<sup>175</sup> (The upper limit for a class is 36 students.)<sup>176</sup> The report highlighted, however, the readiness of the teachers to integrate children with special needs, as well as teachers' awareness of the needs of such children and the opportunities offered by integration. On another positive note, the report found that, in kindergartens where special classes had been formed, the organisation of the special pedagogical work was predominantly evaluated as good or satisfactory.<sup>177</sup>

The NGO Estonian Mentally Disabled People Support Organisation (EVPIT) carried out a three-year inclusion project with the support of Finnish support teachers.<sup>178</sup> The project provided training and financial support and employed 12 support teachers for children with intellectual disabilities in mainstream kindergartens. As a result of the project, the children with intellectual disabilities showed progress in their development, and their parents and the kindergarten staff developed a better understanding of the need for support teachers in the inclusive education of children with intellectual disabilities. Unfortunately, however, the project did not receive further financing and ended in 2002. One important problem encountered during the project was

<sup>173</sup> Ministry of Education and Research research on the organisation of pre-primary education, 2002, available (in Estonian) at <http://www.hm.ee> (accessed September 2004).

<sup>174</sup> In some cases, schools have established contracts with speech therapists at outpatient departments. These carry out assessments once or twice a year to determine which children needed assistance. Anonymous interview with a worker in a kindergarten, Tallinn, January 2002.

<sup>175</sup> Interview in a kindergarten (confidentiality requested), January 2002.

<sup>176</sup> Basic Schools and Upper Secondary Schools Act 2003, art. 25 (1).

<sup>177</sup> Interview with a worker in a kindergarten (confidentiality requested), Tallinn, January 2002.

<sup>178</sup> Estonian Mentally Disabled People Support Organisation (EVPIT) "Early inclusion" project (1999–2001). First year project financed by Phare funds; following years financed by FDUV, a Finnish organisation.

opposition from the parents of other children in the kindergarten. At present, EVPIT is organising the training of voluntary support teachers.

### 3.2.2 Mainstreaming

According to the Basic Schools and Upper Secondary Schools Act, children with special needs may be taught at mainstream schools in their area of residence if the appropriate conditions have been created.<sup>179</sup> However, the existing regulations do not define what mainstream schools must do to adapt their conditions to meet the needs of children with special needs.<sup>180</sup> The right to inclusive education exists on paper, but existing rules and regulations do not provide the mechanisms necessary to implement integration.

In 2002–2003, there were 636 general education schools, including mainstream and special schools, in Estonia, with a total of 200,478 students.<sup>181</sup> Data is available only on the numbers of children with special needs who have been mainstreamed, and not specifically on children with intellectual disabilities. However, the number of children with intellectual disabilities attending mainstream schools appears to be increasing steadily, as a result of the efforts of parents and various organisations and as a result of an increasing awareness of intellectual disabilities.<sup>182</sup>

As shown below in Figure 1, the total number of students with special needs, including intellectual disabilities, at the basic education level increased significantly – by 25 per cent – from 1998 to 2002, a period in which the overall number of students was actually falling. A similar continued increase in the proportion of students with special needs can be foreseen over the coming years.<sup>183</sup> Although the total number of children in special schools remained constant over this period, the proportion of children with special needs educated in special schools decreased from 24 per cent to 19 per cent. In 2002–2003, there were a total of 26,851 students with special needs in general education schools, including special schools and mainstream schools. Of these students, 74 per cent were integrated into regular classes in mainstream schools and seven per cent were integrated into special classes in mainstream schools. This percentage, however, may be misleading, as it is common for children with intellectual and other types of disabilities registered at mainstream schools to study at home, especially in rural areas (see section 3.3.1).<sup>184</sup>

<sup>179</sup> Basic Schools and Upper Secondary Schools Act, art. 19(1).

<sup>180</sup> Tiitus, *Students with Special Needs*, p. 28.

<sup>181</sup> Ministry of Education website.

<sup>182</sup> Tiitus, *Students with Special Needs*, p. 29.

<sup>183</sup> Ministry of Education website, Statistics section.

<sup>184</sup> Ministry of Education and Research, Analysis and Planning Service (as of 10 September 2002), <http://www.hm.ee> (accessed 15 July 2005).

**Figure 1. Children with special needs in general education (mainstream and special schools) (as of 10 September 2002)**



Source: Ministry of Education and Research<sup>185</sup>

A main reason for the increase in the total number of students with special needs is that such children have become more “visible” in Estonian society. There is less stigmatisation and also better diagnosis. Another reason is that there are now more opportunities for children with special needs to receive support in mainstream education. For example, the percentage of speech therapists in schools has increased, and remedial study is now considered part of special needs education. During the Soviet era, a widespread conviction existed that some children did not need to be educated because of their condition or disabilities. The situation has improved today, and such thinking is much less common. On the contrary, today, Estonian legislation supports the provision of education for children with disabilities.<sup>186</sup> Many parents no longer feel their children with intellectual disabilities should be confined to the home, and they are more comfortable integrating these children into a local mainstream school.

Despite the improvement in attitudes, inadequate support for children with intellectual disabilities in mainstream schools remains an important barrier to their integration. The priorities for improving access to education established in Estonia’s “Joint Inclusion Memorandum” included the need to develop, and make available, support services – such as rehabilitation, personal assistance, sign language interpretation service, and transport between home and school – and teaching aids for students with disabilities.<sup>187</sup>

<sup>185</sup> Ministry of Education and Research, Analysis and Planning Service (as of 10 September 2002), available on the ministry website at <http://www.hm.ee> (accessed 15 July 2005).

<sup>186</sup> OECD, *Overview of Estonian Education Policy*, Paris, 2001, p. 57.

<sup>187</sup> *Joint Inclusion Memorandum – Estonia*, pp. 22–23.

In spite of the gains in mainstreaming, there is still considerable resistance to integration from some teachers. This problem is apparently due to teachers' lack of knowledge about how to act towards children with disabilities and also due to their concerns that they will be unable to teach both regular students and students with special needs in the same class. At the same time, some special education teachers believe that the principle of integrative education is being promoted mainly for political purposes, and that educational policy is being oriented towards the cheapest and most broadly available education.<sup>188</sup> These teachers believe that, while integration of children with physical disabilities is "natural", children with intellectual disabilities should be distinguished from other children in planning the education system.

### 3.2.3 Special schools

In accordance with the Basic Schools and Upper Secondary Schools Act, children who need special education, special assistance, special conditions of treatment or therapy may study at a special school.<sup>189</sup> According to statistics of the Ministry of Education and Research, in 2002–2003 there were 45 special schools (residential or day schools) for students with special needs, out of 636 general education schools. These special schools were attended by a total of 5,166 students with special needs – 19 per cent of all children with special needs. It is difficult to find exact information on the total number of children with intellectual disabilities in special schools. As shown in Table 4, the number of children in special schools has remained constant from 1998 to 2003.

**Table 4. Students with special needs in general education, studying in special schools (1998–2003)**

		1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Total number of students		5,185	5,222	5,220	5,182	5,166	5,065
Number of students following curricula for children with intellectual disabilities	Supplementary (simplified) curriculum (for students with <i>mild</i> intellectual disabilities)	2,255	2,281	2,241	2,171	2,098	2,058
	Coping curriculum (for students with <i>moderate</i> and <i>severe</i> intellectual disabilities)	395	438	534	586	570	602
	Students in nursing classes	45	84	102	118	163	157
Total		2,695	2,803	2,877	2,875	2,831	2,817

Source: Eurydice<sup>190</sup>

<sup>188</sup> V. Saliste, "Võrdsed võimalused vs. paremad võimalused" ("Equal Opportunities versus Better Opportunities") in the periodical *Haridus* No. 6/2003.

<sup>189</sup> Basic Schools and Upper Secondary Schools Act, art. 21(3).

<sup>190</sup> Eurydice Database, Estonia, Section 10.8 Statistics, Children with Special Needs in General Education, 1996/97–2003/200, available on the Eurydice database at <http://www.eurydice.org/Eurybase> (accessed 2 December 2004).

### *Special day schools*

Special schools are mainly intended for children with *mild* and *moderate* intellectual disabilities.<sup>191</sup> The majority of all students in special schools have *mild* or *moderate* intellectual disabilities. These schools are sometimes the only educational option available to children with intellectual disabilities, given that most mainstream schools do not have the qualified staff needed to teach children with intellectual disabilities. For this reason, parents are generally satisfied with the schools – at least they have specialists to teach the children. The disadvantage in studying in special schools is that the children are isolated from other (mainstream) children and so have fewer opportunities for development; the environment for development is less stimulating than in mainstream schools.<sup>192</sup>

### *Special boarding schools*

Children and young people with *severe* or *profound* intellectual disabilities are in a particularly difficult situation, as they often lack the opportunity to study at a school near their home. They are therefore mainly forced to study at boarding schools, far from their families, because the schools near their place of residence lack the conditions or the will to teach a child with *severe* or *profound* intellectual disabilities. In smaller villages, the options for people with *severe* or *profound* intellectual disabilities to continue their studies after the age of 17 are practically non-existent.

Conditions at residential special schools are generally very poor, but the situation varies from school to school. The quality of education of special schools is low, due to limited resources: there is a lack of financing, qualified teachers and equipment.<sup>193</sup> For the same reasons, the living standards in residential special schools are low. Still, for students without families, or children from poorer families, residential special schools may be the best opportunity to ensure that a child has a bed to sleep in, three meals a day and someone to care for them.<sup>194</sup>

Many Estonian special schools in effect work as social welfare institutions for a large number of children.<sup>195</sup> There are instances where children are placed in such schools in spite of the fact that they do not need special education. Many children in residential special schools have great difficulties after completing such a special school with coping and accommodating themselves to an inclusive environment.

<sup>191</sup> Regulation No. 10/1994, Clause 2.

<sup>192</sup> Interview with Keiu Talve, social pedagogue at a mainstream school, Tallinn, April 2005.

<sup>193</sup> Interview with Bianka Mättas, January 2005.

<sup>194</sup> Interview with Bianka Mättas, January 2005.

<sup>195</sup> Interview with Helle Känd, parent, doctor and founder of the Maarja School, a medical treatment and pedagogical school for children with *moderate* and *severe* intellectual disabilities and children with multiple disabilities.

### 3.3 Education outside the school system

#### 3.3.1 Home schooling

A child may receive compulsory education at home, either at the request of parents or a guardian or for health reasons. An application for home schooling<sup>196</sup> can be made by the family doctor, a special therapist or the parent.<sup>197</sup> Children in years one to nine (ages seven to 15) are entitled to home schooling for health reasons if the school closest to their place of residence is unable to provide the necessary conditions for their education. Unfortunately, as many schools lack the resources to offer support to children with intellectual disabilities, this provision in the law means, in practice, that many children are denied the opportunity to study in a school and gain important socialisation and communication skills.

If the reason for the request is health-related, study at home is organised by the school. Otherwise, it is organised by the parents, and it is the school's responsibility to check and evaluate the study results.<sup>198</sup> If a student staying at home follows the State basic school and upper secondary school national curriculum, their home study is organised by the local mainstream school. Home study that follows a simplified curriculum or coping curriculum may also be organised by a special school for children with disabilities that applies such a curriculum.<sup>199</sup>

The parents or guardian of a child with intellectual disabilities have the option to arrange for their child to study at home. This mainly applies to children with *mild* intellectual disabilities. In fact, *most* children with intellectual and other types of disabilities who study in mainstream schools are listed as students of the school, but in reality they study at home or on an individual basis.<sup>200</sup> This permits the child to remain at home, rather than having to live far away in a residential special school. However, this arrangement does not provide effective teaching for the child. Home education also substantially limits the child's options for communication, and it is therefore a great obstacle to the development of social skills. It also places a heavy burden on the parents.<sup>201</sup> A student studying at home is entered into the list of students of the relevant school and class with the remark "home schooling". The student receives textbooks, exercise books, workbooks, and other tools required for studying, on the same basis and according to the same procedures as students fulfilling their compulsory school attendance at school.

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<sup>196</sup> Basic Schools and Upper Secondary Schools Act, art. 20.

<sup>197</sup> Regulation No. 24/2000.

<sup>198</sup> Regulation No. 24/2000, art. 1.

<sup>199</sup> Regulation No. 24/2000, art 1.

<sup>200</sup> Interview with Bianka Mättas, January 2005

<sup>201</sup> Tiius, *Students with Special Needs*, p. 34.



### 3.3.2 Education of children in institutions

In general, there has been a successful process of deinstitutionalisation in Estonia.<sup>202</sup> According to the Ministry of Social Affairs, in 2001 there were a total of 257 children with disabilities aged 14 years old and under, and a further 873 young people with disabilities aged 15-17 years old, living in institutions.<sup>203</sup> However, a breakdown by type of disability is not available, so it is not possible to ascertain how many of these children have intellectual disabilities, or to assess the quality of education they receive.

## 4. TRANSITION FROM EDUCATION TO EMPLOYMENT

*In Estonia, the vocational education system has recently been reformed, and an increasing number of young people are receiving vocational training. Recent legislative changes have facilitated the access of young people with special needs to vocational training institutions. In 2002–2003, there were nearly 300 students with special needs, many of whom had intellectual disabilities, studying in vocational educational institutions. The main constraints preventing mainstream vocational schools from accepting students with intellectual disabilities are the lack of qualified personnel and the prevalence of large class sizes. Young people with intellectual disabilities can also be prepared for entering the labour market at the Astangu Coping Centre, which offers “labour therapy” or vocational rehabilitation. The Employment Offices provide no employment services, such as vocational training, for people with intellectual disabilities who are unemployed. These Offices also fail to organise in-service training or re-training specifically for people with intellectual disabilities. In general, people with intellectual disabilities have few options for vocational training, re-training or advanced training in Estonia.*

### 4.1 Vocational training

The Vocational Educational Institutions Act regulates vocational education in Estonia. The system of vocational education is now considered to be the most sophisticated and reformed area of Estonian educational policy.<sup>204</sup> Reforms in vocational education policy were defined in the “Concept of Vocational Education” (1998).<sup>205</sup> This is not a policy paper, but it presents ideas for improving vocational education provision in

<sup>202</sup> See, for example: David McDaid and Graham Thornicroft, *Policy brief. Mental health II. Balancing institutional and community-based care*, European Observatory on Health Systems and Policies, available at <http://www.euro.who.int/Document/E85488.pdf> (accessed 6 July 2005).

<sup>203</sup> Ministry of Social Affairs, information cited in document submitted to the UNHCR on Estonia’s implementation of the CRC, Table 25, The number of children with disabilities that are living in institutions, 2001, available at <http://www.unhchr.ch/html/menu2/6/crc/doc/replies/wr-estonia-1.pdf> (accessed 6 July 2005).

<sup>204</sup> Soren Nielsen, *Report on the Vocational Education and Training System in Estonia*, SEL Copenhagen, 1995.

<sup>205</sup> Ministry of Education and Research, “Concept of Vocational Education”, approved by Estonian Government in 1998, available on the Ministry of Education website.

Estonia. According to the Concept, the aim of vocational education is to provide opportunities for individual self-development, to help young people to adapt to changes in the labour market and to gain broad-based professional skills. The key principles on which vocational education should be organised are effectiveness, flexibility, functionality, cooperation, quality and availability.

Approximately 25 per cent of all students enter vocational educational institutions. In 2001, a new option was created: vocational preliminary training, for students who have not completed basic education and who are above the age of compulsory school attendance (17). The aim of this training is to allow this group of young people to acquire vocational skills and to motivate them to continue their studies.<sup>206</sup>

Mainstream vocational schools are distributed quite evenly throughout Estonia. In rural districts, such schools also serve other societal goals, such as creating workplaces that can prevent people from moving to larger towns. The average size of vocational educational institutions has increased over the last decade. In the academic year 1992–1993, there was an average of 353 students per school, and a total of 30,690 students in 87 schools. By 2002–2003 the average had increased to 435 students, both with and without disabilities, per school – or a total of 35,267 students in 81 schools.<sup>207</sup> This increase may have a particularly negative impact on students with intellectual disabilities, who require a higher degree of individual attention than is often available in schools operating at capacity levels.

After acquiring a basic education, children and young people with special needs may continue their education at secondary schools or vocational educational institutions. The Vocational Educational Institutions Act 2003 establishes special rules enabling people with disabilities to study in vocational schools.<sup>208</sup> The Regulation on Vocational Training of People with Disabilities ensures that people with special needs have the opportunity to acquire an initial vocational education.<sup>209</sup> These provisions have led to an increase in the number of people with special needs studying in vocational educational institutions. In 1998–1999, there were ten special classes for people with

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<sup>206</sup> Zelloth, *Monograph*, p. 98.

<sup>207</sup> The training has also been extended to upper secondary-level students through elective subjects within the State curriculum for basic schools and upper secondary schools, to help students acquire vocational secondary education within a shorter period of time. See the Ministry of Education and Research website. In 2003–2004 there were just 71 vocational schools, where 15,958 students in total were accepted for study, according to the Ministry of Education and Research's Education and Employment Monitoring Centre, *Vocational schools 2004 – help in deciding*, (in Estonian), available on the website of the Foundation for Lifelong Learning Development at <http://www.innove.ee> (accessed 26 July 2005) (this version no longer available).

<sup>208</sup> Vocational Educational Institutions Act, art. 14(4).

<sup>209</sup> Government of the Republic of Estonia Regulation No. 265 of 21 November 1998, the Vocational Training of People with Disabilities, RTI 2002, 105, 626 (entered into force 7 December 1998, last amended by Regulation No. 393 of 17 December 2002, RTI 2002, 105, 626 (entered into force 1 January 2003).

special needs in vocational educational institutions, with a total of 197 students, most of whom had mental disabilities.<sup>210</sup> By 2002–2003, there were nearly 300 students with special needs studying in 22 of the 81 vocational educational institutions.<sup>211</sup> The recently established regional vocational training centres<sup>212</sup> have also included people with special needs in their plans.

One of the aims of the “Action Plan for the Development of the Vocational Education System in Estonia during the Period 2001–2004”<sup>213</sup> was to ensure that study opportunities are available for students with special needs. A target was established to increase the number of study places, from 250 in 2000 to 350 in 2001, to provide enough places for all applicants. The target was not met, as only 222 students with special needs registered, but a place was ensured for each applicant.<sup>214</sup>

Admission procedures for vocational schools differ from year to year.<sup>215</sup> At present, some schools are being reorganised or closed, so they do not take in students with disabilities. The main reasons mainstream vocational schools have problems accepting students with disabilities is a lack of qualified personnel and the belief, by school officials, that they will not be able to adequately meet the needs of such students. Large classes are not suitable for students with intellectual disabilities, as these students require a more individualised approach. The main motivation for vocational schools to open special classes to students with disabilities is that the specialised teachers of such classes understand the real needs of this group of children.<sup>216</sup> Another motivation is that State financing of vocational schools provides incentive for educating students with special needs in segregated settings. Vocational schools receive twice the annual state funding per student for students with special needs who are taught in special classes, as compared to students in regular classes.

The Astangu Coping Centre is the only State vocational rehabilitation centre for people with various special needs, and it must provide services for the entire country. The provision of only one such school is manifestly inadequate. Vocational education is often inconsistent with the needs of the labour market, and study options for young people with intellectual disabilities who do not have a basic education are not covered at all.

<sup>210</sup> Poleshchuk, *Country report on Estonia*.

<sup>211</sup> Interview with Leelo Ainsoo, Head, Social Rehabilitation Service, Astangu Coping Centre, February 2004.

<sup>212</sup> Regional vocational training centres consist of several vocational education institutions in one area that are united to ensure better educational opportunities and quality of education.

<sup>213</sup> “Action Plan for the Development of Vocational Education System in Estonia during the period 2001–2004”, approved by the Government in 2001, available at the Ministry of Education and Research website.

<sup>214</sup> Zelloth, *Monograph*, p. 68.

<sup>215</sup> Interview with Leelo Ainsoo, February 2004.

<sup>216</sup> Interview with Leelo Ainsoo, February 2004.

*Astangu Coping Centre*

People with intellectual disabilities who are incapable of acquiring a vocational education at a mainstream vocational school can prepare for participation in the labour market at the Astangu Coping Centre, the only institution in Estonia providing “labour therapy” (vocational rehabilitation). The Centre is under the administrative jurisdiction of the Ministry of Social Affairs and is the largest vocational educational institution in Estonia for people with disabilities.

People who want to study at the Centre must have completed secondary school education, which is a nine-class education according to the simplified curriculum. Applicants to the Centre also undergo examinations by different specialists.<sup>217</sup> Students at the Centre do not pay for their studies.<sup>218</sup> In 2003–2004, the Centre had 126 students. A total of 81 students are currently studying in special classes meant for students with “study difficulties”, of which the overwhelming majority are students with intellectual disabilities. The vocational education programme at the school has been divided into different levels, and each student begins to study at the level most appropriate to his or her needs. Trainees receive a certificate upon completing their training. These certificates are recognised by the Ministry of Education and Research or Ministry of Labour as a valid qualification.

The Centre’s career advisors contact firms and companies willing to provide work experience for people with special needs. However, it is not easy to find companies ready to accept them. Employers are often concerned that people with intellectual disabilities could injure themselves in the workplace and that they do not demonstrate the same caution and precision on the job as other employees. One careers advisor interviewed noted that “today, employers do not question so much the skills of people with disabilities, but rather are scared that something may have happened to them because of the disability”.<sup>219</sup>

According to the Astangu Coping Centre’s own statistics, 59 per cent of graduates go on to work and six per cent continue their studies somewhere else, while the remaining 35 per cent either do not find a job or need more training. However, most of those who graduate from Astangu are not people with intellectual disabilities. After graduation, those with intellectual disabilities usually continue at other day centres after leaving the Astangu Coping Centre, as they are unable to find employment.

<sup>217</sup> Admission to the centre is based on: opinions of the specialists (medical doctors, psychologists, psychiatrists, speech therapists, special educators, physiotherapists and social workers); the student’s previous education; and an evaluation of the student’s actual skills and motivation.

<sup>218</sup> The school is jointly financed by the Government and by EU funds (Leonardo da Vinci Programme, Joint Action) and by funding for student exchange programmes and curriculum development projects.

<sup>219</sup> Interview with Imbi Must, Career Counsellor, Astangu Coping Centre, May 2004.

## 4.2 Employment services and adult and life-long education

Generally, people with intellectual disabilities have few options for vocational training, re-training and advanced training in Estonia. The Social Protection for the Unemployed Act<sup>220</sup> legislates the provision of special courses for the unemployed, for up to six months, in the form of classes and individual training. This training can be carried out as: vocational training (training for acquisition, development or re-training of professional, occupational and vocational knowledge, skills and experience); or training to cope with the demands of the labour market and adapt to its requirements (information on requirements and opportunities in the labour market and psychological counselling). At present, there is no system of State vocational training for people already actively participating in the labour market. The Employment Office also organises no in-service training or re-training specifically for people with intellectual disabilities, and there are few cases of an unemployed person with intellectual disabilities having been sent on a re-training course by an Employment Office.

According to the “National Action Plan for Social Inclusion”, the Government has established national priorities for adult education in the years 2004–2006. Based on these priorities, the Government intends to develop projects with the support of EU funds.<sup>221</sup> At present, life-long learning opportunities in Estonia are extremely limited. In Estonia, the development of a system of life-long learning requires the creation of suitable mechanisms to provide opportunities for retraining and in-service training for all people who present themselves at the Employment Office. A procedure by which institutions of higher education recognise and award credit for in-service training (that is, on-the-job training or schooling) and work experience is being implemented. In addition, vocational education centres, which are currently being established, will also contain in-service training centres for adults.<sup>222</sup>

<sup>220</sup> Social Protection of the Unemployed Act RTI 2000, 57, 371 (entered into force 1 October 2000, last amended 9 February 2005).

<sup>221</sup> *NAP Social Inclusion*, p. 28.

<sup>222</sup> J. Elbing-Nõlvak, “Õppimisvõimalused puuetega inimestele”, (“Study opportunities for people with special needs”), in *Sinuga*, No. 1/2000.

## IV. Access to Employment

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The Constitution guarantees freedom of choice in employment and “special care of the State and local governments” for people with disabilities. There is no specific legislation on the employment of people with disabilities. The Employment Contracts Act does not protect the rights of people with disabilities. As yet, Estonia has not adopted specific legislation to comply with the EU Employment Directive. People with disabilities who are age 16 or older, and who have been determined by the Medical Commission as having a reduced working capacity of between 40 and 100 per cent, are eligible for either an incapacity pension, if they worked previously, or a national pension. However, people with disabilities with a reduced working capacity of less than 40 per cent are ineligible for social benefits on the basis of their disabilities. The assessment procedures are based on a purely medical approach, and neither the person being assessed, nor his or her parents or guardian, are present at the assessment. Following the amendment of the Social Benefits for Disabled Persons Act, the criteria for establishing the degree of disability and working capacity have been set out more clearly. However, the Chancellor of Justice has received a number of complaints from people whose pensions have been reduced following reassessment of their degree of disability, in accordance with these new criteria. Most people with intellectual disabilities are fully reliant on State benefits, which are currently set at a very low level. Nonetheless, even if they could find employment, there is still often little incentive for them to start working, due to the relatively small difference between the minimum wage and pensions.*

#### 1.1 Equal opportunities and the prevention of discrimination

Article 29 of the Constitution guarantees freedom of choice in employment and place of work. This right is equally accorded to “citizens of foreign states and stateless persons who are in Estonia [...], unless otherwise provided by law”.<sup>223</sup> This article also stipulates that the State is responsible for organising vocational training and assisting those seeking employment in finding work. Article 28 provides special guarantees for the elderly and for people with disabilities, and covers the right to the protection of health and to State assistance for those who are unable to work.<sup>224</sup> The article states that “persons with disabilities shall be under the special care of the State and local governments”.

There is no specific legislation on the employment of people with disabilities in Estonia. The most relevant legislation for the employment and social protection of people with intellectual disabilities is:

- The Unemployment Insurance Act<sup>225</sup>

<sup>223</sup> Constitution, art. 29.

<sup>224</sup> Constitution, art. 28 and 29.

<sup>225</sup> The Unemployment Insurance Act RTI 2001, 59, 359 (entered into force 1 January 2002, last amended 1 January 2004).

- The Social Protection of the Unemployed Act<sup>226</sup>
- The Individual Labour Dispute Resolution Act<sup>227</sup>
- Republic of Estonia Employment Contracts Act<sup>228</sup>
- The Public Service Act<sup>229</sup>
- The Social Welfare Act<sup>230</sup>
- The Working and Rest Time Act<sup>231</sup>
- The Social Benefits for Disabled Persons Act 2002<sup>232</sup>
- The Holidays Act<sup>233</sup>

As yet, Estonia has not adopted specific legislation to comply with the European Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation<sup>234</sup> (hereafter, the Employment Directive). According to the European Commission's *Annual Report on Equality and Non-discrimination 2004*, Estonia has "no specific proposals" for implementation of the Employment Directive.<sup>235</sup> The directive sets out requirements for domestic legislation to define direct and indirect discrimination, harassment, and intimidation in all phases of the employment process. The Employment Directive includes disability as a prohibited ground for discrimination. Estonia did not request

<sup>226</sup> The Social Protection of the Unemployed Act RTI 2000, 57, 371 (entered into force 1 October 2000, last amended 9 February 2005).

<sup>227</sup> The Individual Labour Dispute Resolution Act RTI 1996, 3, 57 (entered into force 1 September 1996, last amended 1 January 2004).

<sup>228</sup> Republic of Estonia Employment Contracts Act, RTI 1992, 15/16, 2412 (entered into force 1 July 1992, last amended 1 January 2005).

<sup>229</sup> The Public Service Act RTI 1995, 16, 228 (entered into force 1 January 1996, last amended 1 May 2004).

<sup>230</sup> The Social Welfare Act RTI 1995, 21, 323 (entered into force 1 April 1995, last amended 9 February 2005).

<sup>231</sup> The Working and Rest Time Act RTI 2001, 17, 78 (entered into force 1 January 2002, partly 1 September 2002, last amended 1 January 2005).

<sup>232</sup> The Social Benefits for Disabled Persons Act RTI 1999, 16, 273 (entered into force 1 January 2000, last amended 1 January 2005).

<sup>233</sup> The Holidays Act RTI 2001, 42, 233 (entered into force 1 January 2002, last amended 1 January 2004).

<sup>234</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available on the European Commission website at [http://europa.eu.int/comm/employment\\_social/news/2001/jul/directive78ec\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2001/jul/directive78ec_en.pdf) (accessed 3 September 2004).

<sup>235</sup> European Commission, *Annual Report on Equality and Non-discrimination 2004*, p. 12.

an extension of the 1 May 2004 deadline for the transposition of the Employment Directive.<sup>236</sup>

The Employment Contracts Act stipulates that it is illegal to give preference to, or restrict the rights of, a person on the grounds of sex, nationality, colour, race, native language, social origin or social status, previous activities, religion or political views or attitude towards the duty to serve in the armed forces.<sup>237</sup> The act also states that it is illegal to restrict the rights of employees or employers on the grounds of marital status, family obligations and membership in citizens' associations or organisations representing the interests of employees or employers.<sup>238</sup> Importantly, however, the act does not refer to people with disabilities.

Article 29 of the Constitution states that "the procedure for the settlement of labour disputes shall be provided by law". In accordance with the Employment Contracts Act, the Labour Inspectorate exercises State supervision over employers' compliance with the requirements of the employment acts and their implementing provisions.<sup>239</sup> The regional offices of the Labour Inspectorate have the right to issue a written warrant to any employer contravening these acts.<sup>240</sup> In most cases, labour disputes are submitted to a Labour Dispute Committee, rather than to the courts, as in this case no State fee is charged.<sup>241</sup> These Committees are extra-judicial, independent, labour-dispute resolution bodies,<sup>242</sup> which consist of a chairperson and representatives of both the employees and employers.<sup>243</sup> If the parties do not agree with a decision of a Labour Dispute Committee, they have recourse to the city or county courts for a hearing of the same labour dispute, within one month of the decision of the Committee.<sup>244</sup>

The Social Welfare Act states that the local authorities must establish, in cooperation with the competent State authorities, appropriate opportunities for people with disabilities to receive vocational training and obtain the skills necessary to compete in the labour market.<sup>245</sup> They are also responsible for ensuring the adaptation of workplaces and establishing occupational centres where young people can put their skills into practice.<sup>246</sup>

<sup>236</sup> European Commission, *Annual Report on Equality and Non-discrimination 2004*, p. 12.

<sup>237</sup> Employment Contracts Act, art. 10(1).

<sup>238</sup> Employment Contracts Act, art. 10(1).

<sup>239</sup> Employment Contracts Act, art. 145(1).

<sup>240</sup> Employment Contracts Act, art. 145(2) and 145(4).

<sup>241</sup> Individual Labour Dispute Resolution Act, art. 9.

<sup>242</sup> Individual Labour Dispute Resolution Act, art. 10(1).

<sup>243</sup> Individual Labour Dispute Resolution Act, art. 11(27).

<sup>244</sup> Individual Labour Dispute Resolution Act, art. 24.

<sup>245</sup> Social Welfare Act, art. 26(1) and 26(2).

<sup>246</sup> Social Welfare Act, art. 26(3).



## 1.2 Diagnosis and assessment of capacity for employment and benefits purposes

Medical Commissions have been established for each of the 17 regional Social Security Boards in Estonia. The Commissions consist of two – or exceptionally one – medical doctors, depending on the individual case. They conduct assessments to determine a person's degree of disability, for social benefits purposes, and to determine “working incapacity”, for employment purposes.

### *Degree of disability*

For children and adults who have disabilities and are under the retirement age of 65, Medical Commissions are responsible for determining the degree of disability, *moderate*, *severe* or *profound*. The degree of disability is established by the commission<sup>247</sup> for a period from six months to three years.<sup>248</sup> Social benefits for both adults and children are based on a person's determined degree of disability – *moderate*, *severe* or *profound* – and their corresponding need for personal assistance. People with *mild* intellectual disabilities are generally not eligible for the social benefits targeted for people with disabilities. The three degrees of disability are defined as follows:<sup>249</sup>

- *Profound* disability is the loss of, or an abnormality in, the anatomical, physiological or mental structure or function of a person, as a result of which the person needs constant personal assistance, guidance or supervision 24 hours a day.<sup>250</sup>
- *Severe* disability is the loss of, or an abnormality in, the anatomical, physiological or mental structure or function of a person, as a result of which the person needs personal assistance, guidance or supervision in every 24 hour period.<sup>251</sup>
- *Moderate* disability is the loss of, or an abnormality in, the anatomical, physiological or mental structure or function of a person, as a result of which the person needs regular personal assistance or guidance outside his or her residence, at least once a week.<sup>252</sup>

### *Working incapacity*

For people with disabilities who are aged 16 to 65, the Medical Commission is also responsible for establishing what is referred to as “working incapacity”. Working incapacity as determined by the commission can be either *total* or *partial*, and it is

<sup>247</sup> Social Benefits for Disabled Persons Act, art. 2(1).

<sup>248</sup> Social Benefits for Disabled Persons Act, art. 2(2).

<sup>249</sup> Social Benefits for Disabled Persons Act, art. 2(1).

<sup>250</sup> Social Benefits for Disabled Persons Act, art. 2(1)1.

<sup>251</sup> Social Benefits for Disabled Persons Act, art. 2(1)2.

<sup>252</sup> Social Benefits for Disabled Persons Act, art 2(1)3.

expressed as a percentage loss of working capacity.<sup>253</sup> The Commission may declare a person to have permanent working incapacity for a period of six months, one year, two years, five years or until attaining retirement age, but not for longer than five years.<sup>254</sup> Reassessments are carried out every five years.

The Medical Commission also determines the starting time, cause and duration of working incapacity. In determining the percentage loss of working capacity, the person's initiative, social adaptability, affective and emotional background are also taken into consideration, along with their intellectual capacity. Among other information, the decision includes the extent of permanent incapacity for work, expressed in percentage terms.<sup>255</sup> The Medical Commission determines the percentage loss of working capacity for each person individually, regardless of the determined degree of disability. In the case of people with intellectual disabilities, the percentage loss of working capacity is divided into four groups.<sup>256</sup> The four groups are defined as follows:<sup>257</sup>

- *Group 1* (30 to 40 per cent loss of working capacity): The main criterion for people in this group is that they have retained an ability to continue their studies after completing mainstream school (or obtaining a qualification at a special school) and have no personality disorders that would prevent them from participating in social life. People in this group are not eligible for the national or incapacity pension, and in effect, are assumed to be able to work.
- *Group 2* (50 to 70 per cent loss of working capacity): This group covers people with intellectual disabilities who are considered incapable of social assimilation and of leading a fully independent life. It also includes those who, due to their disabilities, are not able to obtain a qualification in a special workplace where they can learn a trade with guidance.
- *Group 3* (80 to 90 per cent loss of working capacity): This group is established for people who show a clearly manifested limitation of mental abilities (serious intellectual disabilities), together with a considerably narrowed learning ability and major vocabulary deficiency. They have a relatively high level of personality development and social adaptability, indicated by moderate success in a special school and independence in some areas of life. People in this group are still able to participate in general working life by carrying out simple physical work.

<sup>253</sup> The examination can also be carried out by an expert doctor (usually with a psychiatric qualification) who has entered into a contractual agreement with the Social Insurance Board to perform medical examinations (Regulation No. 13/2002 of Government, art. 2).

<sup>254</sup> State Pension Insurance Act, art. 16(1).

<sup>255</sup> Regulation No. 13/2002 of Government, art. 11(2).

<sup>256</sup> Regulation No. 3 of the Minister of Social Affairs of 3 January 2002 on Instructions for Determining the Percentage of the Loss of Capacity for work RTL 2002, 9, 92 (entered into force 1 January 2002, last amended by Regulation No. 80 of 24 May 2002, RTL 2002, 64, 972, (entered into force 1 June 2002), (hereafter Regulation No. 3/2002 of the Minister of Social Affairs).

<sup>257</sup> Regulation No. 3/2002 of the Minister of Social Affairs, art. 3.

- *Group 4* (100 per cent, or total, loss of working capacity): This group is established in the case of people with intellectual disabilities who are unable to earn their own living in any capacity.

#### *Assessment procedure*

A medical doctor, usually the family doctor or another general practitioner, must initiate the request for an examination by the Medical Commission.<sup>258</sup> The doctor must complete an application form, which includes all medical diagnoses that are considered to cause a patient's working incapacity, together with their degree of severity.<sup>259</sup> In establishing the diagnoses, the doctor must follow the ICD-10 guidelines. After the doctor has completed the application form, the person for whom the request is made must confirm by signing it, indicating that he or she is aware of the aim of the examination.<sup>260</sup> However, a person with restricted legal capacity who requests a certificate of working incapacity is not required to sign the application form; instead, the guardian signs.

After the doctor has sent all relevant documents to the Social Security Board, the Medical Commission issues a certificate regarding the results of their medical examination of the person's degree of disability<sup>261</sup> and working incapacity.<sup>262</sup> Importantly, the Commission's decision is based on the documents submitted by the doctor.<sup>263</sup> Neither the person being assessed, nor his or her parents or guardian, are present at the meeting of the Commission.

For the evaluation of the degree of disability and the percentage loss of working incapacity, a negative approach prevails, and examiners focus on abilities that have been lost, rather than on those retained. The term of "working incapacity" in employment legislation is indicative of an emphasis on people's deficiencies. The term should be discontinued and replaced with terminology that is more positive in connotation. In fact, the aim of both assessment procedures, for degree of disability and working incapacity, should be separated.

Moreover, since the certificate is issued without any direct involvement of the person in question, the procedure does not permit a very individualised assessment. As a consequence, the current treatment of the definition of incapacity for work directly

<sup>258</sup> Regulation 13/2002 of Government, art. 3(1) and 3(3).

<sup>259</sup> The application form should also include medical information on the functional state of the individual, codes of diagnoses, results of studies related to the diseases in question, prior and present treatment, objective findings and other information required by the examination application.

<sup>260</sup> Regulation 13/2002 of Government, art. 3(4) and 3(9).

<sup>261</sup> Regulation 9/2002 of Ministry of Social Affairs, art. 2(1).

<sup>262</sup> Regulation 13/2002 of Government, art 3(10) and 11(1).

<sup>263</sup> Regulation 9/2002 of Ministry of Social Affairs, art 3.

narrows employment opportunities for persons with disabilities and discriminates against them.

People who have been assessed by the Medical Commission can make an appeal to the Dispute Commission (also under the Social Insurance Board) within three months of receiving the decision.<sup>264</sup> The Dispute Commission will then carry out a second assessment.

Since the entry into force of the Social Benefits for Disabled Persons Act, on 1 January 2000, people also have the right to contest the level of benefits they receive.<sup>265</sup> This can be done through the office of the Chancellor of Justice. The majority of these complaints concern the degree of disability determined by the Medical Commission,<sup>266</sup> as this determines the level of social benefits received. There were also complaints about the decisions made by the Dispute Commission.

In analysing complaints received from people with disabilities, the Chancellor of Justice found that complaints concerning the determined degree of disability had been caused by legislative amendments and a lack of adequate public information about these changes.<sup>267</sup> The procedures defined in the Social Benefits for Disabled Persons Act provide for the determination of the degree of disability primarily according to the state of health or level of disabilities of the person being assessed. However, the latest amendments to the act, which entered into force on 1 August 2002, also take into account the person's need for personal assistance, guidance and supervision. The act interprets personal assistance or guidance as the provision of assistance to people who cannot cope independently with eating, maintaining hygiene, dressing, moving about or communicating.<sup>268</sup> This means that the amended act has effectively changed the criteria for determining the degree of disability.

The Chancellor of Justice found that, prior to these amendments, the basis for determining the degree of disability had not been described in sufficient detail.<sup>269</sup> As a

<sup>264</sup> Regulation of the Minister of the Social Affairs No. 32 of 7 March, on determination of the severity of the disability of a child and time of its origination, determination of the disability for 16-year-old and older people and the need for additional expenditures, RTL 2001, 38, 528, art. 13.

<sup>265</sup> Social Benefits of Disabled Persons Act, art. 23.

<sup>266</sup> As an indication, in Tallinn in 2002 there were a total of 14,632 people with disabilities (of all ages) with the following breakdown by degree of disabilities: 5,559 people with *moderate* disabilities; 7,063 people with *severe* disabilities and 2,010 people with *profound* disabilities. Social Insurance Board, Statistics, information from the homepage of the SIB, available at <http://www.ensib.ee> (accessed June 2004).

<sup>267</sup> Chancellor of Justice, *Overview of the Activities of the Chancellor of Justice: 1 September 2002 to 31 August 2003*, p. 34, available at [http://www.oiguskantsler.ee/files/failid/XNVDoiguskantsleri\\_tegevuse\\_ulevaade\\_2003.pdf](http://www.oiguskantsler.ee/files/failid/XNVDoiguskantsleri_tegevuse_ulevaade_2003.pdf) (in Estonian) (accessed 2 December), (hereafter, Chancellor of Justice, *Overview*).

<sup>268</sup> Social Benefits of Disabled Persons Act, art. 2.

<sup>269</sup> *Chancellor of Justice*, *Overview*, p. 33.

result, when the amended act entered into force, a number of people whose state of health or level of disabilities had remained unchanged were subsequently determined to have a milder degree of disability than before.<sup>270</sup> The Chancellor of Justice found that the rights of people with disabilities are more fully guaranteed by the amended procedures for determining the degree of a disability. However, at the same time, the Chancellor recommended that the basis for determining the degree of disability should be explained more fully to patients, doctors and members of the Medical Commissions. The Chancellor of Justice proposed that one way of implementing this recommendation would be for social workers to participate in the work of the Commissions, thus providing a better perspective on the person's need for assistance.<sup>271</sup>

### 1.3 Rehabilitation services

Rehabilitation involves the development of the skills and capabilities of people with disabilities and the provision of support systems. It is targeted towards raising the level of the person's ability to cope and reducing their need for personal assistance or support. People with disabilities may be directed to rehabilitation services when they apply for an examination of their degree of disability. However, rehabilitation services are not always available for people whose disabilities have been diagnosed from childhood, which is the case for most people with intellectual disabilities. During reassessment, the development of a rehabilitation plan is not compulsory for people with intellectual disabilities, though a rehabilitation plan can be requested.

Rehabilitation services are provided by a rehabilitation team, which first prepares a rehabilitation plan and applies the measures specified in the plan.<sup>272</sup> A rehabilitation plan is prepared for an adult or child with disabilities on the basis of instructions from the Medical Commission – or a medical expert who has entered into a contractual agreement with the Social Insurance Board to perform medical examinations. The Commission requests a rehabilitation plan in cases where it is necessary to establish the degree of disability of the person being examined.<sup>273</sup> On the basis of the rehabilitation plan, the Commission can identify a person's need for personal assistance and the estimated additional expenses incurred by the person's disabilities. A personal rehabilitation plan is a written, legally binding document, the form of which cannot be altered.<sup>274</sup> It is established for one, two or five years, depending on the decision of the

<sup>270</sup> In Article 2 of the Social Benefits of Disabled Persons Act, a criterion for *profound* disability is the need for nursing care 24 hours *per day*, while for *severe* disability nursing care is required at least once *in every* 24-hour period.

<sup>271</sup> *Chancellor of Justice*, Overview, p. 34.

<sup>272</sup> Social Benefits for Disabled Persons Act, art 2 (2).

<sup>273</sup> Regulation No. 9 of the Ministry of Social Affairs of 8 January 2002, on the Procedure for Determining the Degree of Severity of a Disability and Identifying Additional Expenses, RTL 2003, 26, 397, art. 2(2), (hereafter, Regulation 9/2003).

<sup>274</sup> Regulation 9/2003, art. 2 (2).

rehabilitation team.<sup>275</sup> Importantly, adults with intellectual disabilities also receive a rehabilitation plan. This is provided on request each time they are assessed.

Active rehabilitation is carried out at a rehabilitation institution that has been granted a licence by the Ministry of Social Affairs. The rehabilitation team consists of a physician, a psychologist (vocational counsellor), a social worker, an operational therapist and a nurse.<sup>276</sup> Other experts can also be included in such a team if necessary.<sup>277</sup> The rehabilitation centres approved by the Ministry of Social Affairs are mostly established in county centres: 39 centres were licensed in 2004, and 12 of them are in Tallinn.<sup>278</sup> The centres primarily offer psychological and psychiatric counselling, speech therapy, and physiotherapy consultations. A rehabilitation allowance is paid for the active rehabilitation of a person who is aged from 16 to 65 and has disabilities. The allowance provides partial compensation of related costs.<sup>279</sup>

In the opinion of parents of children with intellectual disabilities, there are many problems in the present system of rehabilitation in Estonia. Most importantly, at present, rehabilitation plans often only detail those services that are actually available locally, and services for which there are enough resources, rather than those that the child actually needs. One parent interviewed stated that “it is often not understood in Estonia that a rehabilitation plan is meant to be implemented for the benefit of the person, and not just for financing by the State or local government”.<sup>280</sup> Access to rehabilitation services outside the major population centres is another important problem.<sup>281</sup> Parents and people with disabilities do not just need plans but also real rehabilitation, both at the local and national levels. In most cases, psychological counselling is needed, but access to such services is extremely limited. Understanding and awareness from medical specialists are needed as much as special methods.<sup>282</sup>

In practice, therefore, parents are often themselves responsible for implementing the rehabilitation plan. In cases where the family cannot afford the prescribed activities, the

<sup>275</sup> Interview with Leelo Ainsoo, February 2004.

<sup>276</sup> Regulation of the Minister of Social Affairs No. 43 of 28 June 2000, Requirements set on the Institutions of Rehabilitation (RTL 2000, 82, 1205), art. 7.

<sup>277</sup> See: *Sõmer*, “The Magic Word – Rehabilitation”, (in Estonian), in *Sinuga* No. 2/2000; Regulation No. 43 of the Minister of Social Affairs of 28 June 2003 on Requirements Established on Rehabilitation Institutions 2003, RTL 2000, 136, 2163.

<sup>278</sup> There are also seven rehabilitation centres in Tartu county: four each in Viljandi and Ida-Virumaa counties; two in Pärnu, Saare, Lääne, Võru and Põlva counties; one each in Jõgeva, Valga and Rapla counties.

<sup>279</sup> Social Benefits for Persons with Disabilities Act, art. 11(1).

<sup>280</sup> Interview with K. Märtens, a parent, Tallinn, February 2004.

<sup>281</sup> Inclusion Europe, *Human Rights of People with Mental Disabilities, Estonia 2002*, Inclusion Europe and NIZW and Estonian Mentally Disabled People Support Organisation, Brussels, 2002, available in Estonian at: [http://www.hot.ee/evpit/inimoiguste\\_aruanne.html](http://www.hot.ee/evpit/inimoiguste_aruanne.html) (accessed September 2004) (hereafter, *Inclusion Europe*, Estonia report).

<sup>282</sup> *Inclusion Europe*, Estonia report, p. 5.

next time the plan is made, these activities may be excluded from the plan. Most of the prescribed services do not exist in reality, and support from the government is minimal. However, the attitude of parents can also be a problem. Many parents do not appreciate the value of the rehabilitation plan and, as a result, it is viewed as just another element of the general bureaucracy, without any practical results. Research undertaken as part of a Phare project concluded that rehabilitation is not complete and does not support employment. The research recommended that rehabilitation should be more focused on the future working life of people with disabilities.<sup>283</sup>

#### 1.4 The role of the social welfare system

The Social Insurance Board provides pensions and benefits to approximately 370,000 people, including more than 100,000 people with disabilities and approximately 200,000 families with children, including those receiving benefits for children with disabilities. More than EEK 9 billion (approximately €575 million) was paid as pensions, benefits and other allowances in 2002. According to Government statistics, 55,480 people received a national pension in 2003, including 905 children below the age of 18.<sup>284</sup> Social benefits are calculated on the basis of the degree of disability.

People with disabilities who are aged 16 and over and have been determined by the Medical Commission as having a working incapacity of between 40 and 100 per cent<sup>285</sup> are paid a monthly allowance – either an incapacity pension or a national pension – of up to EEK 800 (approximately €51) per month.<sup>286</sup> Importantly, people with less than 40 per cent working incapacity are not eligible for these allowances. This would include most people with mild intellectual disabilities.

The *national pension* is granted to people with disabilities who are of working age and have not fulfilled the accumulation period for eligibility for an incapacity pension. As most people with intellectual disabilities have not worked, they mainly receive this pension. The amount of the national pension is calculated on the basis of the standard national pension. As of April 2004, this was EEK 990 per month (approximately €63). A person with 100 per cent working incapacity receives the full amount of the standard national pension, while a person with a 40 per cent loss of working capacity receives

<sup>283</sup> Phare, *Enhancing employment opportunities for people with disabilities in Estonia: Report on review of labour market measures*, available at [http://www.sm.ee/est/HtmlPages/ReviewofLabourMarketMeasures/\\$file/Review%20of%20Labour%20Market%20Measures.doc](http://www.sm.ee/est/HtmlPages/ReviewofLabourMarketMeasures/$file/Review%20of%20Labour%20Market%20Measures.doc) (accessed 2 December 2004), (hereafter, Phare, *Enhancing employment opportunities*).

<sup>284</sup> Social Insurance Board, *National Statistics Report 2003*, available (in Estonian) at on the SIB website at [http://www.ensib.ee/frame\\_eelarve.html](http://www.ensib.ee/frame_eelarve.html) (accessed 17 July 2005).

<sup>285</sup> State Pension Insurance Act, art. 14(1).

<sup>286</sup> State Pension Insurance Act, art. 2.

EEK 396 per month (approximately €25).<sup>287</sup> By contrast, the subsistence level imposed as a criterion for receiving social assistance is EEK 500 per month (approximately €32)<sup>288</sup> and the official minimum wage was EEK 2,480 (approximately €159) in 2004.<sup>289</sup> Recipients of a national pension that is less than the subsistence level may receive additional benefits up to this amount. People with disabilities become ineligible for the national pension upon entering employment.

The *incapacity pension*<sup>290</sup> is only granted to people with disabilities of working age who have fulfilled the requirements concerning the work accumulation period.<sup>291</sup> The amount an individual receives is calculated as a function of his or her percentage loss of working capacity and the accumulation period worked.<sup>292</sup> In 2003, the average incapacity pension was EEK 1,190 (approximately €76) per month.<sup>293</sup> People receiving the incapacity pension retain this benefit if they take up employment.<sup>294</sup> On becoming unemployed, they may also be eligible for unemployment benefits.<sup>295</sup> However, it is not possible to receive an unemployment benefit in addition to an incapacity pension.<sup>296</sup>

<sup>287</sup> See: Social Insurance Board, SIB website, National Pension, available at [http://www.ensib.ee/frame\\_pensionid\\_eng.html](http://www.ensib.ee/frame_pensionid_eng.html) (accessed 2 December 2004).

<sup>288</sup> The Subsistence level has remained unchanged at the rate of EEK 500 since the beginning of 1998. (Imposed by the Government of the Republic Regulation No. 234 of 2 December 1997, RTI, 17.12.1997, 88, 1483, since the year 2002 specified in § 6(6) of the State Budget Acts of the corresponding years.)

<sup>289</sup> Government of the Republic of Estonia Regulation No. 323 of 18 December 2003, on Establishing a Minimum Wage, RTI 2003, 83, 561 (entered into force 1 January 2004).

<sup>290</sup> On 1 January 2000, the disability pension formerly granted to people with disabilities was transformed into an “incapacity pension” as part of the pension reform process.

<sup>291</sup> In accordance with Article 14 (1) of the State Pension Insurance Act, the following persons have the right to receive an incapacity pension: “persons between the ages of 16 and pensionable age and persons who are declared permanently incapacitated for work with 40 to 100 per cent loss of capacity for work, pursuant to the procedure established by the Government of the Republic, and persons who have earned the pension qualifying period required for grant of a pension for incapacity for work provided for in Article 15 of this Act. A pension for incapacity for work shall be granted for the period of permanent incapacity for work.”

<sup>292</sup> See: Social Insurance Board, SIB website, Pension for incapacity for work, available at [http://www.ensib.ee/frame\\_pensionid\\_eng.html](http://www.ensib.ee/frame_pensionid_eng.html) (accessed 2 December 2004).

<sup>293</sup> Social Insurance Board, statistics, available at [http://www.ensib.ee/frame\\_eelarve.ht](http://www.ensib.ee/frame_eelarve.ht) (accessed September 2004).

<sup>294</sup> State Pension Insurance Act 2004, art. 43(1).

<sup>295</sup> If they have accumulated at least 12 months of employment during the 24 months prior to their registration as unemployed. The amount of the unemployment benefit depends on the person’s previous average wage. Unemployment Insurance Act 2004, art. 1(1) and art. 6(1).

<sup>296</sup> If a person has the right to receive more than one State benefit, only one (as chosen by the person concerned) will be paid. State Pension Insurance Act 2004, art. 4(2) and 6.



The unemployed and their families are at real risk of poverty, due to the very low level of social security benefits.<sup>297</sup> Before the introduction of the new unemployment insurance system on 1 January 2003,<sup>298</sup> an unemployed person was only entitled to receive state unemployment benefits of EEK 400 per month (approximately €26),<sup>299</sup> which does not even cover minimum food costs.<sup>300</sup> This was below the subsistence level imposed as a criterion for receiving social assistance, so that a significant portion of households receiving unemployment benefits had to apply for social assistance (living allowance and subsistence benefit) in order to survive.<sup>301</sup> Unemployment benefits are paid for a maximum of 270 days and are only extended in exceptional cases.<sup>302</sup>

There are seven additional types of social benefits specifically for people with disabilities (with *moderate*, *severe* or *profound* disabilities) and their families. These are: the disabled adult allowance; the disabled child allowance;<sup>303</sup> the caregiver's allowance; the disabled parent's allowance; the education allowance; the rehabilitation allowance; and the in-service training allowance.<sup>304</sup>

<sup>297</sup> The Committee of Independent Experts of the Social Charter of the Council of the European Union (European Council) has made recommendations to Estonia that the unemployment benefit is too low. As a living allowance is the final means in relieving poverty, the level of the unemployment benefit should be higher than the poverty line (EEK 750, approximately €48) and set at a level where there is no need for further social support. See: Ministry of Social Affairs, *Draft Concept of Labour Market Measures*, Ministry of Social Affairs, April 2004, available at [http://www.sm.ee/est/HtmlPages/tooturumeetmetekontseptsioonieelnou/\\$file/toturumeetmete%20kontseptsiooni%20eelnou.doc](http://www.sm.ee/est/HtmlPages/tooturumeetmetekontseptsioonieelnou/$file/toturumeetmete%20kontseptsiooni%20eelnou.doc) (accessed September 2004), (hereafter, Ministry of Social Affairs, *Draft Concept*).

<sup>298</sup> Social Protection of the Unemployed Act 2003.

<sup>299</sup> Today the rate still remains unchanged. (Government of the Republic of Estonia Regulation No. 363 of 15 November 2000, on the Rate of State Benefits for an Unemployed Person RTI 2000, 86, 557, (entered into force 25 November 2000) art. 1.

<sup>300</sup> According to the data of the Statistical Office of Estonia, the minimum food costs per household is EEK 669 per month. Statistical Office of Estonia, home page of the Statistical Office website, available at [www.stat.ee/index.aw?set\\_lang\\_id=2](http://www.stat.ee/index.aw?set_lang_id=2) (accessed 17 July 2005).

<sup>301</sup> In 2002, one third of people receiving unemployment benefits requested additional social benefits in the form of a "living allowance". Ministry of Social Affairs, *Draft Concept*.

<sup>302</sup> To emphasise the active supportive role of the allowance, the name of the unemployment allowance is to be changed to the "job searcher's allowance. *Ministry of Social Affairs*, *Draft Concept*.

<sup>303</sup> In accordance with the Social Benefits for Disabled Persons Act, children are eligible for the disabled child allowance until they reach 16: "Disabled child allowance shall be paid to the parent in the following amounts: 1) to a child with moderate disabilities – 215 per cent of the social benefit rate; 2) to a child with severe or profound disabilities – 255 per cent of the social benefit rate".

<sup>304</sup> For further information on these benefits, see: Social Insurance Board, Granting social benefits for disabled persons, available at the SIB website at [http://www.ensib.ee/frame\\_pensionid\\_eng.html](http://www.ensib.ee/frame_pensionid_eng.html) (accessed 2 December 2004)

People with disabilities who are entitled to more than one social benefit are paid the total sum of the benefits up to twice the established “social benefit rate”. The social benefit rate was EEK 400 per month in 2004, or approximately €26.<sup>305</sup>

People receiving an *incapacity pension* have the right to register as unemployed<sup>306</sup> and to use the services of the Employment Office.<sup>307</sup> Anyone with an incapacity level below 100 per cent has the right to access these services, but they can only register as a job-seeker, not as unemployed. These services include information on the labour market and the possibilities of employment training; employment mediation; vocational counselling; employment subsidies to start a business; employment subsidies for employers who hire unemployed persons with less competitive abilities; and community placement information of vacant positions under conditions provided by employers.<sup>308</sup>

To date, no studies have been carried out to establish the level of poverty of people with intellectual disabilities. However, the results are predictable, given that the majority are fully dependent on pensions and social benefits. For those who can earn a low wage, employment is often not financially rewarding when the additional costs of going to work, such as transport, lunch outside the home or childcare, and the possible loss of social benefits, are taken into consideration. The lowest salaries and wages are in regions with a high unemployment rate, in the fields of agriculture, healthcare and social security (including social welfare institutions). People with *mild* or *moderate* intellectual disabilities, especially when they are supported by their families, frequently resign from a job with a minimum wage, as with employment they lose their eligibility for the national pension and the additional expense of commuting to work outweighs their earnings.

This tendency is noted by research carried out as part of a Phare project, which found that the pension system and the present system of assessing incapacity for work do not always motivate those with disabilities to seek work. The research indicated that an overhaul of the pensions system, and a more precise assessment of the potential of the person with disabilities and their required support for work, rather than assessments of their disabilities and needs, could improve employment prospects for people with intellectual disabilities.<sup>309</sup>

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<sup>305</sup> Social Benefits for Disabled Persons Act, art. 18(1).

<sup>306</sup> If they have not worked due to permanent working incapacity for at least 180 days during the 12 months prior to filing an application with an Employment Office. Social Protection of the Unemployed Act, art. 7(3).

<sup>307</sup> Employment Service Act, art. 5(1).

<sup>308</sup> Employment Services Act, art. 3.

<sup>309</sup> Phare, *Enhancing employment opportunities*.

## 2. GOVERNMENT EMPLOYMENT POLICY

*During the accession process, several Phare-funded projects sought to improve access to employment for people with disabilities in Estonia. The main aims of these projects were to improve rehabilitation and employment services, and to improve the adaptation of workplaces for people with disabilities. Estonia does not have a quota system for the employment of people with disabilities. The primary way in which the Government encourages the employment of people who are “less competitive on the labour market”, including people with disabilities, is through tax concessions and active employment measures. However, these measures were not specifically designed for people with disabilities, and they do not meet the specialised needs of people with intellectual disabilities. In particular, the amount of the subsidies are too low to cover the costs of a job coach, and aids, such as instructions in simplified language, are not included under provisions for workplace modification. Generally, awareness of these measures is very low, and in some cases funding for subsidies is not actually available.*

### 2.1 The EU and Government employment policy

As a rule, the general public in Estonia receives little information about, and has little involvement in, EU-supported national projects in the social sector. However, prior to Estonia's accession to the EU, several Phare projects targeted access to employment for people with disabilities.

At the beginning of 2003, the Phare partnership project “Increasing the employment of persons with disabilities” was launched under the direction of the Ministry of Social Affairs. Its aim was to raise the capability of people with disabilities and increase their employment opportunities, by providing full rehabilitation and employment services and by providing for the adaptation of workplaces.<sup>310</sup> Previous experience in hiring people with disabilities has proved that the key factor in this process is adaptation of the workplace. Unfortunately, however, at present, Estonian employers are neither obliged nor motivated to adapt the working environment to the needs of persons with disabilities, as the Employment Directive has not been implemented. Employers wishing to employ persons with disabilities are also unable to receive relevant counselling and/or financial support. Within the framework of this project, in 2003, several events and panel discussions were organised by the Ministry of Social Affairs. However, citizens' associations dealing with people with intellectual disabilities were involved only once, and only on a voluntary basis.

In 2004, another Phare partnership project, “Enhancing employment opportunities for people with disabilities in Estonia”<sup>311</sup> came to an end. This cooperation project between the Estonian Ministry of Social Affairs and the United Kingdom brought together experts who: closely analysed the employment opportunities for people with disabilities in Estonia; made suggestions on developing the labour market and

<sup>310</sup> Homepage of the Ministry of Social Affairs, <http://www.sm.ee> (accessed September 2004).

<sup>311</sup> Phare, *Enhancing employment opportunities*.

rehabilitation services; and trained and supervised public servants and employees in supporting people with disabilities to obtain and retain a job.

The project analysed labour market services and the rehabilitation network and made a number of concrete recommendations.<sup>312</sup> In particular, the project noted that activities and measures supporting the employment of people with disabilities are not synchronised. It recommended that Government bodies, local authorities, NGOs and private industry should work together to increase the number of people with intellectual disabilities who are integrated into the workforce. It also recommended the establishment of a cooperation network between employment offices, pension boards, and rehabilitation and vocational education institutions.<sup>313</sup> The resulting *Good Practice Handbook* contains practical advice for employers on employing people with disabilities.<sup>314</sup> The NGO, Estonian Mentally Disabled People Support Organisation (EVPIT)<sup>315</sup> prepared a chapter in the handbook describing the employment related needs of people with intellectual disabilities.<sup>316</sup> Other handbooks on workplace adjustments and workplace supervisors for people with disabilities are presently being completed.

## 2.2 National employment policy

Government policy concerning people with disabilities is established on the initiative of the Ministry of Social Affairs or the Ministry of Education and Research. Labour market policy is developed by the Labour Market Department of the Ministry of Social Affairs and implemented by the 16 county Employment Offices. The main legislative base for labour market policy is provided by the Social Protection of the Unemployed Act and the Employment Service Act.

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<sup>312</sup> Phare, *Enhancing employment opportunities*.

<sup>313</sup> Phare, *Enhancing employment opportunities*.

<sup>314</sup> Ministry of Social Affairs, *Guidelines to Employers for Employing People with Disabilities*, available (in Estonian) on the home page of the ministry <http://www.pite.ee/index.php?lang=est&go=pfgpg> (accessed 22 September 2004), (hereafter, Ministry of Social Affairs, *Guidelines*).

<sup>315</sup> The Estonian Mentally Disabled People Support Organisation (EVPIT) is an umbrella NGO that advocates for the interests and rights of people with intellectual disabilities. Its mission is to improve the position of people with intellectual disabilities in Estonian society and to ensure equal opportunities for them.

<sup>316</sup> Ministry of Social Affairs, *Guidelines*.

During 2001–2003, labour market policy was carried out according to the priorities established in the “Joint Assessment of Employment Priorities”<sup>317</sup> (JAP); the “National Development Plan 2003”;<sup>318</sup> and the “Employment Action Program 2003”.<sup>319</sup>

The main priority established in the “Employment Action Program 2003” is to continuously increase the share of active employment according to the needs of risk groups and the labour market.<sup>320</sup> More attention will be given to individual work with risk groups. Among the main problems identified in the plan were the high unemployment rate (12.6 per cent) and long-term unemployment rate (46 per cent of the unemployed) as well as significant regional differences in unemployment rates.

As part of the EU social inclusion process, the Ministry of Social Affairs, in cooperation with other ministries, was responsible for preparing the “National Action Plan on Poverty and Social Exclusion”,<sup>321</sup> on the basis of a “Joint Memorandum on Social Inclusion” (JIM). Drawing up the JIM prepared Estonia for presentation of its two-year “National Action Plan for Social Inclusion” in July 2004. However, EVPIT and other NGOs and associations working with people with disabilities were not involved in preparing the JIM. The document can be viewed on the website of the Ministry of Social Affairs but, unfortunately, only the English language version is available, making the document inaccessible for most people in Estonia.<sup>322</sup> In fact, most Estonian progress reports presented to the EU are available only in English through the Government – though, ironically, the website of the European Commission includes documents such as the “Estonia’s National Action Plan for Social Inclusion” in the Estonian language.<sup>323</sup> In general, there is a lack of mainstreaming and cohesion in Government agencies’ work towards the integration of disabled persons. The role of

<sup>317</sup> “Joint Assessment of Employment Priorities”, available in English at [http://europa.eu.int/comm/employment\\_social/employment\\_analysis/japs/estonia\\_en.pdf](http://europa.eu.int/comm/employment_social/employment_analysis/japs/estonia_en.pdf) (accessed 15 July 2005).

<sup>318</sup> National Development Plan 2003.

<sup>319</sup> Each year an Employment Action Program is established, in line with the four pillars of European employment strategy and guidelines. All plans are prepared in cooperation with the Ministry of Social Affairs, the Ministry of Economic Affairs and Communications, the Ministry of Education and Research, the Ministry of Internal Affairs, and social partners. “Employment Action Programme 2003” (approved on 16 July 2003), available on the Ministry of Education and Research website, <http://www.hm.ee> (hereafter, *Employment Action Program 2003*).

<sup>320</sup> *Employment Action Program 2003*.

<sup>321</sup> The Estonian language version of “Estonia’s National Action Plan for Social Inclusion” is available on the website of the European Commission at [http://europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/nap\\_incl\\_2004\\_ee.pdf](http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/nap_incl_2004_ee.pdf) (accessed 26 November 2004).

<sup>322</sup> Interview with Agne Raudmees, head of the board, EVPIT, Tallinn, June 2004.

<sup>323</sup> The Estonian language version of “Estonia’s National Action Plan for Social Inclusion” is available on the website of the European Commission at [http://europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/nap\\_incl\\_2004\\_ee.pdf](http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/nap_incl_2004_ee.pdf) (accessed 26 November 2004).

social partners in increasing the employment of persons with disabilities, and establishing working conditions that take into consideration employees with disabilities, has until now been minimal.

### 2.3 Government requirements and incentives

To date in Estonia, active employment measures supporting the return of the unemployed to the labour market have been minimal and under-funded. State expenditure on labour market measures was 0.22 per cent of GDP in 2001. In 2001, only 38.5 per cent of this total expenditure was spent on active employment measures, and only 14.1 per cent of those registered as seeking work participated in active employment measures.<sup>324</sup> One consequence of a predominantly passive labour-market policy is the large number of people who have lost hope of ever finding employment and who have totally given up the search for a job.<sup>325</sup>

There is no quota system for the employment of people with disabilities, and there are no active employment measures *specifically* designed for people with disabilities. Phare-funded research found that people with disabilities seldom take advantage of the available active employment measures, which are designed more widely, for people who are “less competitive on the labour market” – rather than just for people with disabilities. It recommended an analysis of employment services and the development of additional measures, as required.<sup>326</sup> At present, the main way in which the State encourages the employment of people with disabilities is through tax concessions and subsidies to employers who engage people with disabilities.

Employment subsidies are allocated to employers through the Employment Office, for the employment of unemployed people who are “less competitive on the labour market”. This includes people with disabilities who have a reduced working capacity of between 40 and 90 per cent (employment of a person with 100 per cent working incapacity is not possible),<sup>327</sup> and who are registered as unemployed at the Employment Office.<sup>328</sup> The employment subsidy received by an employer who employs (full-time) an unemployed person with less competitive abilities is equivalent to the minimum monthly wage<sup>329</sup> during the first six months, and 50 per cent of the minimum monthly wage during the

<sup>324</sup> Statistical Office database.

<sup>325</sup> Estonian Chamber of Disabled People, *Annual Report 2002*, available at <http://www.epikoda.ee/include/blob.php?download=epikmain1&id=0323> (in Estonian) (last accessed September 2004), p. 20.

<sup>326</sup> Phare, *Enhancing employment opportunities*.

<sup>327</sup> Employment Services Act 2002, art. 19(3.1).

<sup>328</sup> Recipients of national pensions may register at employment offices.

<sup>329</sup> In 2004, the minimum monthly wage is EEK 2,480 per month (approximately €159) (Regulation of Government of the Republic of Estonia No. 323 of 18 December 2003, on Establishing a Minimum Wage, RTL 2003, 83, 561, (entered into force 1 January 2004).

following six months.<sup>330</sup> In the case of an employee with disabilities, the State also subsidises the social benefits tax of the employer.<sup>331</sup>

Under the Income Tax Act, special tax concessions are available for people who receive an incapacity pension and other disability allowances.<sup>332</sup> In accordance with the Government Regulation on Special Conditions for Providing Employment-Related State Assistance 2003, for all people covered by the employment subsidy, there are also certain tax advantages for their employers.

State assistance is available for up to 60 per cent<sup>333</sup> of the employee's gross wage for the first year of employment, together with social tax and employment insurance payments,<sup>334</sup> as calculated before deducting direct taxes.<sup>335</sup> In accordance with this regulation, the State may also provide assistance for covering additional expenditures related to the employment of people with disabilities, to cover: adapting the workplace to the needs of an employee with disabilities; employing people to assist the employee with disabilities; or adapting or procuring tools used by the person with disabilities.<sup>336</sup>

The State provides assistance to the employer<sup>337</sup> if the following conditions have been met:<sup>338</sup> First, the number of employees in an enterprise must not increase as a result of employing a person with disabilities. The position must have become vacant upon termination of the employment contract of the previous employee, on the initiative of

<sup>330</sup> Employment Services Act, art. 19(5).

<sup>331</sup> The State subsidises the social benefits tax (EEK 700, or approximately €45) for an employer who employs a person with at least 40 per cent of loss of working capacity, up to a total of EEK 231 (approximately €15) per month, per worker. Social Benefits for Disabled Persons Act, RTI 1999, 16, 273 (entered into force 1 January 2000, last amended 1 January 2005).

<sup>332</sup> Until 31 December 2004, the basic exemption deductible from the income of a resident of Estonia was EEK 16,800. However, for a person receiving a state pension, including an incapacity pension, the basic exemption is increased up to a maximum of EEK 36,000. Income Tax Act RTI 1999, 101, 903 (entered into force 1 January 2000, last amended 1 January 2005), art. 23(2). The present rate of personal income tax for residents of Estonia was 26 per cent until 31 December in 2004. From 1 January 2005 to 1 January 2007, the tax rate will decrease annually by 2 per cent, amounting to 20 per cent in the year 2007. Income tax is charged on income derived by a resident during a period of taxation from all sources of income both in and outside Estonia, including income from employment, maintenance support, pensions, scholarships, grants, benefits and insurance indemnities (including incapacity benefits). Income Tax Act, art. 12(1).

<sup>333</sup> Regulation 214/2003 of Government, art. 3(5).

<sup>334</sup> Government of the Republic of Estonia Regulation No. 214 of 5 August 2003, on Regulations on Special Conditions for Providing Employment-Related State Assistance (RTI 2003, 57, 385), entered into force 15 August 2003, art. 3(4), (hereafter, Regulation No. 214/2003 of Government).

<sup>335</sup> Regulation 214/2003 of Government, art. 3(6).

<sup>336</sup> Regulation 214/2003 of Government, art. 4(1).

<sup>337</sup> Regulation 214/2003 of Government, art. 1(1).

<sup>338</sup> Regulation 214/2003 of Government, art. 3(3).

the employee<sup>339</sup> or the employer,<sup>340</sup> or upon the employee applying for part-time working time.<sup>341</sup> This condition means that, in practice, people with intellectual disabilities are very unlikely to be hired. Second, the person with disabilities must have the right to continue working for the same employer for at least 12 months.<sup>342</sup>

Despite these provisions, however, the Tallinn Project,<sup>343</sup> organised by the Tallinn City Board of Disabled People (a non-profit association) found that existing State measures do not adequately encourage the employment of people with disabilities. The project highlighted the fact that the unavailability of relevant support services and State benefits, and a lack of adequate information, contribute to the lack of integration of people with disabilities into the open labour market. Based on a series of interviews with employers,<sup>344</sup> the project found that only 40 per cent of employers were aware of the employment subsidies and tax subsidies available to employers to encourage the hiring of less competitive workers, including people with disabilities. Of those employers who were not informed of the subsidies available to them, only half were interested in receiving supplementary information. Employers who were interested in hiring a person with disabilities did not know who could provide them with advice, and were not aware of organisations offering counselling and vocational guidance to persons with disabilities, or of employers who arrange transportation for people with disabilities or help to adapt workplaces. If information is not available, it is simply easier not to employ a person with disabilities.

Another problem is that, according to some employers, the employment subsidies offered by the Employment Office are often simply unavailable. For example, in March 2004, EVPIT tried to help an adult with intellectual disabilities secure employment in the open labour market, with the support of a State subsidy for the employer.<sup>345</sup> However, the Tallinn Employment Office had no funds available to support the employer, and it could only hope to obtain the necessary finances by May 2004. At the same time, the social tax subsidy for employers is too small, and procedures are too bureaucratic for employers. For example, in 2002 only six employment subsidies for people with disabilities were granted in Tallinn.<sup>346</sup>

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<sup>339</sup> Employment Contracts Act, art. 79, 80, 82 and 85.

<sup>340</sup> Employment Contracts Act, art. 86.

<sup>341</sup> Working and Rest Time Act, art. 6.

<sup>342</sup> Except in the cases listed under Article 86 of the Employment Contracts Act 2003 (Bases for termination of employment contract on initiative of employer).

<sup>343</sup> See section IV.3.2.

<sup>344</sup> As part of the project, an interview was conducted with 22 Tallinn employers, who between them employed 15 people with disabilities.

<sup>345</sup> Interview with Reet Paumere, Occupational Instructor, EVPIT, April 2004, Tallinn.

<sup>346</sup> Interview with a consultant of The Labour Market Board (confidentiality requested), Tallinn, March 2004.



Moreover, existing subsidies are ineffective in creating greater opportunities *specifically* for people with intellectual disabilities in particular. There is a limited availability (or complete absence) of support services for employees with disabilities. However, while people with intellectual disabilities do not need much adaptation of the workplace itself, they do require a job coach or support person at their workplace. The benefit allocated by the national welfare programme is not enough to employ a job coach, so it is very difficult for a person with more severe intellectual disabilities to gain access to the open labour market. In addition, printed instructions in simplified language (or signs and labels that the employer can use to create a more accessible working environment for an employee with intellectual disabilities) are not regarded as aids for persons with disabilities, so no subsidy would be provided to the employer for this. Nothing is provided to help people with intellectual disabilities cope in the workplace, though a budget allocation of EEK 5 million (approximately €320,000) was planned for adjusting workplaces in 2004.<sup>347</sup> So, in Estonia, “adjusting workplaces” means, in effect, primarily adjustments for people with physical disabilities.

### 3. EMPLOYMENT IN PRACTICE AND POLICY IMPLEMENTATION

*Very few people with intellectual disabilities have any kind of work or employment; in fact, only about 12 per cent of people with disabilities are in employment. Official data on the employment situation of people with disabilities is not disaggregated by type of disability. The data also systematically underestimates the total number of people with disabilities who are in the workforce or unemployed, because the figures do not include people with mild disabilities. Furthermore, many people with intellectual disabilities do not register as unemployed, and so they cannot benefit from employment services.*

*Supported employment services are the most important way in which people with intellectual disabilities can access employment on the open market.<sup>348</sup> However, in Estonia, there is no legal framework for supported employment as it is commonly understood, though a definition does appear in a Ministry of Social Affairs regulation. One small project to encourage the employment of people with intellectual disabilities, through use of employment subsidies, was carried out by the Tallinn City Board of Disabled People. The Estonian Mentally Disabled People Support Organization (EVPIT) also provides vocational counselling for adults with intellectual disabilities living in Tallinn. However, there is an urgent need for the Government to encourage the establishment of supported employment services for people with intellectual disabilities. In addition to inadequate State funding and inadequate support services, an important barrier for people with intellectual disabilities who wish to enter the workforce is their lack of preparedness for seeking employment – in particular their lack of vocational training.*

<sup>347</sup> NAP Social Inclusion, July 2004, p. 23.

<sup>348</sup> Supported employment is an employment option that facilitates competitive work in integrated work settings for people with disabilities. It provides assistance such as job coaches, transportation, assistive technology, specialised job training and individually tailored supervision.

*There is no official data on the number of people with intellectual disabilities in sheltered employment. Sheltered employment is funded by the State through subsidies paid to both employer and employee. In 2004, there were 46 organisations offering State-funded sheltered employment to 511 people with disabilities throughout Estonia. Most of the organisations were social welfare institutions, such as social care homes and day centres. The "Juks" centre in Tallinn is the only sheltered employment centre specifically for people with intellectual disabilities, and it presently offers work and training for 30 people with intellectual disabilities.*

### 3.1 Statistical data

The number of unemployed and inactive people in Estonia has been steadily increasing over recent years and has now stabilised at the relatively high level of 13 per cent. Two thirds of the unemployed are of productive age, between the ages of 25 and 49, and there is an alarming prevalence of long-term unemployment.<sup>349</sup> People with disabilities are among those most at risk in Estonia's labour market.<sup>350</sup>

The unemployment rate of people with disabilities has been increasing rapidly since 1991 and is much higher than that of the general population. More than half of people with disabilities are of productive age, but in 2004, only 12 per cent were employed.<sup>351</sup> Official data on people with disabilities is not disaggregated by type of disabilities. In any case, people with intellectual disabilities generally do not register with the employment office, and, for this reason, they are not included in the statistics on the long-term unemployed.<sup>352</sup> Until now, statistics on people with disabilities in employment have been gathered according to the numbers of people receiving social support payments.<sup>353</sup> However, in order to register as unemployed and receive labour market services, a person must be assessed to have a working incapacity of less than 40 per cent. Therefore, the total number of people with disabilities in the workforce has been seriously underestimated.<sup>354</sup>

<sup>349</sup> Among the unemployed, the percentage of people who have been unemployed for more than one year increased from 30 per cent in 1995, to 45 per cent in 2000. Estonian Labour Market Board, home page, statistics, available at [http://www.tta.ee/est/statistika/viimased\\_andmed.html](http://www.tta.ee/est/statistika/viimased_andmed.html) (accessed September 2004).

<sup>350</sup> Also at risk are young unemployed people with a low level of education; the long-term unemployed; those a few years below retirement age (65); and those who do not speak the national language. Estonian Labour Market Board, home page, statistics, available at [http://www.tta.ee/est/statistika/viimased\\_andmed.html](http://www.tta.ee/est/statistika/viimased_andmed.html) (accessed September 2004).

<sup>351</sup> Statistical Office database.

<sup>352</sup> Interview with Anne Martin, Case Solver, Harjumaa Job Centre, Labour Market Board, Tallinn, August 2004.

<sup>353</sup> Phare, *Enhancing employment opportunities*.

<sup>354</sup> Draft Concept of Labour Market Measures, Ministry of Social Affairs, April 2004.

### 3.2 Employment on the open market

In Estonia, very few people with intellectual disabilities are employed on the open labour market. Moreover, people with intellectual disabilities rarely benefit from active employment measures. Supported employment is not defined in Estonian legislation.

#### *Tallin City Board of Disabled People*

The Tallinn City Board of Disabled People, a non-profit association, carried out an important project, entitled “Work counselling for youth with disabilities in Tallinn on the employment of people with intellectual disabilities”, from September 2001-February 2002.<sup>355</sup> Using existing employment support measures, the project aimed to find employment on the open labour market for 20 young people, including nine with *mild to moderate* intellectual disabilities.<sup>356</sup> The initial aim of the project, to find employment for all 20 of these young people with disabilities, was not fulfilled, though three or four participants did find short-term, part-time work. The project organisers concluded that it is easier for people with *mild* intellectual disabilities to find and retain work in unskilled jobs on the open labour market than for those with *moderate* intellectual disabilities.

The Tallin project revealed some trends in the employment of people with disabilities. It was found, for example, that the non-profit sector is a large employer of people with disabilities. In the private sector, due to the wide availability of labour, there is little pressure on employers to take responsibility for the welfare of their employees or to hire people with disabilities. The project also found that employers avoid entering into labour contracts for an unspecified term.<sup>357</sup> It further concluded that employers are looking for flexibility in labour engagements; and in terms of qualities sought in employees, employers demonstrated a preference for individuals who have sound judgement, can work independently and can adapt to change.

Another study within the Tallinn Project involved a series of interviews with employers. Employers indicated that they were most satisfied with the performance of the project participants who had *mild* intellectual disabilities and who had previously undergone vocational rehabilitation. These employees were all graduates of the Astangu

<sup>355</sup> “Tallinna Puuetega Noorte töölenõustamine” (“Work counselling for youth with disabilities in Tallinn on the employment of people with intellectual disabilities”). Interview with Pirjo Vaarma, Executive Director, Tallinn City Board of Disabled People, Tallinn, April 2004.

<sup>356</sup> Each vocational adviser was given seven clients. The advisers’ assignments included primary counselling aimed at both the disabled person seeking employment and the employer, and included individual work with the client, mapping the client’s skills and knowledge, communicating with employers with the aim of finding appropriate employment for the client, answering questions and solving problems of the employed client and his or her employer; setting up a database of persons seeking work, reporting to the project manager, cooperating with the client’s family and providing information about the project and its aims. The project was financed by the Ministry of Social Affairs (EEK 284,016).

<sup>357</sup> Interview with Pirjo Vaarma, April 2004.

Vocational Rehabilitation Centre,<sup>358</sup> with specialisation in woodworking, sewing or baking. The participants' job responsibilities consisted of routine work that did not require higher qualifications. Employers described the project participants as conscientious and responsible, and they reported that these workers showed great perseverance in carrying out certain tasks. Employers did, however, point out the need for regular guidance and supervision of employees with intellectual disabilities. They said there were not sufficient State subsidies available for this work, so that employers had additional expenses. The results of the project also confirmed that employers, because they have little or no information about people with disabilities and issues relating to their employment, avoid employing people with disabilities.

The Survey of Employers found that those employers who had experience with employing people with disabilities recommended that the State support the adaptation of workplaces for people with disabilities, perhaps in the form of a subsidy. Employment services that specifically target people with disabilities should also be developed, the survey showed.

Finally, the survey revealed that cooperation with the Employment Office, a provider of State vocational rehabilitation services, is essential. For this reason, the Government should facilitate the registration of people with disabilities at the Employment Office, so that they may receive employment services. Employers also recommended that a database of unemployed people with disabilities be maintained.

#### *Enhancing employment opportunities for people with disabilities in Estonia*

The Phare project "Enhancing employment opportunities for people with disabilities in Estonia", which produced the *Good Practice Handbook*<sup>359</sup> on the employment of people with disabilities, came to conclusions similar to that of the Survey of Employers. The Phare project found that it was uncommon for employers in Estonia to adapt workplaces to the needs of people with disabilities and recommended the establishment of a system of support services for the adaptation of workplaces – including a "workplace adaptation service"; consultant services for employers; and funding for workplace adaptation. The "National Action Plan on Social Inclusion" states that a workplace adaptation service has already been established.<sup>360</sup> Furthermore, the Phare project recommended that, since employers have little knowledge or experience of employing people with disabilities, greater attention should be devoted to raising the awareness and changing the attitudes of employers and people with disabilities.<sup>361</sup>

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<sup>358</sup> See section III.4.1.

<sup>359</sup> The *Good Practice Handbook* was the outcome of a Phare partnership project ("Enhancing employment opportunities for people with disabilities in Estonia") between the Estonian Ministry of Social Affairs and Great Britain. See section IV.2.2.1.

<sup>360</sup> *NAP Social Inclusion*, p. 21.

<sup>361</sup> Phare, *Enhancing employment opportunities*.

### *Equal Opportunities for Disabled People in Competing on the Open Labour Market*

A project in Hiiumaa County, “Equal opportunities for disabled people in competing on the open labour market”,<sup>362</sup> carried out by the Hiiumaa Support Organisation for People with Developmental Disabilities showed that the conditions for negotiating with employers are more favourable in rural areas. Employers in rural areas often know applicants beforehand and have had more contact with people with disabilities. In contrast, in Tallinn, it is more difficult to get employers to sit around a common table and discuss face-to-face the topic of employing people with disabilities. Other methods must be used in Tallinn. Employers must be contacted directly; vocational advisers must provide support to employees and employers alike; and, finally, positive media coverage of people with disabilities and public awareness campaigns on the employment of persons with disabilities are needed.

#### *EVPIT*

EVPIT provides vocational counselling for adults with intellectual disabilities living in Tallinn. The organisation has identified the main barriers encountered by people with intellectual disabilities who wish to enter the workforce.<sup>363</sup> The most significant barriers are the lack of preparedness of people with intellectual disabilities for seeking employment and a lack of suitable support services.

EVPIT has found that many young people with intellectual disabilities are not psychologically prepared to work, and that actual time spent seeking employment is low. This is due partly to a lack of skills in searching for work, but it is also due to the fact that people with intellectual disabilities do not always perceive themselves as employees (or workers) or, consequently, as being capable of finding work on the open labour market. Support to people with intellectual disabilities therefore must take into consideration their often low self-esteem and perceptions of their own abilities, as well as expectations in relation to employment opportunities. In this light, family counselling is essential, as most parents of those counselled do not support the idea that their family member with intellectual disabilities can secure and retain employment; the expectations of parents are often unrealistic.

In addition, many people with intellectual disabilities have modest or insufficient preparation for employment on the open labour market. Russian-speaking people with intellectual disabilities are particularly disadvantaged, because most jobs, even manual ones, require some knowledge of Estonian. Today, securing employment is difficult for anyone who has completed only basic education and has no further qualifications or professional training – not only for people with disabilities. Unfortunately, vocational

<sup>362</sup> “Equal opportunities for disabled people in competing on the open labour market”, project carried out from 1 January 2003 to 31 December 2003; continued from 1 January 2004 to 12 December 2004.

<sup>363</sup> Interview with special educator Keju Talve, EVPIT, Tallinn, January 2005.

training does not correspond to the requirements or expectations of the labour market, while vocational counselling is not widely available, and the quality of counselling is not sufficiently professional. Furthermore, vocational education consists of little practical training; vocational schools offer few opportunities to learn a profession; and no opportunities are available for people with a basic education to learn a profession. Vocational schools must begin to motivate students by providing them with skills that will be sought after on the open market.

EVPIT has also highlighted the limited availability (or complete absence) of support services for employers of people with intellectual disabilities.

### 3.3 Sheltered employment

There is no official definition of sheltered employment<sup>364</sup> nor have studies been conducted to establish the actual need for employment centres and sheltered workplaces for people with disabilities. Moreover, data is not collected on the number of people with intellectual disabilities in sheltered employment.

In February 2005, the Estonian Chamber of Disabled People and Ministry of Social Affairs carried out a seminar to introduce the support system for people with disabilities in the United Kingdom, and to analyse the existing system and opportunities to develop the Estonian support system for people with disabilities. As a result of the seminar, all the recommendations will reportedly be taken into account in a new Social Welfare Act.<sup>365</sup>

National policy<sup>366</sup> calls for sheltered employment with support services for the employee with disabilities *and* the employer. Services include assistance, guidance and counselling, as well as adaptation of the workplace and working conditions to meet the needs of the employee. This policy applies to private employers, and calls for the creation of inclusive environments. Such support may be carried out through allocations of funds to the employer for specific purposes or by providing professional services, such as that provided by a psychologist, social worker, solicitor or medical doctor.<sup>367</sup> Unfortunately, such services are rarely available.

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<sup>364</sup> The only legal reference to sheltered work is in annex 1 in the regulation of the Minister of Social Affairs, No. 4 of 3 January 2002, Requirements set on the Institutions of social care and social care services, RTL 2002,9,93.

<sup>365</sup> See the homepage of the Estonian Chamber of Disabled People <http://www.epikoda.ee/index.php?op=4&cid=0058> (accessed 15 June 2005).

<sup>366</sup> Ministry of Social Affairs, "Welfare programme for children and for people with disabilities for 2004–2006", available (in Estonian) on the website of the Ministry of Social Affairs at [http://www.sm.ee/est/HtmlPages/lasteprogramm/\\$file/lasteprogramm.pdf](http://www.sm.ee/est/HtmlPages/lasteprogramm/$file/lasteprogramm.pdf) (accessed May 2004), (hereafter, "Welfare programme for children and for people with disabilities for 2004–2006").

<sup>367</sup> "Welfare programme for children and for people with disabilities for 2004–2006".

In Estonia, sheltered employment is financed by the State for one year, at the rate of EEK 625 per month (approximately €40) for each employee with disabilities, and is paid either to an employer or to an association that provides the necessary guidance in the workplace. Employees in sheltered employment receive a wage of between 25 and 75 per cent of the minimum wage, according to their working capacity. In 2004, there were 46 organisations offering state-funded sheltered employment to 511 people with disabilities throughout Estonia. In Harju County and Tallinn there are 10 organisations with 149 clients. The overwhelming majority of these organisations are in social care homes, such as welfare homes or day centres. Sheltered employment centres should not be mistaken for day centres. Day centres provide activities and work for people with disabilities, but unlike sheltered employment centres pay no wages.

In Estonia, there is only one state-funded sheltered employment centre for people with *intellectual disabilities*: the “Juks” centre in Tallin. The “Juks” training centre is the only opportunity for young people with intellectual disabilities who are not ready to start vocational training or enter the open labour market. It is intended as a transition centre to employment. Instructors and/or supervisors at the centre provide employees with guidance and assistance in workshops for textile production (weaving, silk painting, sewing) and painting of porcelain tableware and ceramics. At present, 30 people with intellectual disabilities are working at the centre.

Young people with intellectual disabilities often lack the social skills necessary for a work environment. At best, young people with intellectual disabilities stay at sheltered workplaces for one year and are then dismissed. Their self-confidence in their abilities and skills to cope with their work is minimal.<sup>368</sup>

At present, sheltered employment (or the employment subsidies system) is viewed by employers as labour paid for by the State. There are cases where employers have dismissed employees with the termination of the subsidy (available for people with disabilities) after the one-year term ends. Fortunately, however, many employers are motivated by more than the lure of state subsidies; between November 2003 and February 2004, ten people with disabilities found employment with employers who did not request subsidies.

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<sup>368</sup> Interview with Kalev Aedma, Chief Specialist, Harju County Government, Tallinn, April 2004.

## V. Conclusions

At present, the vast majority of people with intellectual disabilities in Estonia are not able to access inclusive education or any kind of employment or work. Over recent years, mainly as a result of accession to the EU, some important steps have been taken towards improving the situation of people with intellectual disabilities. In particular, the number of children with intellectual disabilities included in the education system has risen significantly over the last decade, and the parents and guardians of children with intellectual disabilities increasingly want their children to be educated in a mainstream school. Nonetheless, a number of important barriers remain to be addressed.

In particular, the Government should, as a priority, introduce comprehensive legislation to ensure protection against discrimination for people with disabilities. It should ensure that comprehensive data on people with intellectual disabilities is available across all relevant sectors, and it should monitor the number of people placed under guardianship. To ensure access to inclusive education, legislative barriers to the integration of children with intellectual disabilities into mainstream education should be abolished, and legislation aimed at promoting inclusive education should be introduced. The Government should monitor the progress of integration in practice, and it should ensure that mainstream schools are provided with the necessary resources, to enable children with all levels of intellectual disabilities to receive education in a mainstream environment throughout their schooling. With respect to access to employment, main priorities are to introduce active employment measures targeted specifically at people with disabilities, and to establish supported employment services for people with intellectual disabilities throughout the country. The procedures for the assessment of work capacity should be comprehensively reformed, and employment services should be tailored to the needs of people with intellectual disabilities.

At present, the Estonian legislative framework does not provide adequate protection from discrimination for people with disabilities. Estonia acceded to the EU on 1 May 2004, and it is obliged to transpose a number of EU directives into national law. However, as yet Estonia has not transposed the provisions of either the EU Employment Directive or the EU Race Equality Directive into national legislation. These directives, particularly the EU Employment Directive, are important for ensuring the rights of people with disabilities, including people with intellectual disabilities. The Government, should, as a priority, take steps to introduce legislation in conformity with these directives.

There is good official data on people with disabilities in general in Estonia, and the 2000 Population Census included a number of questions on disability. However, although this data covers all relevant sectors, at present it is not available disaggregated by type of disability. To better reveal the specific situation and needs of people with intellectual disabilities, the Government should ensure that regularly updated and consistent data that specifically covers this group is available. In particular, data needs to be made available on the degree of integration of children with intellectual



disabilities in the mainstream education system, including the number of children who are enrolled in a mainstream school but actually receive home schooling. In addition, information is needed on the employment situation of adults with intellectual disabilities.

No official data is available on the numbers of people placed under guardianship. However, most people with at least a *moderate* level of intellectual disabilities are placed under guardianship by the courts at age 18. The Government should take steps to monitor the number of people with intellectual disabilities placed under guardianship and to monitor the degree to which their active legal capacity has been restricted. It should ensure that people with intellectual disabilities are able to exercise their civil rights to the fullest possible extent, including the right to work and sign an employment contract.

### *Access to education*

At present, children with intellectual disabilities (and their families) are not able to access early intervention services throughout the country. Intellectual disability is diagnosed too late to adequately prepare children with intellectual disabilities for education in a mainstream school. The Government should, as a priority, ensure that children with intellectual disabilities up to age six (and their families) are able to access quality early intervention services throughout the country.

Although the number of children with intellectual disabilities enrolled in mainstream schools continues to increase, most of these children are either educated in a special school, or are registered at a mainstream school but in fact receive home schooling. The Ministry of Education and Research should closely monitor the progress of inclusive education for children with intellectual disabilities in Estonia. In particular, it should ensure that children with intellectual disabilities enrolled in mainstream schools are not, in practice, actually educated at home. The ministry and local authorities should ensure that the wishes of parents are adequately taken into account in selecting a school for their child with intellectual disabilities.

Education legislation provides children with intellectual disabilities with the right to study at a mainstream school in the area where they live, but on the important proviso that the local authorities have ensured suitable conditions for teaching them. However, as existing legislation does not adequately define what these “suitable conditions” should be, it is not clear what exactly mainstream schools must do to meet the needs of children with intellectual disabilities. To promote the integration of children with intellectual disabilities, the Ministry of Education and Research should introduce specific legislation on inclusive education, with the intention of promoting maximum integration, and equality of access, for children with intellectual disabilities. The Ministry should also elaborate secondary legislation that clearly specifies the conditions required for children with intellectual disabilities to attend mainstream schools.

Most importantly, the successful integration of children with intellectual disabilities into mainstream schools requires the provision of adequate support services – in particular, support teachers. At present, though, most mainstream schools do not receive the funding they require to meet the specific needs of children with all levels of intellectual disabilities. The Ministry of Education and Research should ensure that the inclusion of children and young people with intellectual disabilities into mainstream education is adequately funded, to cover their special needs, in particular the costs of employing support teachers or personal assistants in mainstream schools. The Ministry should also take steps to address other barriers to inclusive education, such as lack of transportation; large class sizes; and opposition from some teachers and parents of children without disabilities.

Most young people with intellectual disabilities still leave school inadequately prepared to meet the demands of an increasingly competitive marketplace. To enable people with intellectual disabilities to access employment, the Government should encourage vocational schools and employment agencies to work together to prepare people with intellectual disabilities for the real needs of the labour market. In particular, the Government should improve the access of people with intellectual disabilities to vocational training and retraining in an inclusive (rather than segregated) environment.

#### *Access to employment*

Very few people with intellectual disabilities have any kind of work or employment. There is no quota system in Estonia, and the main way in which the State encourages the employment of people with disabilities is through active employment measures, targeted more generally at people who are “less competitive on the labour market”. However, these measures are not adapted to the specific employment needs of people with intellectual disabilities. The Government should develop and introduce active employment measures that specifically target people with disabilities. This should include employment subsidies, for employers to hire job coaches for people with intellectual disabilities, and increased employment subsidies for employers who hire adults with severe intellectual disabilities or multiple disabilities. The Government should also ensure that people with disabilities, including those with intellectual disabilities, can access employment services adapted to their needs at the Employment Offices.

Supported employment services are the most important way in which people with intellectual disabilities can access employment on the open market, but in Estonia, there is no legal framework for supported employment as commonly understood. The Government should, as a priority, introduce comprehensive legislation on supported employment. It should then provide funding for supported employment services that are accessible to people with intellectual disabilities throughout the country.

At present, the assessment of capacity for employment purposes is not well adapted to the needs of people with intellectual disabilities. The Ministry of Social Affairs should completely overhaul the system for the assessment of people with disabilities for employment purposes and for access to social benefits. The Ministry should introduce

procedures enabling more precise assessments of the potential, capacity and needs of people with intellectual disabilities, replacing the existing assessments, which focus on what a person with intellectual disabilities cannot do. The Ministry should also ensure that, for assessments of working capacity, the participation of the person being assessed and, as appropriate, of his or her parents or guardian, is obligatory.

## ANNEX 1. Table

Table A1. Special provisions for the employment of people with disabilities

	Employee without disabilities	Employee with disabilities		Parent/guardian of a child with disabilities or a caregiver of a person completely unable to work
		No special conditions prescribed by a doctor	Specific activities forbidden by the decision of a doctor	
<b>Employee</b>	A natural person who has attained at least 18 years of age and has active legal capacity or restricted legal capacity <sup>369</sup>			
<b>Working hours</b>	8 hours a day, 40 hours a week; <sup>370</sup> permitted overtime up to 4 hours a day <sup>371</sup>	Shall not be required to work overtime <sup>372</sup>		Only with his or her consent <sup>373</sup>
<b>Working at night</b>	Night time is the period from 10 p.m. to 6 a.m. <sup>374</sup>	Shall not be required to work <sup>375</sup>		Only with his or her consent <sup>376</sup>
<b>Working on a rest day</b>	With his or her consent except in order to perform temporary urgent works or as a result of <i>force majeure</i> <sup>377</sup>	Shall not be required to work <sup>378</sup>		Only with his or her consent <sup>379</sup>
<b>Additional paid day off</b>	No right to have additional days off			1 day a month; financed from State budget <sup>380</sup>
<b>Probation period</b>	Up to 4 months <sup>381</sup>	Shall not be implemented, if hired for employment (professional) positions which are prescribed for him or her <sup>382</sup>		Up to 4 months
<b>Holiday</b>	Annual holiday 28 days	Extended annual holiday, altogether 35 days, <sup>383</sup> out of which the holiday of more than 28 calendar days is financed from state budget funds; <sup>384</sup> in the first working year the person has a right to it regardless of the time worked. <sup>385</sup>		A parent or guardian raising a child under 18 has a right to 14 days of additional child care leave without pay <sup>386</sup>
<b>Business travel</b>	An employer has a right to send and the employee is required to go, but for no longer than 30 days, except for a longer duration by agreement of both parties <sup>387</sup>			Only with the employee's consent <sup>388</sup>

Source: Employment Contracts Act 2004; Holidays Act 2004; and Working and Rest Time Act 2003.

<sup>369</sup> Employment Contracts Act 2004, art 2(2). <sup>370</sup> Working and Rest Time Act 2003, art. 4(1). <sup>371</sup> Working and Rest Time Act 2003, art. 9(2). <sup>372</sup> Working and Rest Time Act 2003, art. 8(1). <sup>373</sup> Working and Rest Time Act 2003, art. 8(1). <sup>374</sup> Working and Rest Time Act 2003, art. 11(1). <sup>375</sup> Working and Rest Time Act 2003, art. 11(3). <sup>376</sup> Working and Rest Time Act 2003, art. 11(4). <sup>377</sup> Working and Rest Time Act 2003, art. 22(1) and (2). <sup>378</sup> Working and Rest Time Act 2003, art. 22(3). <sup>379</sup> Working and Rest Time Act 2003, art. 22(4). <sup>380</sup> Working and Rest Time Act 2003, art. 23. <sup>381</sup> Employment Contracts Act 2004, art. 33(2). <sup>382</sup> Employment Contracts Act 2004, art. 33(5). <sup>383</sup> Holidays Act 2004, art. 9(2). <sup>384</sup> Holidays Act 2004, art. 26(1). <sup>385</sup> Holidays Act 2004, art. 13(2). <sup>386</sup> Holidays Act 2001, art. 31(1) and (2). <sup>387</sup> Employment Contracts Act 2004, art. 51(1). <sup>388</sup> Employment Contracts Act 2004, art. 51(2).

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