

Rights of People with Intellectual Disabilities

Access to Education and Employment

Poland

Table of Contents

| | |
|---|----|
| Acknowledgements | 5 |
| Preface | 9 |
| Foreword | 11 |
| I. Executive Summary and Recommendations | 13 |
| 1. Executive Summary | 13 |
| 2. Recommendations | 20 |
| II. Country Overview and Background | 25 |
| 1. Legal and Administrative Framework | 25 |
| 1.1 International standards and obligations | 25 |
| 1.2 Domestic legislation | 26 |
| 2. General Situation of People with Intellectual Disabilities . | 27 |
| 2.1 Definitions | 28 |
| 2.2 Diagnosis and assessment of disability | 28 |
| 2.3 Guardianship | 29 |
| 2.4 Statistical data | 33 |
| III. Access to Education | 36 |
| 1. Legal and Administrative Framework | 36 |
| 1.1 The right to education | 36 |
| 1.2 Structure and administration of schools | 38 |
| 1.3 Assessment of disability for educational purposes | 44 |
| 1.4 Early intervention | 47 |
| 2. Government Education Policy | 51 |
| 2.1 The EU and Government education policy | 51 |
| 2.2 National programmes | 52 |
| 3. Education in Practice | 54 |
| 3.1 Resources and support | 54 |
| 3.2 Inclusive education | 56 |
| 3.2.1 Mainstreaming | 56 |

| | | |
|-------|--|-----|
| 3.2.2 | Special schools | 65 |
| 3.3 | Education outside the school system | 69 |
| 3.3.1 | Home schooling | 70 |
| 3.3.2 | Education in remedial classes | 73 |
| 3.3.3 | Education of children in institutions | 75 |
| 4. | Transition from Education to Employment | 81 |
| 4.1 | Vocational training | 81 |
| 4.2 | Adult and life-long education | 83 |
| 4.3 | Employment services | 84 |
| IV. | Access to Employment | 87 |
| 1. | Legal and Administrative Framework | 87 |
| 1.1 | Domestic legislation | 87 |
| 1.1.1 | National employment legislation | 87 |
| 1.2 | Diagnosis and assessment for employment and benefits purposes | 93 |
| 1.3 | The role of the social welfare system | 98 |
| 2. | Government Employment Policy | 102 |
| 2.1 | The EU and Government employment policy | 102 |
| 2.2 | National employment policy | 103 |
| 3. | Employment in Practice | 108 |
| 3.1 | Statistical data | 110 |
| 3.2 | Employment on the open market | 112 |
| 3.3 | Sheltered employment | 114 |
| 3.3.1 | Sheltered workplaces | 114 |
| 3.3.2 | Occupational workshops | 117 |
| 3.3.3 | Occupational therapy workshops | 119 |
| V. | Conclusions | 121 |
| | Annex 1. The Polish educational system | 126 |
| | Annex 2. Legislation cited in the report | 127 |
| | Annex 3. Bibliography | 132 |

Index of Tables

| | |
|--|-----|
| Table 1. Estimated number of people with intellectual disabilities aged 16 years old and above | 34 |
| Table 2. Number of students in primary and lower secondary schools (2002–2003) | 58 |
| Table 3. Students with disabilities enrolled in integrated education in 2003 | 61 |
| Table 4. Students with intellectual disabilities in special primary schools and special lower secondary schools (2002–2003) | 66 |
| Table 5. Children and young people with intellectual disabilities in special education care centres and educational centres (on 31 October 2002) | 77 |
| Table 6. Students with intellectual disabilities in secondary schools (2002–2003) | 82 |
| Table 7. Examples of social benefits available to people with disabilities and their families | 101 |
| Table 8. Economic activity of people with disabilities (first quarter of 2003) | 110 |
| Table 9. Economic activity of people with intellectual disabilities (2000) | 111 |
| Table 10. People with intellectual disabilities registered in labour offices as unemployed or seeking a job (end of the first semester 2003) | 112 |
| Table 11. Employment in sheltered workplaces (December 2002) | 116 |

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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), 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.

Geert Freyhoff

Director
Inclusion Europe

I. Executive Summary and Recommendations

1. EXECUTIVE SUMMARY

Throughout Europe people with intellectual disabilities¹ 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 Poland, access to inclusive education and to any kind of employment remains highly limited. Most children with intellectual disabilities receive education in a segregated environment and are not able to attend a mainstream school. A very positive development is the increasing number of children with intellectual disabilities attending an integrated school, where children with intellectual disabilities are educated alongside children without disabilities. However, at present there are not enough schools to meet the demand from parents. Children with intellectual disabilities do not leave school with the skills they need to access employment. Very few are employed on the open market and there is no framework for supported employment in Poland. As yet, the Government has not done enough to create programmes and initiatives specifically promoting the employment of adults with intellectual disabilities.

Background

Poland has ratified most international human rights instruments, including those with provisions relating to the rights of people with disabilities. However, Poland has yet to sign and ratify the revised European Social Charter; or to sign and ratify Protocol No. 12 to the Protection of Human Rights and Fundamental Freedoms (ECHR). The Polish Constitution, as well as other legislation, provides a general protection from

¹ The term “intellectual disability” (also described as “learning disability” or “mental retardation”) here refers to a lifelong condition, 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.

discrimination and guarantees care and integration into social life for people with disabilities. The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities (hereafter, Act on Rehabilitation) regulates the vocational and social rehabilitation of people with disabilities, but people with intellectual disabilities are specified in very few regulations.

There is lack of specific data on people with intellectual disabilities in Poland. It can be estimated that there were approximately 130,000 adults with intellectual disabilities in Poland in 2002. This figure includes only those with legal disability status, aged 16 or over, living in households; those living in institutions are not included. Precise data on children is not available. Poland has adopted the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders definition of intellectual disability and the term "mental retardation" is used most frequently in legislation. There are different procedures for the diagnosis and assessment of intellectual disability for educational purposes (for children); employment (for adults); and access to social benefits (for adults and children). For educational purposes, children are diagnosed with one of four levels of intellectual disability (*mild, moderate, severe and profound*). For employment purposes, disability is assessed by the Social Insurance Institute, which determines the right to social benefits, and by Disability Assessment Boards, which establishes legal disability status. For children and adults with intellectual disabilities, legal disability status can only be awarded for those with disabilities of at least a *moderate* level.

In Poland, a significant number of people with intellectual disabilities are placed under guardianship. However, the assessment procedures for placing people with disabilities under guardianship are often not sufficiently comprehensive and the courts usually impose *plenary*, rather than *partial*, guardianship for people with intellectual disabilities. Guardianship does not represent a barrier to employment, as people under plenary guardianship retain the right to work. However, the protection of people under guardianship remains inadequate, as wards do not have access to the legal or other support needed if their guardian violates their rights.

Education

The Constitution and other legislation recognise the universal right to education but there is no anti-discrimination legislation which applies specifically to education. The education system is regulated by the Act on the Education System. This includes provisions on children and young people with disabilities, including the right to education at any type of school and to individual teaching, curricula and classes. Cases of discrimination in education can be brought to the Ombudsman or the Children's Rights Ombudsman. Integration is both legislated and encouraged, and various schooling options are available for people with intellectual disabilities. These include mainstream, integrated and special schools, individual teaching (home schooling), remedial classes and education in institutions. Schools are under the responsibility of local authorities and counties. Most funding is from the State budget in the form of

educational subsidies, calculated according to a per-capita allowance on the principle of “funds follow the student”. However, there has been criticism that the weighting system for children with intellectual disabilities does not allocate enough funding to meet the real needs of some students. Moreover, the local authorities do not always make budget allocations according to these per-capita regulations, further disadvantaging students needing extra support.

While there are positive examples of early intervention services operated by NGOs, at present there is no formalised (governmental) system of early intervention. Early intervention services are available in medical centres, non-governmental early intervention centres and psychological-educational counselling centres. However, parents are not always aware of these services, which are also under funded and not readily available to children in rural areas. Bureaucracy can present an additional barrier for many parents.

Assessments of disability for educational purposes are carried out in psychological-educational counselling centres by a multidisciplinary team of specialists. These make evaluations of a child’s need for remedial classes, individual teaching, or special education (including the form of special education to be provided). Although parents or guardians have the right to challenge an assessment or request a reassessment, in practice few actually exercise this right. Consequently, although the law provides for the transfer of students from special to mainstream education, in practice this rarely happens. The quality of assessment varies, as many centres are understaffed and overworked, and equipment for therapy and diagnosis is often inadequate. There is evidence that in some cases the local authorities have compelled the counselling centres to prescribe forms of education that were available within the county, rather than making a recommendation corresponding to the actual needs of the child.

Poland acceded to the European Union (EU) on 1 May 2004 and will now receive EU Structural Funds. A proportion of these funds will be directed towards programmes for people with disabilities, including on education. However, at present it is too early to assess the impact of these new funds. The reforms of the education system initiated in 1999 have also included special education, although with a significant delay in comparison with other areas of the education system.

As of 2004, one year of pre-school education is obligatory for all children. At this stage, however, it is unclear how this will be organised for children with intellectual disabilities, especially in rural areas. At the primary and lower secondary levels, although children with intellectual disabilities are increasingly being integrated into the mainstream education system, the majority still attend special schools. In 2002–2003, there were a total of 61,677 students with intellectual disabilities in special schools (not including secondary schools) for students with intellectual disabilities. However, special schools suffer from significant under-funding, which has resulted in cutbacks in staffing levels and spending on educational resources, and is leading to their progressive closure. Special schools for children with *mild* intellectual disabilities follow the same programme principles of general education as mainstream schools, but the curriculum

is adapted to the students' abilities. Special schools for students with *moderate/severe* intellectual disabilities have separate programme principles of general education. The quality of special education depends very much on the school and there are sometimes waiting lists for schools with a good reputation.

One of the most promising developments for the inclusive education of children with intellectual disabilities is the growth of integrated schools, in which children with disabilities are taught in the same class as children without disabilities, with the support of additional educators. In 2002–2003, over 4,000 students with (mostly *mild*) intellectual disabilities were enrolled in such schools, which provide quality education for both children with and without disabilities. The number of integrated schools is far too inadequate to meet needs, particularly at secondary level, and parents must compete to secure places for their children. In 2002–2003 there were 34,751 students with intellectual disabilities in mainstream schools (including those in integrated schools). However, the conditions in mainstream schools often do not meet the particular special needs of children with intellectual disabilities, as they are not provided with the support they require. In particular there are not enough specialists to provide support, and teachers do not receive adequate training in disability issues. There is also a lack of flexibility and the curricula are not adequately adapted to the individual needs of the child. Integrated education is more difficult at the secondary school level, particularly for children with *moderate* intellectual disabilities. At present, the educational needs of children with autism are not adequately met in either mainstream or special schools (some of which exclude children with autism). Generally, students with intellectual disabilities start out in integrated schools, but transfer to special education as they get older.

Education outside the education system is provided through individual teaching, and in remedial classes and residential institutions. In 2002–2003, almost 15,000 children with disabilities received individual teaching (home schooling), but the number of children with intellectual disabilities is not known. Individual teaching is intended as a temporary solution for children with severe health problems, but in some cases it can be assigned to meet the needs of the system rather than the needs of the child. Many children remain in individual teaching throughout their school education. Recently introduced Government regulations on individual teaching have been widely criticised for reducing the possibility for home schooled children to attend at least some classes at a school. Remedial classes provide education for children and young people with *profound* intellectual disabilities. These can be organised with the education system (in kindergartens and schools), in special educational care centres, non-governmental remedial centres, social care homes, community self-help homes or medical care centres; or at the child's family home. In some cases, there is a lack of organisation and supervision of remedial classes and an insufficient number of specialists to organise classes. However, many non-governmental remedial centres, such as those provided by the Polish Association for Persons with Mental Handicap (PAPMH), provide a positive learning environment for this group of children.

Education for children with intellectual disabilities is also provided in social welfare homes, special educational care centres and education care centres. In 2002 there were over 20,000 children with intellectual disabilities in special education centres and education care centres; the precise numbers in social welfare homes are not available. By law, social welfare homes must provide access to education. Children with *profound* intellectual disabilities in social welfare homes attend remedial classes at the home, while children with *mild, moderate* and *severe* intellectual disabilities attend a special school at the home, or a neighbouring special school. Special education care centres are boarding schools where both boarders and non-boarders receive education at various levels. Education care centres do not include a school, but they must nonetheless provide education. Education care centres and special education care centres have for some time been inadequately regulated. New regulations on special education care centres have now been proposed, but have been criticised as insufficient. The Ombudsman has particularly highlighted the fact that many children from disadvantaged families are unnecessarily placed in special education care centres, and that insufficient effort is made to seek more appropriate alternatives for these children. There is also a lack of adequate coordination between the Ministry of National Education and Sport and the Ministry of Social Policy, which both have responsibilities with respect to children in these centres.

Transition from education to employment

In 2004, almost 18,000 students with intellectual disabilities were receiving vocational training and education. Most were students with *mild* intellectual disabilities, who continue their education in special vocational schools. However, courses taught at these schools rarely correspond to the needs of the labour market and even those students who complete such vocational education are often not integrated into the workforce. School-leavers with *mild* intellectual disabilities, who as adults do not meet with the criteria for legal disability status, face particular problems in competing for employment on the open market. The employment services (including employment counselling) provided through the labour offices are not well adapted to the special needs of people with disabilities, so few access these services. The “Junior Programme” is an interesting new initiative intended to enable school-leavers with disabilities to take up apprenticeships. However, the number of apprentices taken on so far is quite low and it is likely that very few of these are people with intellectual disabilities. The fact that those receiving social benefits would have to suspend their entitlements to be eligible for this programme is likely to be the main reason for this. People with intellectual disabilities are effectively excluded from continuing education and their opportunities for rehabilitation are also limited. As a result, after completing school, a large number of young people with intellectual disabilities are not able to participate in any kind of activity or work and so just remain at home.

Employment

Polish law guarantees the right to work and to choose a profession. Recent legislation has strengthened protection against discrimination in employment, or in access to vocational training and counselling, for people with disabilities. Poland has fully transposed the provisions of the EU Employment Directive into national legislation. The Act on Rehabilitation regulates the rehabilitation and employment of people with disabilities. It provides a definition of disability and provisions concerning the assessment of disability. The Government Plenipotentiary for Disabled Persons' Affairs is responsible for supervision of the tasks arising from the act.

The assessments of disability carried out by the Social Insurance Institute and Disability Assessment Boards are both based on medical examination and carried out by a team of specialists. There are no clear rules for carrying out the assessments, which are often open to individual interpretation and do not answer the specific needs of people with intellectual disabilities.

The Disability Assessment Boards determine legal disability status and (for adults) the degree of disability (*low, moderate or significant*). However, the definitions of the degrees of disability set out in the Act on Rehabilitation are discriminatory and not in line with international standards, in that they presume incapacity to work is automatically linked to the ability to lead an independent life. As a result, people who may not be able to lead an independent life automatically receive a recommendation for therapy only, and not for employment. The certificates issued by the boards can be stigmatizing and superficial, and do not specify the kind and degree of support that is essential. Adults assessed by the boards as having a moderate or significant degree of disability and are considered only able to work in a sheltered workplace, although they may also work in non-sheltered employment conditions if the work place has been approved as adapted to their needs. People with *mild* intellectual disabilities cannot receive legal disability status, which thereby excludes them from a number of legal protections.

The assessment of disability carried out by the Social Insurance Institute assesses the ability of the person with disability to work (partial or total inability to work) and to live independently. This assessment determines eligibility to social benefits and also the level of the benefits received. Most people with intellectual disabilities are fully reliant on social welfare benefits (either inability to work pensions or social pensions), but cannot register as unemployed or claim unemployment benefits. However, people with all degrees of disability nonetheless have the right to register at a labour office as seeking employment and use the employment services provided by the labour offices.

As an EU Member State, Poland receives EU Structural Funds, which will be used to improve the vocational and social rehabilitation of people with disabilities and improve their level of vocational preparedness and employability. The main way in which the employment of people with disabilities is encouraged is through the quota system. However, at present most employers prefer to pay into the State Fund for the Rehabilitation of People with Disabilities rather than engage a person with disabilities.

Very few people with intellectual disabilities find work through this quota system. Local governments must also implement programmes to develop and maintain the employment of people with disabilities. Targeted programmes are also created and funded from the State Fund, although none of these are specifically addressed at people with intellectual disabilities. NGOs are closely involved in providing employment opportunities for people with disabilities. In the past, they were rarely consulted on draft legislation, or on the development of targeted programmes, but recent legislation should improve coordination and partnership.

The current high level of unemployment in Poland has particularly affected people with disabilities, who are disadvantaged in entering the work force by the negative attitude of employers, co-workers and over-protective parents. Available statistics on people with intellectual disabilities reveal that most are unemployed on a long-term basis and that their levels of employment and economic activity fall well below that of even people with other types of disabilities. Very few are employed on the open market and there is no framework for supported employment in Poland.² There are only a very limited number of Government programmes which train and maintain people with disabilities in employment, such as the “Junior Programme”, but these are not adapted to the needs of people with intellectual disabilities. The best example of supported employment is one operated by an NGO, the Job Coach Project, initiated by the Agency of Supported Employment, in Wrocław.

Employers are supported in a variety of ways when they commit themselves to running one of two forms of sheltered employment: a sheltered workplace or an occupational workshop. The sheltered workplaces receive significant Government funding but employ relatively small numbers of people with intellectual disabilities, and then mostly those with a *mild* degree. These workplaces are segregated and do little to develop the skills needed for employment on the open market. The workplaces have also been criticised for inadequacies such as poor working conditions and mismanagement of funds, and it is also unclear whether they will meet recent EU requirements for sheltered employment. Occupational workshops are a new form of sheltered employment in Poland and provide employment to people with more significant disabilities. However, to date, Government funding for these workshops has been quite limited. A final option for people with intellectual disabilities is the occupational therapy workshops, which are day centres providing individual therapy, often run by NGOs or local authorities. They are not considered as employment, but provide participation in social and vocational rehabilitation. However, although these workshops have trained participants capable of employment, in most cases there is no work available for them.

² 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.

2. RECOMMENDATIONS

General recommendations

Legislation

1. Poland should sign and ratify the Revised European Social Charter (RESC) and should bind itself to Article 15 of the RESC (on the right of persons with disabilities to independence, social integration and participation in the life of the community).
2. Poland should sign and ratify Protocol No. 12 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).

Data collection

3. While respecting all relevant legislation on the protection of personal data, the Central Statistical Office should gather consistent, complete and continuous statistics on the situation of people with intellectual disabilities, including on their human rights. This should include people with *mild* intellectual disabilities who are currently excluded from statistical records on disability.

Guardianship

4. The Government should introduce regulations to specify that *plenary* guardianship should be imposed only under limited circumstances, so that wards can exercise their rights to the fullest possible extent.

Deinstitutionalisation

5. The Government should take steps to eliminate large social care institutions, which are a barrier to social inclusion and limit the residents' access to education and employment. Alternative forms of housing in the community should be made more widely available.

Public awareness

6. All public authorities, at both the national and regional levels, should in collaboration with NGOs and other organisations working with people with intellectual disabilities, initiate intensive action to change the social perception of the rights of people with intellectual disabilities and to increase public awareness of their situation.

Coordination and support

7. The Government should create a common strategy and rules of cooperation to improve coordination between the various ministries (the Ministry of National Education and Sport; the Ministry of Social Policy; the Ministry of Economy

and Labour; and the Ministry of Health) responsible for policy on people with disabilities, including those with intellectual disabilities.

8. The Government should prepare and implement a consistent and comprehensive programme of support for people with intellectual disabilities and their families. This should cover all periods of life (from early intervention to care of the elderly) and should include material, psychological and social support. The programme should aim to ensure that families receive comprehensive and reliable information on the forms of support available to them. The Government should coordinate with NGOs which are already providing elements of such a system.
9. The Ministry of Health, the Ministry of Social Policy and the Ministry of National Education and Sport should, in coordination with NGOs and other organisations working with people with intellectual disabilities, ensure that psychological support and counselling is made available to parents at all stages of the life of their child with intellectual disabilities.

Recommendations on transition from education to employment

Vocational training

10. The Ministry of National Education and Sport should ensure better organisation of vocational training in vocational schools.

Continuing education

11. The Ministry of National Education and Sport, together with the Ministry of Social Policy, should ensure that formalised programmes of life-long education are created for adults with intellectual disabilities, including refresher courses and development of skills.

Recommendations on education

Education policy

12. The Ministry of National Education and Sport should develop clear guidelines and financing mechanisms to support mainstream educational opportunities for people with intellectual disabilities.
13. The Ministry of National Education and Sport should undertake a review of the form and concept of special education in Poland to promote inclusive education. New standards of education for children with disabilities should be introduced, with particular attention paid to adapting the education that is offered to the needs and potential of children with *mild* intellectual disabilities.

14. The Ministry of National Education and Sport should analyse the functioning of integrated schools and take steps to increase the number of such schools, in order to create more opportunities for the inclusive education and development of children and young people with intellectual disabilities.
15. The Ministry of National Education and Sport should review the practice of individual teaching (home schooling), such that these alternatives to inclusive education are only provided for those pupils whose health makes school attendance impossible or very difficult. The rules³ limiting the possibility of conducting individual teaching at school should be changed.
16. The Ministry of National Education and Sport and the Ministry of Social Policy, should, as part of a general deinstitutionalisation programme, take strategic decisions about the concept and function of special education care centres and education care centres. Local schools should be enabled to provide education for children presently resident in centres, for example by developing integrated classes in mainstream schools.
17. As part of an overall deinstitutionalisation policy, the Government should ensure that students attending boarding schools are guaranteed by law certain standards of care and residence. Credible periodic evaluation of the need for the child to attend such a centre should be made and concrete action taken towards returning the child to the family.

Early Intervention

18. The Government should make early intervention services widely available to children from birth to the age of three, with services provided by multidisciplinary teams.

Assessment for educational purposes

19. The Ministry of National Education and Sport should comprehensively review and evaluate the guidelines for assessment bodies to ensure that the educational placement is based on the child's own abilities and needs.
20. The Ministry of National Education and Sport should ensure that assessments for educational purposes are changed from a one-time evaluation to a longer diagnostic process that combines observation with examination.
21. The education of pupils with intellectual disabilities should be based on individual programmes (education and rehabilitation) and be the subject of intense observation and evaluation by multidisciplinary teams.

³ Regulation of the Minister of National Education and Sport on the manner and course of organisation of individual teaching for children and young people, 29 January 2003, *Dziennik Ustaw* (an official journal – hereafter, Dz. U.) of 2003, No.23, item. 193.

Financing

22. The Government should implement more effective controls to ensure that local governments comply with the “funds follow the student” approach when making education budget allocations.

Educational support

23. The Ministry of National Education and Sport should ensure that specialists (in particular teachers in mainstream schools and specialists in psychological-educational counselling centres) are better prepared to work with people with intellectual disabilities, by improving the quality of education at university level.
24. The Ministry of National Education and Sport should encourage greater cooperation between teachers from mainstream, integrated, special schools, specialists in psychological-educational counselling centres, methodological consultants and other specialists.
25. The Government should ensure that children and young people with intellectual disabilities, and their parents and teachers, are provided with better access, at the level guaranteed by law, to psychological-educational support.
26. The Ministry of National Education and Sport should ensure that mainstream schools are adapted to be more flexible to carrying out individual programmes. Methods of work used in schools should include real preparation for students' contribution to social life.

Recommendations on employment*Legislation*

27. The Government should undertake a review of how the EU Employment Directive has been adopted and interpreted in Poland, to ensure that its provisions are fully implemented with respect to the specific needs of people with intellectual disabilities.
28. The Government should introduce legislation on supported employment and establish a national system of supported employment.

Assessment of disability for employment purposes

29. The Ministry of Social Policy should reform the assessment system of the Disability Assessment Boards used to grant disability status, to reflect internationally accepted standards and eliminate discriminatory provisions linking inability to work with disability status. In particular, the assessments should focus on the opportunities for people with intellectual disabilities to develop and live an active life, and the support required for them to achieve this.

Employment policy

30. The Government should review the current employment situation and level of vocational training of people with *mild* intellectual disabilities, to develop policy on integrating them into the labour market, as well as people with other levels of intellectual disabilities.

Employment support

31. The Government should improve the system of support for the employment of all people with intellectual disabilities, particularly those with a *moderate* and *significant* degree of disability.

Social benefits

32. The Ministry of Economy and Labour and the Ministry of Social Policy should assess the current system of eligibility for *inability to work* pensions and social pensions, and in particular current regulations which constitute barriers to access for some services aimed at vocational activity.
33. The Ministry of Social Policy should set the level of social benefits for people with intellectual disabilities having taken into account the costs of independent living, integrated into society. The level should allow for the higher costs of living an active life in society.
34. The Ministry of Social Policy should review the current situation of the right to inability to work pensions, for people who are *totally* incapable of working because of a disability developing before the age of 18 and who have the right to a social pension, with a view towards granting these people access to insurance pensions during employment.⁴
35. The Ministry of Social Policy should readjust the right to social protection of persons *partly* incapable of working because of a disability which developed before the age of 18, to increase eligibility for social insurance assigned on the basis of inability to work.⁵

⁴ At present, as these persons do not fulfil the third condition required in the Pensions Act – the specified period during which the disability appeared – when they are employed (and are paying compulsory social insurance), they do not have the right to a pension from insurance assigned on the basis of inability to work

⁵ At present, these individuals do not have the right to social pensions, nor do they have the possibility of forming a pension from the social insurance assigned on the basis of inability to work. When they are employed and paying compulsory insurance, they still do not have the right to receive a pension from social insurance assigned on the basis of inability to work. This can happen only in the case of deterioration of health within the period of insurance (or no later than 18 months after that period), which is serious enough for the person to be assessed as totally incapable of working. Otherwise, in spite of insurance, the person would not have the right to social insurance assigned on the basis of inability to work.

II. Country Overview and Background

1. LEGAL AND ADMINISTRATIVE FRAMEWORK

Poland has ratified most international human rights instruments, including those with provisions relating to the rights of people with disabilities. However, Poland has yet to sign and ratify the revised European Social Charter, or to sign and ratify Protocol No. 12 to the Protection of Human Rights and Fundamental Freedoms (ECHR). The Polish Constitution, as well as other legislation, provides a general protection from discrimination and guarantees care and integration into social life for people with disabilities. The Act on Rehabilitation regulates the vocational and social rehabilitation of people with disabilities, but people with intellectual disabilities are specified in very few regulations.

1.1 International standards and obligations

Poland has ratified most major human rights instruments, including those with provisions relating specifically to the rights of people with disabilities. Poland ratified the International Covenant on Civil and Political Rights⁶ (CCPR) in 1977; and the International Covenant on Economic, Social and Cultural Rights⁷ (CESCR) in 1997. Poland ratified the Convention on the Rights of the Child⁸ (CRC) in 1991.

After gaining membership of the Council of Europe in 1991, Poland ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms⁹ (ECHR) in 1993. However, Poland has not signed or ratified Protocol No.12 to the ECHR, which includes the general prohibition against discrimination.¹⁰ Poland ratified the European Social Charter¹¹ (ESC) in 1997 and is bound by Article 15 on the right of physically and mentally disabled persons to vocational training,

⁶ International Covenant on Civil and Political Rights (CCPR), 23 March 1976, 999 U.N.T.S. 171.

⁷ International Covenant on Economic, Social and Cultural Rights (CESCR), 3 January 1976, 993 U.N.T.S. 3.

⁸ International Convention on the Rights of the Child (CRC), 2 September 1990, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

⁹ 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).

¹⁰ Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 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 2004).

¹¹ European Social Charter (ESC), 1 July 1999, C.E.T.S. 035, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm> (accessed 1 September 2005).

rehabilitation and social resettlement. Poland has not signed or ratified the Revised European Social Charter (RESC).¹²

Poland has ratified all of the eight fundamental conventions of the International Labour Organization (ILO).¹³ Poland has also ratified ILO Convention C142 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975; and in 2004 also ratified ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983.

1.2 Domestic legislation

All provisions contained in the Constitution of the Republic of Poland of 2 April 1997 also apply to people with disabilities. Article 32 contains a general prohibition against discrimination.¹⁴ The Constitution also guarantees the right to social security for people with disabilities, and the obligation of public authorities to ensure their medical care. Article 69 states that “Public authorities shall provide, in accordance with the statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication.”

The Charter of Rights for Persons with Disabilities, approved by the Parliament (*Sejm*)¹⁵ on 1 August 1997, also prohibits discrimination. The Charter acknowledges that people with disabilities have the right to an independent, active life, free from discrimination. The Charter was approved in the form of a resolution, so it is not binding, but rather represents the will of Parliament. Legislation adopted after 1 August 1997 cannot contradict the terms of the Charter. The Charter also imposes an obligation on the Polish Government to provide information concerning implementation of the rights of persons with disabilities.¹⁶

¹² 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).

¹³ The International Labour Organisation (ILO) has identified eight fundamental ILO Conventions: Convention on the Abolition of Forced Labour, 1930 (No. 29); Convention on the Freedom of Association and Protection of the Right to Organize, 1948 (No. 87); Convention on the Right to Organize and Collective Bargaining, 1949 (No. 98); Convention on Equal Remuneration, 1951; (No. 100) Convention on Abolition of Forced Labour, 1957 (No. 105); Convention on Equality Discrimination (Employment and Occupation) 1958 (No. 111); Convention on the Elimination of Child Labour and Minimum Age, 1973 (No. 138); Convention on Worst Forms of Child Labour, 1999 (No. 182).

¹⁴ All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever. Constitution of the Republic of Poland, Dz. U. of 1997, No 78, item. 48, art. 32, (hereafter, Constitution).

¹⁵ The *Sejm* is the Lower Chamber of the Polish Parliament. The Higher Chamber of the Parliament is the *Senat* (Senate).

¹⁶ The Charter of Rights for Persons with Disabilities, Resolution of the *Sejm* of 1 August 1997, *Monitor Polski*, 1997, No 50, item. 475, (hereafter, Charter of Rights).

Regulation of the vocational and social rehabilitation of people with disabilities is specified in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities 1997 (hereafter, Act on Rehabilitation) and its implementing regulations, which has been in force since 1998.¹⁷ Regulations concerning rehabilitation refer to all people with identified disabilities. People with intellectual disabilities are mentioned specifically in only a few regulations.

As a member of the European Union (EU) since 1 May 2004, Poland is obliged to fully transpose the anti-discrimination *acquis* into domestic law. Poland has transposed into national legislation the provisions of the European Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation¹⁸ (hereafter, the Employment Directive), through amendments to the Labour Code and other legislation.¹⁹

2. GENERAL SITUATION OF PEOPLE WITH INTELLECTUAL DISABILITIES

There is a lack of specific data on people with intellectual disabilities in Poland. It can be estimated that there were approximately 130,000 adults with intellectual disabilities in Poland in 2002. This includes only those with legal disability status, aged 16 or over and living in households; those living in institutions are not included. Precise data on children is not available. Poland has adopted the American Psychiatric Association's DSM-IV definition of intellectual disability and the term "mental retardation" is used most frequently in legislation. There are different procedures for the diagnosis and assessment of intellectual disability for educational purposes (for children); employment (for adults); and access to social benefits (for adults and children). For educational purposes, children are diagnosed with one of four levels of intellectual disability (mild, moderate, severe and profound). For employment purposes, disability is assessed by the Social Insurance Institute, which determines the right to social benefits, and by Disability Assessment Boards, which establishes legal disability status.

¹⁷ The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 27 August 1997, Dz. U. 1997, No. 123, item. 776, (with last amendment 20 April 2004, Dz. U. 2004, No. 99, item. 1001), (hereafter, Act on Rehabilitation). This act replaced the Act on Employment and Rehabilitation of Persons with Disabilities 1991. The new system of support for social and vocational rehabilitation of people with disabilities, based on the quota system, is based on this act.

¹⁸ European Union 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 (accessed 3 September 2004).

¹⁹ European Commission, *Equality and Non-Discrimination Annual Report 2004*, Directorate-General for Employment and Social Affairs, European Commission, Luxembourg, 2004, p. 13 (available at http://www.europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubdocs/annualrep2004_en.pdf) (accessed 24 November 2004).

For children and adults with intellectual disabilities, legal disability status can only be awarded for those with disabilities of at least a moderate level. In Poland, a significant number of people with intellectual disabilities are placed under guardianship. However, the assessment procedures for placing people with disabilities under guardianship are often not sufficiently comprehensive and the courts usually impose plenary, rather than partial, guardianship for people with intellectual disabilities. Guardianship does not represent a barrier to employment, as people under plenary guardianship retain the right to work. However, the protection of people under guardianship remains inadequate, as wards do not have access to the legal or other support needed if their guardian violates their rights.

2.1 Definitions

In Poland the term “disability” is used as a general term for all types of disabilities. However, for intellectual disability, the term “mental retardation” is more common and is used in almost every legal act.²⁰ Poland has adopted the definition and levels of “mental retardation” formulated by the World Health Organization’s *International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, (hereafter, ICD-10);²¹ and by the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Revision, (hereafter, DSM-IV).²²

According to the DSM-IV, intellectual disability is defined as “significantly sub-average intellectual functioning (an IQ of approximately 70 or below) existing concurrently with deficits or impairment in present adaptive functioning in at least two of the following areas: communication, self-care, home living, social skills, use of community resources, self-direction, health and safety, functional academic work, leisure and work. The onset of intellectual disability is defined as before the age of 18.”²³

2.2 Diagnosis and assessment of disability

There are different assessment procedures for educational purposes (for children); for determining eligibility to social insurance benefits (for adults); and for establishing legal disability status (for adults and children). Intellectual disability is diagnosed according to four levels: *mild*, *moderate*, *severe* and *profound*.²⁴ These four levels of intellectual disability are used mainly for educational purposes, and the diagnosed level of intellectual disability can determine the type of education that a child receives.

²⁰ This report uses the terms “intellectual disability” and “person with intellectual disabilities”, with the exception of titles of legal acts and in certain proper names, such as the Polish Association for Persons with Mental Handicap (PAPMH).

²¹ World Health Organization, *International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, Geneva, 1992, (hereafter, ICD-10). The WHO uses the term “mental retardation” rather than “intellectual disability”.

²² American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*, Fourth Edition, Washington, DC, 1994, (hereafter, DSM-IV).

²³ DSM-IV, pp. 39–46.

²⁴ ICD-10.

Psychological-educational counselling centres are responsible for assessments for educational purposes.

Assessment of the level of intellectual disability is also important for establishing legal disability status for adults and children, as only individuals with *moderate*, *severe*, or *profound* intellectual disabilities can obtain legal disability status. Such assessments are made by Disability Assessment Boards. For people aged over 16, the boards issue legal disability status with one of three degrees of disability: *low*, *moderate* or *significant*. The Act on Rehabilitation regulates legal disability and the operation of the Disability Assessment Boards.²⁵

The Social Insurance Institute (ZUS) carries out a separate assessment of eligibility for social benefits (for adults), based on the ability of the individual to work (partial or total working incapacity) and to live independently. A person identified as having partial working incapacity does not automatically qualify for disability benefits.

2.3 Guardianship

In Poland, there are two different kinds of guardianship: *plenary* and *partial*. Under *plenary* guardianship, a guardian is appointed and acts on behalf of the ward in all matters. Under *partial* guardianship, a supervisor is appointed whose agreement is essential for the validity of legal acts made by the ward.²⁶ People who are at least aged 13 can be placed under *plenary* guardianship; and people who are at least aged 18 can be placed under *plenary* or *partial* guardianship.

People are placed under *plenary* guardianship (and so lose all legal capacity) if, because of intellectual disability,²⁷ they cannot “control their behaviour”.²⁸ Such vague wording could lead to the abuse of this provision. If the circumstances do not warrant *plenary* guardianship, but a person needs assistance, he or she can be placed under *partial* guardianship²⁹ and the legal capacity of the person is partially restricted. There is also very little data concerning the number of people with intellectual disabilities under

²⁵ Since 2002 the legal disability status for children up to the age of 16 has been granted by the same Disability Assessment Boards as for persons over the age of 16. Act on Rehabilitation, art. 4a.

²⁶ The Civil Code, 23 April 1964, Dz. U. 1964, No. 16, item. 93, (last amendment 2 July 2004, Dz. U. 2004, No. 172, item. 1804), art. 13, 16 and 17, (hereafter, Civil Code).

²⁷ The Civil Code uses the term “mental deficiency”. A person can be placed under *plenary* guardianship if because of mental health problems, mental deficiency or other “mental disorders”, particularly alcoholism and drug addiction they cannot “control their behaviour”. Civil Code, art. 13.

²⁸ Civil Code, art. 13.

²⁹ Civil Code, art. 16.

guardianship. Research can only estimate that people with intellectual disabilities are far more often under *plenary* than under *partial* guardianship.³⁰

A request for *plenary* or *partial* guardianship can be proposed by the spouse of the individual; by close relatives, such as brothers or sisters; by a statutory representative; or by a prosecutor.³¹ The request must clearly state why the person needs a guardian or supervisor. The best interests of the ward must be the criteria for the request, and the justification for the order by a judge. The convenience of officials or financial considerations cannot be a premise for guardianship³² and such abuse of guardianship is punishable by a fine³³ of up to Polish Złoty (PLN) 1,000 (or approximately €217).³⁴

Cases on guardianship are processed in regional courts, which have greater jurisdiction than district courts.³⁵ Before beginning the court proceedings, the court can demand a medical certificate concerning the state of the person.³⁶ One or more experts in psychiatry consider the person's degree of intellectual disability, possibility of self-control and eventual need.³⁷ On the basis of the opinions of two experts, the court can send the potential ward to a medical centre for observations, for a period of between six weeks and three months. The court is also obliged to listen to the person concerned, their statutory representative or a spouse.

If the person cannot participate in the court proceedings, the court may not call the person to trial and the proceedings may either be held in the person's home or the court may appoint a supervisor to represent the person during court proceedings. A person who is placed under guardianship has the right to appeal against the judgement.³⁸ If the reasons for requesting guardianship cease to exist, the judgement can be repealed. If the ward's state of health improves, *plenary* guardianship can be changed to *partial*, and conversely *partial* guardianship can be changed to *plenary*.³⁹

³⁰ In 2002, with the collaboration of the Polish Association for Persons with Mental Handicap (PAPMH) and the Clinic of Rights at Warsaw University, a report was prepared on "Practice of guardianship of people with intellectual disabilities in Polish courts" (unpublished). It was based on an analysis of guardianship cases involving people with intellectual disabilities in six regional courts in Poland, in 1998–2002. (Hereafter, PAPMH, *Practice of guardianship*).

³¹ The Code of Civil Procedure, 17 November 1964, Dz. U.1964, No. 43 (last amendment 2 July 2004, Dz. U. 2004, No. 172, item. 1804), item. 296, (hereafter, Code of Civil Procedure).

³² Civil Code; and Judgement of the Supreme Court (post. SN of 25 April 1972, unpublished).

³³ Code of Civil Procedure, art. 545.

³⁴ Throughout the report, the exchange is calculated at PLN 4.6 = €1.

³⁵ Code of Civil Procedure, art. 544 and 546.

³⁶ Code of Civil Procedure, art. 552.

³⁷ Code of Civil Procedure, art. 553.

³⁸ Code of Civil Procedure, art. 547.

³⁹ Code of Civil Procedure, art. 559-560.

The spouse or parents should be appointed as the guardian if this is not in conflict with the person's best interests.⁴⁰ The guardian, supervisor and the child's parents are under the supervision of a guardianship court.⁴¹ The guardian is obliged to report to the guardianship court at least once a year and produce proof of any financial transactions on behalf of the ward.⁴² A supervisor can represent the ward or administer the ward's property to the extent specified by the court.⁴³ For example, if the guardian or supervisor wishes to sell property (or anything more than just administer the assets) of the ward, they must have the agreement of the guardianship court. Usually members of the family are the primary guardians of wards, however, sometimes employees of social welfare homes are the guardians.

People under *plenary* guardianship do not have the right to conclude any legal acts and any legal action they take is invalid. Only transactions of everyday life, such as buying bread or a newspaper are valid (if they are not harmful for the ward).⁴⁴ Legally, the ward cannot make any personal decisions.⁴⁵ The ward is deemed incompetent to sign an employment contract, but the law does not prohibit a person under *plenary* guardianship from becoming an employee. It seems that the guardian can sign the employment contract on behalf of the ward, although the law is unclear. Also if an employee is placed under *plenary* guardianship the employment contract is still valid, but it is unclear how the employer can enforce the fulfilment of the employee's duties.⁴⁶

A person under *partial* guardianship can carry out certain transactions relating to everyday life and administer his or her property and income without the agreement of the supervisor.⁴⁷ The person has the right to be employed and to sign an employment contract. However, if employment is harmful for the ward, the supervisor (with the agreement of the guardianship court) has the right to terminate employment.⁴⁸

In spite of the fact that guardianship is intended to provide legal protection for people with intellectual disabilities, there are often grave breaches of the law that have serious

⁴⁰ The Family and Guardianship Code, 25 February 1964, Dz. U. 1964, No. 9, item. 59 (last amendment 17 June 2004, Dz. U. 2004, No. 162, item. 1691).

⁴¹ Family and Guardianship Code, art. 155, 165 and 178.

⁴² Family and Guardianship Code, art. 166.

⁴³ Family and Guardianship Code, art. 181.

⁴⁴ Civil Code, art. 14.

⁴⁵ Civil Code, art. 13.

⁴⁶ Opinion accessed by the Law Department of the Main Labour Inspectorate, 22 March 2004.

⁴⁷ Civil Code, art. 20-22.

⁴⁸ The Labour Code, of 26 June 1974, unified text Dz. U. 1998, No. 21, item. 94, (last amendment 30 April 2004, Dz. U. 2004, No. 120, item. 1252), art. 22.

consequences for the ward.⁴⁹ The current legal framework does not always ensure recourse to the law when there are serious infringements of the constitutional rights of people with disabilities, who do not receive the support or advice to which they have the right by law. Institutions that have “taken over” the right to defence from people under guardianship often do not fulfil their duties. During court proceedings, too often people with disabilities are not the *subjects* but the *objects* of the case.⁵⁰

Research has shown that in most cases the medical diagnosis of a person under guardianship strays from the prescribed standards and there are serious mistakes and failures of procedure. This applies to both initial and final diagnoses.⁵¹ Courts generally prefer *plenary* guardianship, although *partial* guardianship is a milder form of legal interference in a person’s autonomy and should be preferred. Very often decisions made about people with intellectual disabilities are treated as permanent and final, in spite of the fact that there is a right to seek review.⁵²

People with intellectual disabilities and their families are often treated in a most discriminatory and illegal manner when they attempt to obtain the services and benefits to which they are legally entitled. For example, the Units of the Social Insurance Institute, ZUS, do not permit withdrawal of social pensions if the person is not under guardianship.⁵³ Similarly, courts that conduct inheritance proceedings demand that an heir with intellectual disabilities be under guardianship in order to receive a bequest. In some cases, dentists illegally demand written proof of guardianship, particularly when necessary medical treatment increases the risk to the

⁴⁹ PAPMH, *Practice of guardianship*. The results show a number of infringements among these cases. Complaints concerning infringements of the law on guardianship are also addressed to the Ombudsman (see: case no. RPO-418864-XI/02/GR). A control conducted in 2003 by the Minister of Justice verified these infringements. Source: letter from the Minister of Justice to the Ombudsman of 4 November 2003, accessed by PAPMH, 1 March 2004.

⁵⁰ Letter from the Minister of Justice to the Ombudsman of 4 November 2003, accessed by PAPMH, 1 March 2004.

⁵¹ A request for guardianship must be accompanied by a certificate on disability status; medical information containing diagnosis and the degree of intellectual disability; and information about other possible health disorders. However, in the legal files examined, very often there were no certificates or medical information. If medical documents were included, they were often not signed by a psychiatrist or neurologist. In some cases there was no information on the doctor’s specialisation, or the documents were signed by doctors with non-relevant specialities; one was signed by a veterinary surgeon. In some cases, legal proceedings did not include a current, obligatory psychiatric examination. In most cases examined, in making the diagnosis, the psychiatrist did not refer to psychological examinations and the diagnosis relating to the degree of intellectual disability was made on the basis of a single contact with the person in question. PAPMH, *Practice of guardianship*

⁵² Code of Civil Procedure, art. 559.

⁵³ Information from Jarosław Kamiński, lawyer, Polish Association for Persons with Mental Handicap, via e-mail, 16 January 2004.

person with intellectual disabilities. All these acts are illegal.⁵⁴ Measures have been taken to change this situation by the Ombudsman (Commissioner for Citizens' Rights) and the Polish Association for Persons with Mental Handicap (PAPMH).

According to reports from social welfare homes, guardians (usually relatives) administer the pension that remains after paying for the person's care at the social welfare home, even if they do not fulfil their duties towards their wards. Moreover, even guardians who evade fulfilment of their role and do not contact their relative inherit these savings after the ward's death.⁵⁵

2.4 Statistical data

In 2002, there were 4,450,139 people with legal disability status in Poland, or 11.6 per cent of the population.⁵⁶ This figure is even higher if people without legal disability status, but with total or severely limited ability to carry out fundamental activities, such as people with *mild* intellectual disabilities, are also included. In this case, in 2002 there were 5,456,711 people with disabilities (14.3 per cent of the population).⁵⁷

Among those with diagnosed disabilities of all types, the most numerous were people with *low* (35.5 per cent) and *moderate* (32 per cent) degrees of disability; there were fewer with a *significant* degree of disability (23.9 per cent).⁵⁸ The number of children with disabilities aged zero to 16 was approximately 135,000 (three per cent of people with legal disability status). However, these figures only refer to children with legal disability status, who had the right to a nursing allowance in 2002. The real number of children with disabilities at that age is therefore higher.⁵⁹

There is a lack of data concerning people with intellectual disabilities. Research conducted in 2000 indicated that people with intellectual disabilities aged 15 and over

⁵⁴ M. Szeroczyńska, "Guardianship of persons with intellectual disabilities – how to avoid pressure and create alternative forms of support", (in Polish), in conference proceedings "Rights of Persons with Disabilities – theory, practice, essential activities", 13-14 November 2001, Office of the Ombudsman, Warsaw, June 2002, pp. 22–29, (hereafter, Szeroczyńska, *Guardianship*).

⁵⁵ Office of the Ombudsman, *Informacja Rzecznika Praw Obywatelskich na temat stanu przestrzegania praw niepełnosprawnych dzieci i młodzieży w domach pomocy społecznej (w latach 1999–2000)*, (*Information from the Office of the Ombudsman concerning respect for the rights of children and young people with disabilities in social welfare homes*), Office of the Ombudsman, Warsaw 2002 (*unpublished*).

⁵⁶ The total population in Poland in 2002 was 38,300 million. Central Statistical Office, *Persons with disabilities and their households*, (in Polish), CSO, Warsaw, 2003, (hereafter, CSO, *Persons with disabilities and their households*).

⁵⁷ CSO, *Persons with disabilities and their households*.

⁵⁸ There were also 251,875 persons (5.7 per cent) with an unknown degree of disability. CSO, *Persons with disabilities and their households*.

⁵⁹ CSO, *Persons with disabilities and their households*.

make up three per cent of all those with disability status.⁶⁰ As shown in Table 1, it can therefore be estimated (although with a large margin of error) that there were approximately 130,000 people with intellectual disabilities in Poland in 2002. This includes only those with legal disability status aged 16 or over, living in households; those living in institutions are not included.

Table 1. Estimated number of people with intellectual disabilities aged 16 years old and above⁶¹

| | | Number of people with disabilities [1] | Percentage of people with disabilities who have intellectual disabilities [2] (per cent) | Number of people with intellectual disabilities [3] |
|--------------------|-------------|--|--|---|
| Sex | Men | 2,069,851 | 3.5 | 72,445 |
| | Women | 2,163,279 | 2.5 | 54,082 |
| Place of residence | Towns | 2,524,539 | 2.4 | 60,589 |
| | Countryside | 1,708,591 | 3.7 | 63,218 |
| Total | | 4,233,130 | 3.0 | 126,994 |

Sources: (1) S. Kostrubiec, *Osoby niepełnosprawne na rynku pracy w 2000 roku*, (*Persons with disabilities on the labour market in 2000*), Central Statistical Office, Warsaw, 2001. (2) Central Statistical Office, *Osoby niepełnosprawne i ich gospodarstwa domowe*, (*Persons with disabilities and their households*), Warsaw, 2003. (3) Calculation: E. Wapiennik.

It is difficult to estimate the number of people with intellectual disabilities below the age of 16. The most precise information is collected for educational purposes, but this is based on different criteria. Within the educational system, children are counted as having intellectual disabilities on the basis of their special education needs evaluation. However, these evaluations can also be made for pupils with *mild* intellectual disabilities who in adult life can be assessed as not having legal disability status, and who often do not consider themselves disabled. There is a complete lack of information concerning children with intellectual disabilities of pre-school age.

Due to lack of data, it is also difficult to estimate the percentage of people with intellectual disabilities living in institutions. In 2001 there were 983 social welfare homes with 85,254 residents. Among these were 267 social welfare homes for people with intellectual disabilities, with 22,713 residents. These consisted of 169 social welfare

⁶⁰ S. Kostrubiec, *Persons with Disabilities on the Labour Market in 2000*, (in Polish), Central Statistical Office, Warsaw 2001, (hereafter, Kostrubiec, *Persons with Disabilities and the Labour Market*).

⁶¹ The information in the table only includes individuals with legal disability status living in households, not those living in institutions. [1] Number of people with disabilities, aged 16 and over. According to data from the 2002 census. [2] Percentage of people with disabilities, age 15 and over, who have intellectual disabilities. According to research conducted in 2000. [3] Estimated number of people with intellectual disabilities aged 16 and over in 2002. Calculated from [1] and [2].

homes for adults with intellectual disabilities, with 14,864 residents, and 98 social welfare homes for children and young people with intellectual disabilities, with 7,849 residents.⁶² Many social welfare homes still have more than 100 residents, despite the fact that the new standards (to be implemented by 2006) allow a maximum of 100 residents.⁶³ A large number of children with intellectual disabilities are wards in special education care centres and education care centres. In the school year 2002–2003 these centres had almost 20,000 pupils with intellectual disabilities.

⁶² Central Statistical Office, *Statistical Yearbook of the Republic of Poland 2002*, (in Polish), CSO, Warsaw, 2002, (hereafter, CSO, *Statistical Yearbook 2002*).

⁶³ For more about the situation of people with intellectual disabilities in residential institutions, see: Inclusion Europe and Polish Association for Persons with Mental Handicap, *Human Rights of Persons with Intellectual Disability. Country Report – Poland*, Inclusion Europe and PAPMH, Brussels, January 2002, available on the Inclusion Europe website at <http://www.inclusion-europe.org/documents/327.pdf> (accessed 10 March 2005), (hereafter, Inclusion Europe and PAPMH, *Poland report*).

III. Access to Education

1. LEGAL AND ADMINISTRATIVE FRAMEWORK

The Constitution and other legislation recognise the universal right to education but there is no anti-discrimination legislation which applies specifically to education. The education system is regulated by the Act on the Education System. This includes provisions on children and young people with disabilities, including the right to education at any type of school and to individual teaching, curricula and classes. Cases of discrimination in education can be brought to the Ombudsman or the Children's Rights Ombudsman. Integration is both legislated and encouraged, and various schooling options are available for people with intellectual disabilities. These include mainstream, integrated and special schools, individual teaching (home schooling), remedial classes and education in institutions. Schools are under the responsibility of local authorities and counties. Most funding is from the State budget in the form of educational subsidies calculated according to a per-capita allowance on the principle of "funds follow the student", but there has been criticism that the weighting system for children with intellectual disabilities does not allocate enough funding to meet the real needs of some students. Moreover, the local authorities do not always make budget allocations according to these per-capita regulations, further disadvantaging students needing extra support.

While there are positive examples of early intervention services operated by NGOs, at present there is no formalised (governmental) system of early intervention. Early intervention services are available in medical centres, non-governmental early intervention centres and psychological-educational counselling centres. However, parents are not always aware of these services, which are also under funded and not readily available to children in rural areas. Bureaucracy can present an additional barrier for many parents. Assessments of disability for educational purposes are carried out in psychological-educational counselling centres by a multidisciplinary team of specialists. These make evaluations on a child's need for remedial classes, individual teaching, or special education (including the form of special education to be provided). Although parents (or guardians) have the right to challenge an assessment or request a reassessment, in practice few actually exercise this right. So although the law provides for the transfer of students from special to mainstream education, in practice this rarely happens. The quality of assessment varies, as many centres are understaffed and overworked, and equipment for therapy and diagnosis is often inadequate. There is evidence that in some cases the authorities have compelled the counselling centres to prescribe forms of education that were available within the county, rather than making a recommendation corresponding to the actual needs of the child.

1.1 The right to education

The right to education is specified in the Constitution⁶⁴ and in the Act on the Education System and its implementing regulations.⁶⁵ The right to education for children with intellectual disabilities is also guaranteed by the Act on the Protection of Mental Health.⁶⁶

⁶⁴ Constitution, art. 32.

⁶⁵ The Act on the Education System, 7 September 1991, unified text in Dz. U. 2004, No. 256, item. 2572, (hereafter, Act on the Education System).

⁶⁶ The Act on the Protection of Mental Health, 19 August 1994, Dz. U. 1994, No. 111, item.. 535, (last amendment of 22 December 2000, Dz. U.2000, No.120, item. 1268), (hereafter, Act on the Protection of Mental Health).

The Constitution states that education up to the age of 18 is both compulsory and universal⁶⁷ for citizens and non-citizens.⁶⁸ Moreover, the Charter of Rights for Persons with Disabilities provides children and young people with disabilities the right to be educated at schools together with children and young people without disabilities of the same age, as well as the right to special or individual teaching.⁶⁹

The main legislative framework for the educational system is the Act on the Education System and its implementing regulations. In accordance with this act, special education is an integral part of the education system in Poland,⁷⁰ although a system of separate special schools remains, and integrated schools represent only a fraction of all mainstream schools. The act ensures the right to education and care for all children and young people at a level appropriate to their age and level of development. For children and young people with disabilities, the act provides the right to education at any type of school as well as the right to individual teaching, curricula and classes, and appropriate adjustments to the content of the curricula in order to correspond to individual abilities.⁷¹

In Poland, there is no anti-discrimination legislation that applies specifically to education. The Constitution contains only a general anti-discrimination clause: “no one shall be discriminated against in political, social or economic life for any reason whatsoever”.⁷² There are no specialised bodies or procedures to address cases of discrimination in education. However, according to the Act on the Education System the observance of children’s rights, and creating awareness of these rights, is under the supervision of the Ministry of National Education and Sport (hereafter, Ministry of Education).⁷³

Cases of discrimination in education can be addressed directly to the persons or bodies responsible for educational supervision. Depending on the type of case, this could be the head of a school (who supervises the teachers);⁷⁴ a school superintendent (who supervises schools and other educational centres in the province);⁷⁵ or the Minister of Education (who supervises and coordinates educational supervision throughout the

⁶⁷ Constitution, art. 70.

⁶⁸ Details are specified in the Act on the Education System; and Regulation of the Minister of National Education on the enrolment of persons who are not Polish citizens in public kindergartens, schools and institutions, 4 October 2001, Dz. U. 2001, No. 131, item. 1458.

⁶⁹ Charter of Rights.

⁷⁰ Act on the Education System, art.2

⁷¹ Act on the Education System, art. 1.

⁷² Constitution, Article 32.

⁷³ Act on the Education System, art. 33.

⁷⁴ Act on the Education System, art. 35.

⁷⁵ Act on the Education System, art. 31.

entire country).⁷⁶ They can be also brought to the Ombudsman⁷⁷ (Commissioner for Citizens' Rights) or the Children's Rights Ombudsman⁷⁸ (Commissioner for Children's Rights). Some of the cases supported by both these Ombudsmen regarding people with intellectual disabilities are referred to later in this report.

1.2 Structure and administration of schools

In Poland, education is compulsory for *all* children from the age of seven to 18, regardless of whether or not they have disabilities (and regardless of the degree of a child's disabilities).⁷⁹ Education begins with primary school (six years) and lower secondary school (three years) and lasts until completion of lower secondary school, but not beyond the age of 18. After lower secondary school, compulsory education continues with public or private secondary school, or outside school education.⁸⁰ As of 1 September 2004, all children in Poland must also attend one year of pre-school.⁸¹

⁷⁶ Act on the Education System, art. 35.

⁷⁷ The Act on the Commissioner for Civil Rights Protection, 15 July 1987, unified text, Dz. U. 2001, No. 14, item. 147. The Ombudsman is responsible for defending the human rights and civil liberties enshrined in the Constitution and other legal instruments. Everyone has the right to make a complaint to the Ombudsman. The Ombudsman investigates whether there has been a violation of law, or of the principles of community life and justice, through the action (or failure to act) of a Government organ or an organisation or institution obliged to abide by and respect human rights and civil liberties. The Ombudsman can examine individual cases, conduct independent surveys, publish reports and make recommendations to the Government. A case may be directed simultaneously to a court, and in such cases both the court and the Ombudsman remain independent while examining the case.

⁷⁸ The Act on the Ombudsman for Children, 6 January 2000, Dz. U. 2000, No. 6, item. 69. The Children's Rights Ombudsman is responsible for ensuring the complete and harmonious development of children with due respect for their dignity and empowerment. The direct addressees of the Ombudsman's action are organs of the public authorities (such as the President, Parliament and the Government) and governmental institutions, local authorities and NGOs. The Ombudsman for Children may ask them for explanations and necessary information, as well as access to files and documents. They may also be asked to undertake action for the benefit of children within their range of competency. The Children's Rights Ombudsman may approach them and submit opinions and motions aimed at the effective protection of a child's rights and welfare. The Ombudsman for Children may also turn to appropriate organs and submit a motion to take legislative initiative or to issue or alter existing legal regulations. The Ombudsman undertakes action foreseen by the law at his or her own initiative, paying special attention to information which may indicate violation of a child's rights or welfare. The Children's Rights Ombudsman submits annual reports to Parliament.

⁷⁹ Act on the Education System, art. 15.

⁸⁰ Act on the Education System, art. 16. According to Article 68b of the Act on the Education System, education outside the education system is organised in public and non-public centres providing life-long education, which receive an accreditation from the school superintendent.

⁸¹ Act on the Education System, art. 14. This obligation starts in the calendar year in which the child turns six. Previously, children aged six had the right to one year of pre-school (referred to as 'zero year') but no obligation. Many children did not attend pre-school, especially in rural areas. Pre-school education for children aged three to five is voluntary.

The Polish educational system provides a variety of schooling options for people with intellectual disabilities, including mainstream schools (which can have special or integrated sections), integrated schools, special schools, and other educational units such as non-governmental remedial centres.⁸² Special schools for students with intellectual disabilities are divided into schools for students with *mild* intellectual disabilities and schools for students with *moderate* and *severe* intellectual disabilities.⁸³ Education outside the public school system is provided through individual teaching and in residential institutions. Private and non-governmental organisations also offer educational options for people with intellectual disabilities.

Children with intellectual disabilities who have been evaluated as needing special education can also attend pre-school beyond the age of six and their compulsory primary school education can be postponed until the end of the school year when they reach the age of ten.⁸⁴ Students with disabilities also have the right to attend each stage of education for a longer period than pupils without disabilities;⁸⁵ for at least one year at each stage of education.^{86 87} Children and young people with *profound* intellectual disabilities fulfil their compulsory pre-schooling and schooling obligation by participating in remedial classes.⁸⁸ These classes can be provided both within the education system (in public kindergartens and schools), in special educational care centres, non-governmental remedial centres, social care homes, community self-help homes and medical care centres; or at the child's family home. Children and young people have the right to attend such classes between the ages of three and 25.

⁸² Act on the Education System, art. 71 b.

⁸³ The Regulation of the Minister of National Education and Sport on educational framework programmes (framework organisation sheets) in public schools, 12 February 2002, Dz. U. of 2002, No. 15, item. 142, (hereafter, Regulation on educational framework programmes).

⁸⁴ Act on the Education System, art. 14. As of 1 September 2004 a child, for whom compulsory primary school education is postponed, is obliged to attend one year of pre-school before he or she starts compulsory education (at the age of nine).

⁸⁵ Regulation on educational framework programmes.

⁸⁶ Primary school to the age of 16, lower secondary school to the age of 21 and secondary school to the age of 24. See: T. Serafin, "Step by step towards equal opportunities in education", (in Polish), materials from the conference "Step by step towards equal opportunities in education", 19 November 2003, Radom. The given age brackets are based on the already invalid Ordinance of the Minister of Education of 4 October 1993, Dz. U. No. 29, item. 36.

⁸⁷ However, those rights are not respected in every case. Comment added by a representative from the Helsinki Foundation for Human Rights after the OSI Roundtable, Warsaw, June 2004. *Explanatory note: OSI held a roundtable meeting in Poland in June 2004 to invite critique of the present report in draft form. Experts present included representatives of the government, parents and NGOs.*

⁸⁸ Act on the Education System, art. 16.

The State has no reliable data on the number of children who do not fulfil their obligation of attending school.⁸⁹ The directors of public primary and lower secondary schools are responsible for overseeing whether children in their counties fulfil their compulsory education requirement, while the municipalities are responsible for overseeing whether students between 16 and 18 years of age fulfil their compulsory education after they complete lower secondary school. The municipalities are obliged to send to the school directors an up-to-date list of children between the ages of three and 18 who live in their school district.⁹⁰ However, these lists are often outdated and incomplete. For example, some children fulfil their compulsory education in schools outside their county of residence, in public, private, or non-governmental schools or special schools. Although the directors of such schools or centres are obliged to inform the director of the public school of the district where the child lives that the child was admitted to a school outside the district,⁹¹ not all directors carry out this obligation. Although the obligation to study of young persons between the age of 16 and 18 is the responsibility of the municipalities, research by the Helsinki Foundation for Human Rights has shown that this obligation is not being carried out.⁹²

There is no data on how many children with intellectual disabilities do not fulfil their obligation of attending school. In August 2002, the Ministry of Education reported that only 560 students with disabilities (0.37 per cent of all students with disabilities) did not fulfil their compulsory schooling obligation in the school year 2001–2002.⁹³ Of these children, there were many with *profound* intellectual disabilities. There is also no information on the number of young people with disabilities of any kind between the ages of 16 and 18 who do not fulfil their obligation to study. However, in the light of research by the Helsinki Foundation, the data provided by the Central Statistical Office for the year 2001, which shows that 97.6 per cent of graduates of primary schools continue their education, does not seem reliable.

Financing of the education system

Local authorities (communities) are responsible for establishing and administering public kindergartens; mainstream and integrated primary schools; and lower secondary schools. Secondary schools and special schools are established, administered and

⁸⁹ Research conducted by the Helsinki Foundation for Human Rights in 2001–2002. Helsinki Foundation for Human Rights, *The right to education. Report from monitoring*, Warsaw, 2002, (hereafter, Helsinki Foundation, *Right to education*).

⁹⁰ Act on the Education System, art. 19.

⁹¹ Act on the Education System, art. 16.

⁹² Helsinki Foundation, *Right to education*.

⁹³ Document setting out the organisation of special education, based on information collected via telephone from school superintendents' offices. Supreme Chamber of Control, *Report on the results of inspections of the organisation and financing of the education of persons with disabilities in public schools*, (in Polish), SCC, Zielona Góra, December 2003, (hereafter, Supreme Chamber of Control, *Report on education of persons with disabilities*).

maintained by county authorities (*poviats*).⁹⁴ Funding for education is guaranteed to the local authorities by a general State subsidy that includes funds for education (hereafter, education subsidy).⁹⁵ The amount is specified each year in the State Budget.⁹⁶ The education subsidy provides, above all, for operational expenses and the salary costs of teachers and other specialists. In addition, local authorities also have other income, such as from taxes, which is partly spent on education. The amount allotted to education depends on the relative wealth of the region; the wealthier local authorities spend up to 20 per cent more on education than their poorer neighbours.⁹⁷ The local authorities themselves decide how this income is to be spent. Local authorities are responsible above all for renovations, investments and for providing schools with special equipment essential for teaching the curriculum.⁹⁸

Education subsidies are calculated according to the principle “funds follow the student” and are based (among other things) on the number of students who attend schools administered or established by local authorities. The total amount received by each local authority is based on a standard amount per student plus a weighting for particular groups of students (including students with intellectual disabilities) and groups of schools (for example, integrated schools).⁹⁹ There is, however, some controversy over the weighting system, in that the same weighting, and therefore the same amount of funds, is used for children with *moderate* and *severe* intellectual disabilities, *profound* intellectual disabilities, multiple intellectual disabilities and diagnosed autism. However, the costs of education for students with multiple

⁹⁴ Act on the Education System, art. 5.

⁹⁵ The Act on Incomes of units of territorial self-government, 13 November 2003, Dz. U. 2003, No 203, item. 1966.

⁹⁶ According to the Supreme Chamber of Control (the supreme body responsible for State auditing, reporting to the Parliament) in 2002 funding for education to local authorities was severely inadequate. The main reasons were a lack of standards for calculating educational costs and unreliable planning and implementation of budgets. In many local authorities the subsidy was not sufficient to cover the costs of the educational tasks to be funded. The expenses of local authorities exceeded the amount of subsidies received by 15.7 per cent. At the same time, one in three local authorities spent less money than provided by the subsidy for education from the State Budget. The costs of educating a student at a particular school differ widely. For those local authorities which were audited, the average cost of education of one student was PLN 4,521 (€980) a year and in districts (*poviats*) PLN 3,749 (€815). The differences in costs varied between PLN 2,654 (€577) and PLN 7,630 (€1,660). This reflects the fact that in fairly wealthy and socially conscious areas the quality and organisation of education is better. Supreme Chamber of Control, *Report on education of persons with disabilities*.

⁹⁷ Helsinki Foundation, *Right to education*, pp. 53–90.

⁹⁸ Act on the Education System, art. 5.

⁹⁹ The rules for sharing the subsidy for education in 2004 are specified in the Regulation of the Minister of National Education and Sport on the part of general subsidy for education for units of territorial self-government in 2004, 22 December 2003, Dz. U. 2003, No. 225, item. 2231.

disabilities and autism are much higher than those associated with the education of students with *moderate* and *severe* intellectual disabilities.¹⁰⁰

Although the weightings affect the level of subsidies to schools, they are not a determinate for the access to education of children with disabilities.¹⁰¹ According to a report by the Helsinki Foundation for Human Rights,¹⁰² the principles for the distribution of subsidies for education are neither fixed nor clear-cut and the principle of “funds follow the student” is far from being realised. So far, only one in three representatives of local authorities have declared that expenditures on public education constitute the basis for the division of their budget. In other words, they do not respect the rule that “funds follow the student”. The fall, in real terms, (or the maintenance at existing levels) of expenditure on public education has led to less expenditure on teaching materials and activities which take place after compulsory classes, and also to overcrowding.

The local authority responsible for the school supervises its finances and administration.¹⁰³ The school superintendent¹⁰⁴ supervises the activities of schools and

¹⁰⁰ According to the statutes of schools, students with autism and multiple disabilities study in classes of two to four persons, whereas students with *moderate* and *severe* intellectual disabilities study in classes of six to eight persons. The Ministry of Education is currently conducting work to adapt additional weightings to the actual costs of education of particular groups of students with disabilities. Comment added after the OSI Roundtable, Warsaw, June 2004, by T. Serafin, Department of Regular and Special Education and Social Prevention, Ministry of Education and Sport, (hereafter, Ministry of Education). See also, for example: J. Jankowska, “Limitation of rights to education of children and youths with autism”, (in Polish), in conference proceedings “Rights of persons with disabilities – theory, practice, essential activities”, 13-14 November 2001, Office of the Ombudsman, Warsaw, June 2002, (hereafter, Jankowska, *Limitation of rights to education*).

¹⁰¹ Public expenditure for education in 2002 was PLN 33.800 billion (€7.3 billion),¹⁰¹ or 4.37 per cent of GNP. Expenditures from the State Budget for education in 2002 were PLN 24.5 billion, including PLN 22.3 billion (€4.8 billion) in educational subsidies for local authorities. In 2002 the share of educational subsidies from the State Budget in expenditures on education spent by local government authorities accounted for more than 72 per cent of total expenditures. Central Statistical Office, *Education in the School Year 2002/2003*, (in Polish), CSO, Warsaw, 2003, (hereafter, CSO, *Education in the School Year 2002/2003*).

¹⁰² Helsinki Foundation, *Right to education*, pp. 53–90.

¹⁰³ Act on the Education System, art. 34a.

¹⁰⁴ There is an office of the school superintendent in every region, usually with a few sub-regional offices.

other educational units in the provinces (*voivodeships*),¹⁰⁵ although this supervision has in the past often proved insufficient.¹⁰⁶

The educational system is monitored by the reporting obligation of schools and other educational institutions to the Central Statistical Office, and controlled by the Supreme Chamber of Control⁹⁰ and by the external examination system, which provides a great deal of information regarding the quality of education. Since 2002, all examinations at both primary and lower secondary school levels have been standardised for all students throughout the country. Examination results are checked by independent commissions, which compile results for students from across the country. Exceptionally, students with disabilities have the right to take an exam in a form that is adapted to the degree and type of their disability. However, as such exams are only obligatory for students with intellectual disabilities, who have a *mild* level of intellectual disabilities, examination scores only provide information regarding the quality of education for this group of students.¹⁰⁷ The Central Examination Commission and other Regional Examination Commissions carry out the analysis of the results of exams. There is, however, a lack of sufficient analysis concerning the examination results of students with intellectual disabilities, or of discussion as to how their form and content is adapted to the expectations.¹⁰⁸

Local authorities are obliged to provide free transportation to kindergartens, schools and other educational institutions (including non-public ones) for children with disabilities during their period of compulsory education.¹⁰⁹ This statutory requirement allows for reimbursement of the cost of the child's (and his or her parent's or

¹⁰⁵ In general, the educational system is monitored by the head of the school or other educational unit (who supervises the teachers), the school superintendent (who supervises schools and other educational centres in the whole province) and the Minister of National Education and Sport (who supervises and co-ordinates educational supervision in Poland). Act on the Education System, art. 31 and 35.

¹⁰⁶ For example, the results of audits by the Supreme Chamber of Control in 2002 indicate that there are irregularities and inefficiencies in educational supervision. Supreme Chamber of Control, *Report on results relating to the control of the organisation of pedagogical supervision, conducted by school superintendents and head masters of schools*, (in Polish), SCC, Warsaw 2002. Following the introduction of rules for educational supervision, the Act on the Education System was amended. As of September 2004, there is a new regulation concerning educational supervision: Regulation of the Minister of National Education and Sport on detailed rules on educational supervision, 23 April 2004, Dz. U. 2004, No. 89, item. 845. However, due to a lack of funding, it is hard to estimate whether these new rules will improve this situation in practice.

¹⁰⁷ Details are specified in: Regulation of the Minister of National Education and Sport on the conditions and ways of grading, classifying and giving promotions to students and conducting exams and tests at public schools, 21 March 2001, Dz. U. 2001, No. 29, item. 323, (last amendment 7 January 2003, Dz. U. 2003, No. 26, item. 225), (hereafter, Regulation on exams and tests).

¹⁰⁸ OSI Roundtable, Warsaw, June 2004.

¹⁰⁹ Act on the Education System, art 14a and 17. The right to be driven to school by school buses is also extended to children without disabilities if the distance from home to school is greater than three or, in some situations, four kilometres.

guardian's) travel to school by public transport. For some local authorities, this represents a huge financial burden. In 2002, in almost 50 per cent of the counties (*poviats*) where the Helsinki Foundation carried out research, children with disabilities had to travel between 20 and 40 kilometres a day to attend a special school.¹¹⁰

By law, private persons, foundations, or associations can establish non-public schools and other non-public educational centres.¹¹¹ Non-public schools providing compulsory education are financed from State sources. Non-public schools providing compulsory education (for children and young persons between the ages of seven and 18) receive subsidies for every student. Such subsidies are given to the local authority units,¹¹² who then make the final division of funds for expenditure in schools.¹¹³ There is no information on the percentage of students with intellectual disabilities in non-public schools.¹¹⁴ For children with *profound* intellectual disabilities and with multiple disabilities, education adapted to their needs is provided in non-governmental remedial centres.

1.3 Assessment of disability for educational purposes

For educational purposes, the most important assessment is made in public psychological-educational counselling centres. In these centres, teams of experts issue evaluations on the need for:

- special education;
- remedial classes; and
- individual teaching (home schooling).

An evaluation for special educational purposes is made at the request of the child's parent or guardian. Evaluations on the need for remedial classes are issued only in the case of children with *profound* intellectual disabilities. Evaluations are free of charge and completely voluntary. The written request for an assessment should include all previous medical or psychological assessments and any other relevant documentation. If such documents are not available, the assessment team will carry out the necessary examinations in order to make a proper diagnosis. The multidisciplinary team carrying

¹¹⁰ According to the authors of the report there is a need to adapt the conditions of the transport to the needs of children with physical disabilities as well as organising care for children with intellectual disability during travel. Helsinki Foundation, *Right to Education*, pp. 37–47.

¹¹¹ Act on the Education System, art. 82-86.

¹¹² In Poland there are 16 provinces (*voivodeships*), 379 districts (314 districts and 65 cities with district status), 2,478 municipalities and 40,057 village administrators' offices. There are 884 towns and 56,769 villages.

¹¹³ The amount of the subsidy cannot be lower than the amount provided per student in subsidies for education that is received by local authorities per student. Act on the Education System, art. 90.

¹¹⁴ In 2002-03, among non-public schools with the designation of public schools there were: 31 primary special schools with 664 students; 27 special lower secondary schools with 814 students and seven vocational and general vocational schools with 293 students.

out the evaluation consists of the director of the counselling centre (or another person appointed to preside over the team); a psychologist; an educator; a speech therapist; a doctor; and any other outside specialist whose participation the team considers essential. The team also obtains information from teachers of the child. The assessment is decided by majority vote and parents or guardians have the right to participate in the assessment meeting.

In evaluating the need for special education, the team gives the type of disability, the needs and possibilities of the child, and justification of the evaluation showing the type of individual remedial classes¹¹⁵ that the child will need. The team recommends the form of special education to be provided, for example in a mainstream school, an integrated school or class, or a special school or class. Evaluations for the type of school can be issued for the school year, for an educational period of a number of years; or for an indefinite period (which could be until the end of compulsory schooling). Evaluations for remedial classes are issued for up to five years. If the evaluation is issued for a defined period and the need for special education continues beyond that period, the assessment must be repeated.

Parents or guardians can challenge an evaluation for special education to the school superintendent through the expert assessment team. The team can decide either that the appeal is justified, and provide a new evaluation, or that it is unjustified, in which case the appeal is sent to the school superintendent. Before a final decision is taken, the school superintendent may question additional specialists (psychologists, educators, doctors or others). The decision of the school superintendent is final¹¹⁶ and parents who are dissatisfied with the decision must appeal to the administrative courts. The evaluation is received by parents and at their request the appropriate unit of the local authority has the responsibility to ensure that the child receives the prescribed form of education. Therefore, parents or guardians have the chance to contest the form of education prescribed.

The regulations described above also apply to the evaluation on the need for individual teaching. If parents (or guardians) request individual teaching, they must include in their written request a doctor's health certificate indicating that the state of the child's health would make attending school impossible or difficult. The medical certificate should specify a time period for home schooling. An evaluation for individual teaching is then issued for the period specified in the health certificate.

¹¹⁵ Remedial classes for children with *profound* intellectual disabilities are different from individual remedial classes in special schools for children with less severe disabilities. The latter are additional classes for individual work such as speech therapy.

¹¹⁶ Details concerning evaluations and opinions issued by public psychological-educational counselling centres are specified in: Regulation of the Minister of National Education on the evaluation of the needs for special education and individual teaching of children and youth and on detailed rules on directing pupils to special education or individual teaching of 12 February 2001, Dz. U. of 2001, No.13, item. 114, (last amendment 29 January 2003, in Dz. U. 2003, No. 23, item. 192).

Parents (or guardians) whose children have received an evaluation for special education or individual teaching can request a change in the evaluation if circumstances change; for example, if rehabilitation has been successful. They can also request a new assessment if the original diagnosis changes – for example if the condition of the child deteriorates.¹¹⁷ There is no data on how often parents exercise their right to challenge an assessment,¹¹⁸ but the available information suggests that probably few parents actually do so because they are not aware that they have such a right.¹¹⁹

The quality of assessment in psychological-educational counselling centres varies. The centres are often understaffed and overworked and the equipment for therapy and diagnosis is often inadequate.¹²⁰ Although there are signs that some centres take more modern approaches, assessment is generally still focused on what a child cannot do rather than on a child's capabilities. Recommendations are often general as opposed to individualised because the teams must recommend a form of education that already exists, but which may not be suited to individual needs.¹²¹ There is evidence that in some cases the authorities have compelled the psychological-educational counselling centres to prescribe forms of education that were available within the county, rather than making a recommendation which responded to the actual needs of the child.¹²² In order to meet real individual needs, schools would essentially be required to make new diagnoses and develop individual programmes for children.¹²³

While the law provides for the possibility for a child to transfer from special education to mainstream education, in practice this virtually never happens: 95 per cent of children with intellectual disabilities stay at special schools until the end of their

¹¹⁷ Regulation of the Minister of National Education and Sport on amending the regulation on the evaluation of the needs for special education and individual teaching of children and youth and on detailed rules on directing pupils to special education or individual teaching of 29 January 2003, Dz. U. 2003, No. 23, item. 192.

¹¹⁸ Interview with Teresa Serafin, Department of Regular and Special Education and Social Prevention, Ministry of Education, Warsaw, 10 December 2003.

¹¹⁹ Interview with Krystyna Mrugalska, President, Polish Association for Persons with Mental Handicap, (PAPMH), Warsaw, 18 and 23 December 2003.

¹²⁰ Methodological Centre for Psychological-Educational Support, *Psychological-educational guidance in the light of the database for the school year 2001/2002*, Warsaw, February 2003.

¹²¹ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

¹²² Interview with an official from the Office of the Children's Rights Ombudsman, Warsaw, 4 December 2003.

¹²³ Interview with Danuta Mochnacka, head of school No. 10 in Warsaw, for children with *moderate* and *severe* intellectual disabilities Warsaw, 2 December 2003. Education for students with *moderate*, *severe* and *profound* intellectual disabilities is based on individual educational programmes. Students with *mild* intellectual disabilities have the same programme principles of general education as in mainstream schools. Teachers are obliged to adapt the educational requirements to the individual needs of any student with disabilities, whereas individual remedial classes are adapted to every pupil's needs and are conducted in accordance with individual programmes.

education, although many could succeed in a mainstream environment.¹²⁴ A comprehensive professional multidisciplinary evaluation of a child is only carried out once.¹²⁵ The child is assessed in an unfamiliar environment, by unfamiliar people and is therefore at an automatic disadvantage.¹²⁶

All too often pupils without intellectual disabilities are placed in special schools for students with intellectual disabilities, usually because they come from disadvantaged families.¹²⁷ In the past, counselling centres regularly directed Roma children to special schools.¹²⁸ Roma associations protested against this procedure and in 1998–1999 and 1999–2000¹²⁹ school superintendents ordered a survey of the evaluations that sent Roma children into special education. This has resulted in much stricter control and such misdirection now rarely occurs.¹³⁰

1.4 Early intervention

While there are positive examples of early intervention services operated by NGOs, at present there is no formalised (governmental) system of early intervention. It is estimated that in 2001 the number of children with various disabilities between the ages of zero and seven was about 115,000, of which 45 per cent lived in rural areas. In 2002, the number of centres providing services to these children was not more than 120. These comprised:

- medical centres;
- non-governmental early intervention centres; and
- a few psychological-educational counselling centres (specialising in early intervention and early development support).

¹²⁴ J. Bogucka, “Students with disability at integrated schools”, (in Polish), materials from the conference “Integration or Segregation – problems of education of children with intellectual disabilities”, 28-30 November 2003, Warsaw, (hereafter, Bogucka, *Students with Disability*).

¹²⁵ Interview with Teresa Serafin, 10 December 2003.

¹²⁶ Interview with Jadwiga Bogucka, Methodological Centre for Psychological-Educational Support, Warsaw, 8 December 2003.

¹²⁷ J. Głodkowska, *Meeting the Student from a Special School*, (in Polish), WSiP, Warsaw 1999. How inaccurate reassessment procedures can be is evidenced by the case of a boy who completed a special school for students with *mild* intellectual disabilities, although he did not have intellectual disability (he had an IQ of 100). For many years, the centre did nothing to change the assessment. Information from a visit of representatives of the Office of the Ombudsman to a special educational centre in 2000. Office of the Citizen’s Rights Ombudsman, Case No. RPO/346374/2000.

¹²⁸ European Roma Rights Center, *The Limits of Solidarity: Roma in Poland After 1989*, Budapest, ERRC, 2003, pp. 156–157.

¹²⁹ Helsinki Foundation, *Right to Education*, p. 155–156.

¹³⁰ Interview with Teresa Serafin, 10 December 2003.

On average, these centres provided services for about 13,000 children.¹³¹ In 2003, the Polish NGO, the Association for the Rights of Persons with Mental Handicap (PAPMH) managed 26 early intervention centres throughout Poland, providing services to 5,600 children below the age of seven and their families.¹³²

There is little information as to the number of specialists with adequate qualifications, organisations and other facilities that are competent to provide early intervention services. For families living far away from centres providing early intervention services, commuting expenses contribute to the inability of the child and family to access these services.¹³³

Centres providing early intervention and early development support services must coordinate with various Ministries: Health, Education, and Social Policy. This bureaucracy presents a barrier to parents with young children seeking services because they must apply to different Ministries for different kinds of services.¹³⁴

Children up to the age of seven who show signs of disability, or are diagnosed as having disabilities, have the right to medical and psychological services, speech therapy and rehabilitation in medical institutions and medical centres. However, because of general funding problems in medical services provided by public health insurance, in reality children have limited access to such services. Parents of children with developmental disabilities very often complain that diagnosis of their child is made too late, sometimes when the child is between two and five years old, although signs of problems were identified by parents much earlier. Local paediatricians often do not react appropriately to parents' concerns and do not send the child to a specialist. Access to medical care is also not consistent throughout Poland, as medical specialists tend to be grouped in large urban centres and clinics and there is little information about services for parents.¹³⁵

By law, psychological-educational counselling centres must provide services to children who need them from birth. Theoretically, therefore, all children who need them have access to psychological, speech and pedagogical therapies. However, because counselling centres are understaffed and cannot meet demand, in practice they do not have the capacity to support young children with therapy.

Within the social welfare system, a family with a child with disabilities, up to the age of seven and meeting certain financial criteria, can receive financial assistance by applying

¹³¹ Recommendations of the new governmental programme "Early, specialist, complex, coordinated and permanent help for the child who is susceptible to disability or with disability and his or her family", February 2003. Material accessed by PAPMH, (hereafter, Recommendations for Children with Disabilities).

¹³² PAPMH, *Report of the Polish Association for Rights of Persons with Mental Handicap for the period: 3rd of March 2000 – 31 December 2003*, material accessed by PAPMH.

¹³³ Recommendations for Children with Disabilities.

¹³⁴ Recommendations for Children with Disabilities.

¹³⁵ Recommendations for Children with Disabilities.

to social welfare units. There are no special financial services for early intervention; the family can apply for financial assistance according to general regulations of social welfare. A child with disabilities has the right to a nursing allowance, but must have legal disability status issued by a Disability Assessment Board (the same board that issues disability identification for persons over 16).¹³⁶ In 2002, new criteria¹³⁷ were introduced for assessing disabilities in children up to the age of 16 and many people lost their right to this nursing allowance, previously paid on the basis of a medical certificate.¹³⁸ This affects many children with *mild* intellectual disabilities, because unless they have multiple disabilities these children now do not obtain legal disability status and thus do not get any type of disability benefit.

As access to services requires not only knowledge of a complex system, but presupposes that parents are aware of their rights, many children do not receive the early intervention, early development support or any other auxiliary services such as nursing care that they need.¹³⁹ This complicated system exposes the child and parents to repeated examinations, unnecessary costs and stress.¹⁴⁰

Currently, at the suggestion of NGOs, a pilot Government programme is being developed called “Early, multi-specialist, coordinated and permanent help for children who are susceptible to disability or children with disabilities and their families”. The draft of this programme was prepared by a working group of the Social Council on the Protection of Rights of Children with Disabilities, which operates under the office of the Ombudsman. This pilot programme will operate for five years and is intended to lead to the development of a national programme for early intervention for children with developmental disabilities.¹⁴¹ It is being coordinated between ministerial departments, but because the financing mechanism remains uncertain it is unclear as to how it will develop in practice and when it will begin.

Apart from early intervention, early development support is also provided and is oriented specifically towards education. Early development support is a new

¹³⁶ The amount of the nursing allowance is now PLN144 (€31 per month). Status as of 1 May 2004.

¹³⁷ Regulation of the Minister of Labour and Social Policy on the criteria of evaluation of the disability of persons up to age 16, 1 February 2002, (Dz. U. No. 17, item. 162).

¹³⁸ Office of the Children’s Rights Ombudsman, *Information from the Children’s Rights Ombudsman concerning activities in 2002 and some remarks relating to respect for children’s rights*, (in Polish), Office of the Children’s Rights Ombudsman, Warsaw, 2003, p. 48, (hereafter, Children’s Rights Ombudsman, Activities 2002).

¹³⁹ For example, early intervention services are the responsibility of the Ministry of Health; early development support is the responsibility of the Ministry of Education; access to benefits and other social services is the responsibility of the Ministry of Social Welfare; legal disability status is decided according to various procedures and by various administrative organs.

¹⁴⁰ Recommendations for Children with Disabilities.

¹⁴¹ Recommendations for Children with Disabilities.

programme which was introduced into the educational system in 2001.¹⁴² Opinions on the need for early development support are issued by expert teams in psychological-educational centres. This support¹⁴³ should be available from the moment a disability is detected until the child begins school.¹⁴⁴ In practice, however, since the enactment of this provision there has been no corresponding administrative regulation to actually provide this service and there is only a draft regulation. According to the Ministry of Education, which is responsible for this service, coordination of financing for early development support is currently being negotiated with the Ministry of Finance.¹⁴⁵ It is still unclear when these services will be provided.

Another issue that has been a main focus of discussion between the Ministry of Education and representatives of NGOs concerns the definition of who should be responsible for providing such early development support services. The Ministry of Education takes the position that early development support services are, above all, educational in nature and should therefore be provided by teachers. By contrast, NGOs are of the opinion that to be effective such support services must be provided by a multidisciplinary team.¹⁴⁶ Ultimately, a further amendment to the Act on Education, in 2003,¹⁴⁷ established that early development support should be carried out by “specialists with pedagogical qualifications to work with young children with disordered development”.¹⁴⁸ In the draft regulation, these are “special teachers with qualifications appropriate to the disabilities of the child, psychologists, speech therapists, and other specialists, if necessary”.¹⁴⁹ It is difficult to say whether the term “other specialist, if necessary” will allow for the provision of this service by a multidisciplinary team.

¹⁴² Act on amending the Act on the Education System and some other Acts, 23 August 2001, Dz. U. 2001, No. 111, item. 1194.

¹⁴³ In theory, the main tasks of specialists are: (1) cooperation with the family of the child regarding the diagnosis of the disability, support in interpreting the child’s behaviours, teaching correct reactions to these behaviours, training and counselling in conducted rehabilitation, information about necessary rehabilitation equipment, (2) determination of methods and forms of rehabilitation and therapy, (3) creation and realisation of an individual programme of early development support, including actions supporting the family, (4) analysis of the child’s progress and the effectiveness of the support and planning of further actions. Draft Regulation of the Ministry for Education on the organisation of early development support, available at the website of the Ministry of Education and Sport at <http://www.men.waw.pl> (accessed 1 March 2004)

¹⁴⁴ Act on the Education System, art. 71b.

¹⁴⁵ Interview with Teresa Serafin, 10 December 2003.

¹⁴⁶ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

¹⁴⁷ Act on amending the Act on the Education System and some other Acts, 27 June 2003, Dz. U. 2003, No. 137, item. 1304.

¹⁴⁸ Act on Education, art. 71 b.

¹⁴⁹ Draft Regulation of the Minister of National Education and Sport on the organisation of early development support, available at the website of the Ministry of Education at <http://www.men.waw.pl> (accessed 1 March 2004)

2. GOVERNMENT EDUCATION POLICY

Poland acceded to the EU on 1 May 2004 and will now receive EU Structural Funds. A proportion of these funds will be directed towards programmes for people with disabilities, including on education. However, at present it is too early to assess the impact of these new funds. The reforms of the education system initiated in 1999 have also included special education, although with a significant delay with respect to other areas of the education system.

2.1 The EU and Government education policy

During the EU accession process, the education of people with intellectual disabilities was not specifically mentioned by the Polish Government, the European Commission or other European institutions and was not included in *Accession Partnership* documents or in *Regular Reports* from the European Commission on Poland's progress towards accession. Each of these documents made very limited mention of disability in general.¹⁵⁰ NGOs representing people with disabilities and their families report that they were not consulted by the Government on Poland's progress towards accession in the disability field.¹⁵¹

Pre-accession EU funding did not generally support the development of programmes specifically for the education of people with intellectual disabilities in Poland. However, NGOs have received EU funding in this area for: (1) A report entitled "Human Rights of Persons with Intellectual Disability," prepared by Inclusion Europe and the Polish Association for Persons with Mental Handicap (PAPMH) in 2002.¹⁵² (2) The project "Family for Family", which provided support for families with a child with *profound* and/or multiple disabilities from a region of high unemployment with difficult access to special medical or social care. This was carried out by PAPMH (Szczecin Branch) and financed through the 1999 Phare Access Programme (77 per cent).¹⁵³

Following EU accession, Poland is now eligible for EU Structural Funds, a proportion of which will be directed towards programmes targeting people with disabilities. One of the areas in which these funds will be used is to facilitate access to education for students with special educational needs through the purchase of modern specialist

¹⁵⁰ The *Accession Partnership* documents and *Regular Reports* on Poland, and other documents on enlargement are available on the European Commission website at <http://europa.eu.int/comm/enlargement/docs/index.htm> (accessed 14 January 2004)

¹⁵¹ Interview with Krystyna Mrugalska, 1 March 2004.

¹⁵² Inclusion Europe and PAPMH, *Poland report*.

¹⁵³ The web database on projects financed by the EU is available on the portal of NGOs at <http://www.ngo.pl> or <http://bazy.ngo.pl/gfrAtlasEuro.asp?ida=49&id=325&rodzaj=1> (accessed 14 January 2004).

equipment for classrooms.¹⁵⁴ At this stage, however, it is difficult to estimate how much this will improve the education of people with intellectual disabilities and how much funding will be made available for this purpose. The provision of equipment is only one of many requirements necessary to improve access to education for people with intellectual disabilities.

2.2 National programmes

A reform of the Polish educational system has been underway since 1999.¹⁵⁵ The first stage involved the introduction of a six-year primary school and three-year lower secondary school (*gimnazjum*). In the second stage, the new system of secondary school education was introduced on 1 September 2002. It consists of three years at general or specialised secondary school or a four-year study at technical secondary school; and two or three-year basic vocational school or three-year special school providing preparation for work. Pupils completing any of these schools (except basic vocational schools or special preparatory schools) can continue their education in post-secondary schools. Pupils with intellectual disabilities who have completed lower secondary school can only continue their education in three-year basic vocational schools or three-year special schools providing preparation for work. They therefore do not have the option of continuing their education at post-secondary schools.

The educational reforms have also led to programming changes in general education and general vocational education and training for specific professions; the introduction of new curricula and textbooks; a system of internal school assessment; and an external examination system. They also include organisational and staff changes (such as changes in educational supervision) and the upgrading of teachers' qualifications and administrative and financial management. The final elements of this educational reform process will be introduced in 2007.¹⁵⁶

The reforms also include the special education system. In 1998, a working group on the reform of education for children with special needs, made up of representatives of the Ministry of Education and independent experts and NGOs, was called on to develop a programme for the education of children with special needs, in line with the

¹⁵⁴ Sectoral Operational Programme on Human Resources Development, 2004–2006, (hereafter, SOP-HRD 2004–2006) Priority 2 (Development of a Knowledge-Based Society), Measure 2.1 (Increasing access to education). The Ministry of Economy, Labour and Social Policy, "Sectoral Operational Programme – Human Resources Development 2004–2006", Warsaw, December 2003, (hereafter, SOP-HRD 2004–2006). available at <http://www.mpips.gov.pl/english/index.php?dokument=67> (accessed 14 January 2004).

¹⁵⁵ The Act on Rules that Introduced the Reform of the Education System, 8 January 1999, Dz. U. 1999, No. 12, item. 96.

¹⁵⁶ The Ministry of Economy, Labour and Social Policy, "Sectoral Operational Programme – Human Resources Development 2004–2006" Warsaw, December 2003, (hereafter, SOP-HRD 2004–2006). Also available at <http://www.mpips.gov.pl/english/index.php?dokument=67> (accessed 14 January 2004).

ongoing reforms.¹⁵⁷ However, NGOs have reported that they have had too little influence over the direction and content of the reforms and that not all their recommendations were implemented. Unquestionably, the most positive outcome of the educational reform is that special education does not differ substantially from mainstream education. This expression of cohesion in education has had the positive effect of contributing to a change in the attitude of teachers towards educating children with disabilities.¹⁵⁸

In spite of these positive outcomes, however, the reforms of special education have been implemented considerably later than for mainstream education. For example, the programme principles of general education,¹⁵⁹ which are obligatory in mainstream schools and in special schools for pupils with *mild* intellectual disabilities, were introduced on 1 September 1999.¹⁶⁰ However, in 2004 not all textbooks had yet been adapted for children with *mild* intellectual disabilities.¹⁶¹ Theoretically these students can use textbooks for students without disabilities, but in many cases this is impossible because of the level of difficulty. Thanks to the reforms, programme principles for children with *moderate* and *severe* intellectual disabilities were also developed. Nevertheless, these were also introduced considerably later than those for mainstream education, at the beginning of 2001.¹⁶²

The educational reforms have certainly lead to a greater awareness of the rights of children with disabilities, which was a main recommendation of the working group. However, there are no special procedures to supervise the implementation of the reforms or to evaluate the results.¹⁶³

¹⁵⁷ “Reforma systemu kształcenia uczniów ze specjalnymi potrzebami edukacyjnymi” (“The reform of education of children with special education needs”), in *Szkola Specjalna*, No 2, 1998, pp. 1–8.

¹⁵⁸ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

¹⁵⁹ Programme principles set out the general purposes and tasks of the school and the educational content for specific levels of education and are published by the Ministry of Education as annexes to legal regulations. The curriculum for each subject on every specific levels of education is issued on the basis of the programme principles of general education. See, Regulation of the Minister of National Education and Sport on the programme principles of pre-school and general education, 21 May 2001 Dz. U. 2001, No. 61, item. 625, (last amendment of 6 November 2003, Dz. U. 2003 No. 210, item. 2041).

¹⁶⁰ Regulation of Minister of National Education on the programme of general education, 15 February 1999, Dz. U. 1999 No. 14, item. 129.

¹⁶¹ Textbooks adapted to the needs of pupils with disabilities are financed by the Ministry of Education and other textbooks are bought by the parents themselves. Comment added after the OSI Roundtable, Warsaw, June 2004, by T. Serafin, Department of Regular and Special Education and Social Prevention, Ministry of Education.

¹⁶² The Regulation of the Minister of National Education on amending the Regulation on the programme of pre-school and general education, 4 January 2001, Dz. U. 2001, No. 5, item. 49.

¹⁶³ Interview with Teresa. Serafin, 10 December 2003.

3. EDUCATION IN PRACTICE

As of 2004, one year of pre-school education is obligatory for all children. At this stage, however, it is unclear how this will be organised for children with intellectual disabilities, especially in rural areas. At the primary and lower secondary levels, although children with intellectual disabilities are increasingly being integrated into the mainstream education system the majority still attend special schools. In 2002–2003 there were a total of 61,677 students with intellectual disabilities in the special schools (not including secondary schools) for students with intellectual disabilities. However, special schools suffer from significant under-funding, which has resulted in cutbacks in staffing levels and spending on educational resources, and is leading to their progressive closure. Special schools for children with mild intellectual disabilities follow the same programme principles of general education as mainstream schools, but the curriculum is adapted to the students' abilities. Special schools for students with moderate/severe intellectual disabilities have separate programme principles of general education. The quality of special education depends very much on the school and there are often waiting lists for schools with a good reputation.

One of the most promising developments for the inclusive education of children with intellectual disabilities is the growth of integrated schools, in which children with disabilities are taught in the same class as children without disabilities, with the support of additional educators. In 2002–2003, over 4,000 students with (mostly mild) intellectual disabilities were enrolled in such schools, which provide quality education for both children with and without disabilities. However, the number of integrated schools is far too inadequate to meet needs, particularly at secondary level, and parents must compete to secure places for their children. In 2002–2003 there were 34,751 students with intellectual disabilities in mainstream schools (including those integrated schools). However, the conditions in mainstream schools often do not meet the particular special needs of children with intellectual disabilities, who are, therefore, not provided with the support they need. In particular there are not enough specialists to provide support and teachers do not receive adequate training in disability issues. There is also a lack of flexibility and the curricula are not adequately adapted to the individual needs of the child. Integrated education is more difficult at the secondary school level, particularly for children with moderate intellectual disabilities. At present, the educational needs of children with autism are not adequately met in either mainstream or special schools (some of which exclude children with autism). Generally, students with intellectual disabilities start out in integrated schools, but transfer to special education as they get older.

3.1 Resources and support

The qualifications required of teachers are specified by legislation.¹⁶⁴ Although there are differences in requirements according to the type of school and the classes taught, teachers must at least have an undergraduate university degree and a teaching certificate. However, because these requirements are rather new, not all teachers have

¹⁶⁴ Details concerning teachers' qualifications are specified in the Act on the Charter of Teachers, 26 January 1982, unified text, Dz. U. 2003, No. 118, item. 1112, (last amendment of 15 July 2004, in Dz. U. 2004 No. 179, item. 1845), (hereafter Act on Charter of Teachers). Also in the appended Regulation of the Minister of National Education and Sport on teachers' required qualifications and schools and situations when teachers without a high level education certificate can be employed, 10 September 2002 Dz. U. 2002, No. 155, item. 1288, (hereafter, Regulation on teachers' required qualifications).

fulfilled them. There are approximately 600,000 teachers employed in Poland¹⁶⁵ and their level of education is improving, with approximately 85 per cent now having university degrees.¹⁶⁶ Nonetheless, the quality of education for both mainstream and special teachers at the university level is usually outdated and suffers from a lack of modern standards of pedagogical knowledge in the field of intellectual disabilities.¹⁶⁷ Although new legislation sets out and defines standards for teacher training,¹⁶⁸ stipulating that training must include knowledge of special education, this means a minimal knowledge and does not constitute a qualification to teach students with special educational needs. There are also no anti-discrimination or tolerance components in teacher training courses, or the teaching of modern trends concerning inclusive education.

Currently teachers in mainstream schools receive no specific training in disability issues. Those who also teach children with intellectual disabilities (usually children with *mild* intellectual disabilities) are seldom supported by auxiliary staff.¹⁶⁹

Teachers in special kindergartens and schools for children and young people with intellectual disabilities, and teachers conducting remedial classes, must have at least an undergraduate university degree and a teaching certificate to work with children with intellectual disabilities. Teachers must have at least a first university degree with a Bachelor of Special Education in a specialisation, which in the law is still called “oligofrenopedagogy”.¹⁷⁰ Currently, it can honestly be said that not all teachers in special schools have the qualifications to work with children with intellectual disabilities. Those teachers who do not have a Bachelor or Master of Special Education, with the specialisation “oligofrenopedagogy”, must complete post-graduate studies conducted by universities or courses conducted by in-service teacher training centres with curricula similar to post-graduate studies, giving them a qualification to work with children with intellectual disabilities.¹⁷¹

¹⁶⁵ CSO, *Education in the School Year 2002/2003*.

¹⁶⁶ SOP-HRD 2004–2006, p. 63.

¹⁶⁷ Interview with Krystyna Mrugalska, 1 March 2004; Difficulties in the education of children with intellectual disabilities as a result of inadequate training are also experienced by priests and other teachers conducting religion classes at school. Comment at the OSI Roundtable, Warsaw, June 2004.

¹⁶⁸ Regulation of the Minister of National Education and Sport of 23 September 2003 on the standards for teacher training, Dz. U. 2003, No. 170, item. 1655. Since 1 October 2004 there is a new regulation on the standards for teachers training, 7 September 2004, Dz. U. 2004, No. 207, item. 2110.

¹⁶⁹ Interview with Joanna Głodkowska, Professor, Dean of the Faculty of Educational Sciences, Academy of Special Education, Warsaw, 15 December 2003.

¹⁷⁰ This is despite the efforts of the Academy of Special Education in Warsaw to change the name of the specialisation to “education of persons with intellectual disabilities”. OSI Roundtable, Warsaw, June 2004.

¹⁷¹ Regulation on teachers’ required qualifications.

All teachers are required to attend continuing education courses, and educational supervisors can oblige a teacher to attend courses in certain forms of skills upgrading.¹⁷² Teachers have various possibilities to attend courses, pursue post-graduate studies and participate in continuing education or in-school vocational training.¹⁷³ School authorities allocate funding for vocational education and vocational counselling of teachers (one per cent of the annual allotment for teacher's salaries),¹⁷⁴ but this amount seems to be insufficient.¹⁷⁵ In 2002, a new legal framework established a skills upgrading requirement for teachers and new regulations include a clear financing mechanism to reach this goal. It is up to the teachers to decide how often and which skills they want to upgrade; this upgrading includes special education skills as well.

3.2 Inclusive education

3.2.1 Mainstreaming

There is no widespread inclusion of children with disabilities in mainstream schools in Poland and the concept of well-organised, inclusive education is still new. Most schools have architectural barriers making them inaccessible to people with physical disabilities. Schools are not able to satisfy individual children's specific needs and are generally not flexible.¹⁷⁶ There are not enough specialists in mainstream schools and conditions are inadequate to teach children with intellectual disabilities. There are no options for children in the form of supported classes, and mainstream schools do not work with individually adapted curricula.¹⁷⁷ Intellectual disability is often still misunderstood by teachers¹⁷⁸ and discrimination is especially evident in the low quality of education children with intellectual disabilities are offered at mainstream schools. Negative attitudes towards pupils with intellectual disabilities are evident among both students and teachers.¹⁷⁹ Teachers of children without disabilities lack the skills and

¹⁷² Act on Charter of Teachers, art. 12.

¹⁷³ Continuing education for teachers takes place in teacher training centres, in universities and other schools at the university level, and in public and non-public in-service teacher training centres. Many teachers have improved their qualifications because of the new rules of promotion based on vocational training issued during the educational reform. Interview with Joanna Głodkowska, 15 December 2003.

¹⁷⁴ Act on Charter of Teachers, art. 70a.

¹⁷⁵ Interview with Joanna Głodkowska, 15 December 2003; Supreme Chamber of Control, *Report on 'control' results of the organisation and financing of skills upgrading and continuing education for teachers*, (in Polish), SCC, Warsaw, April 2004.

¹⁷⁶ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

¹⁷⁷ Interview with Lidia Klaro-Celej, Methodological Consultant on Special Education Warsaw, 9 December 2003.

¹⁷⁸ Interview with Teresa Serafin, 10 December 2003.

¹⁷⁹ Interview with Krystyna Mrugalska, 1 March 2004.

qualifications both to teach children with disabilities, and to instil positive and tolerant attitudes towards schoolmates with disabilities in their students.¹⁸⁰

Pre-school education

As of 1 September 2004 one year of pre-school education is compulsory for all children in Poland.¹⁸¹ In 2002–2003 almost all (96.7 per cent) children aged six were placed in a pre-school preparatory classes (class zero).¹⁸² There were 8,963 children with disabilities (8,152 in urban areas; 980 in rural areas) in pre-school education, but there is no information as to how many were children with intellectual disabilities. In 2000–2001 there were only 501 children with intellectual disabilities in 23 special kindergartens (children who have not yet been diagnosed are not included in these statistics). In is therefore unclear how kindergartens and schools will organise pre-school education for all children with intellectual disabilities, in the face of the new obligation.¹⁸³

Primary and lower secondary education

Children are enrolled in primary and lower secondary schools according to where they live in the district.¹⁸⁴ Theoretically, children who are assessed as requiring special education can be placed in a mainstream school. The Act on the Education System provides that any child may attend any type of school and parents have the right to decide which type of school is most appropriate.¹⁸⁵ In practice, however, in spite of the fact that the mainstream school has a legal responsibility to educate the child, parents of children with intellectual disabilities wishing to enrol their child in a mainstream school are often under pressure from the school to place the child in a special school. The lack of

¹⁸⁰ Interview with Lidia Klaro-Celej, 9 December 2003.

¹⁸¹ Act on Education System, art. 14.

¹⁸² In 2002–2003 there were also 8,015 kindergartens in Poland (including 74 special kindergartens) and 9,191 pre-school sections within primary schools. These were attended by 840,500 children. Some 51.1 per cent of children aged three to six (64.8 per cent in urban areas and 34.9 per cent in rural areas) attended pre-school, and 96.7 per cent of children aged six (only 87.1 per cent in rural areas) were placed in a pre-school preparatory classes (class zero). CSO, *Education in the School Year 2002/2003*; and J. Kwapisz, “Special Education in the School Year 2000/2001”, (in Polish), in conference proceedings “Rights of Persons with Disabilities – theory, practice, essential activities”, 13–14 November 2001, Office of the Ombudsman, Warsaw, (hereafter, Kwapisz, *Special Education in 2000/2001*).

¹⁸³ Comments at the OSI Roundtable, Warsaw, June 2004.

¹⁸⁴ Detailed rules are specified in the Regulation of the Minister of National Education and Sport on placement of children in schools and changing from one type of school to another of 20 February 2004, Dz. U. of 2004, No. 26, item. 232.

¹⁸⁵ Act on the Education System, art. 71b. The evaluation assessing the need for special education does not impose a specific school it only suggests one. According to the Act on the Education System, the head of the county (*powiat*) ensures the appropriate form of education, at the parents’ request and when the child is identified as having special educational needs. The type and degree of intellectual disability is considered in making the recommendation. The parents’ request that the child be educated at a regular or an integrated school should be ensured by the local authority.

adequately trained teachers is usually given as the main reason.¹⁸⁶ In rural areas, it is common for the child to be registered at a mainstream school, but the parents are often persuaded by the head of the school that the child would be better served by individual teaching.¹⁸⁷ In some cases children who are enrolled in mainstream schools are redirected to special schools, but the reverse situation rarely occurs.¹⁸⁸

As detailed in Table 2, in the school year 2002–2003 there were 14,810 mainstream primary schools in Poland, with 2,943,109 students; and 5,804 mainstream lower secondary schools, with 1,669,106 students (these mainstream schools include integrated schools). In primary schools there were 47,457 students with disabilities, including 22,701 students with intellectual disabilities. In lower secondary schools there were 28,307 students with disabilities, including 11,336 with intellectual disabilities. There is no data concerning the total number of students with intellectual disabilities studying in special classes, in individual teaching or remedial centres. Approximately eight per cent of the children with intellectual disabilities referred to in Table 2 were studying in integrated classes or schools. The children with *profound* intellectual disabilities were registered at school but fulfilled their educational obligations outside the school in remedial classes, either in social care centres, day centres, or in the home (see section III.3.3.2).

Table 2. Number of students in primary and lower secondary schools (2002–2003)

| | Type of school | | |
|--|----------------|-----------------|-----------|
| | Primary | Lower secondary | Total |
| Mainstream and special schools – total number of students | 2,982,982 | 1,709,002 | 4,691,984 |
| Mainstream (and integrated) schools – total number of students | 2,943,109 | 1,669,106 | 4,612 215 |
| Mainstream (and integrated) schools – total number of students with disabilities (all types) | 47,457 | 28,307 | 75,764 |

Source: CSO¹⁸⁹

¹⁸⁶ Interview with Krystyna Mrugalska, 1 March 2004. Sometimes a child is refused enrolment in a mainstream school on the decision of the headmaster of the school.

¹⁸⁷ Interview with Lidia Klaro-Celej, 9 December 2003

¹⁸⁸ Office of the Ombudsman, *Information of the Commissioner for Citizens' Rights for the year 2002*, (in Polish), RPO-MAT No. 47, Office of the Ombudsman, Warsaw, 2003, pp. 52–53, (hereafter RPO-MAT No. 47).

¹⁸⁹ Central Statistical Office, *Education in the School Year 2002/2003*, CSO, Warsaw, 2003.

Resources and support

Problems arise when children with intellectual disabilities are placed in mainstream schools without adequate support. Some local authorities wish to close their special schools because they are not financially sustainable, so the inclusion of children with intellectual disabilities in mainstream schools works to their benefit because of the additional weighting received under the “funds follow the student” system. Once the funding is received, however, spending is not restricted or supervised and children with intellectual disabilities rarely receive appropriate support.¹⁹⁰

Teachers in mainstream schools usually do not have the necessary qualifications for educating children with disabilities, nor do they receive adequate staffing support for teaching children with intellectual disabilities.¹⁹¹ Kindergartens, schools, psychological-educational counselling centres and other educational units are obliged to provide students, parents and teachers with psychological-educational support. This support is free of charge and on a voluntary basis. However, teachers tend to be unaware of their rights (and those of parents and children) to psychological-educational support¹⁹² and so do not actively seek such support. In general, there is poor cooperation between teachers in mainstream and special schools.¹⁹³

The authority responsible for the school is obliged to provide it with special equipment essential for teaching the curriculum and other mandatory tasks¹⁹⁴ such as books, teaching materials and video tapes. However, many schools do not have the funds to purchase this equipment.¹⁹⁵

Mainstream schools must adhere to the programme principles of general education. These set out the general purposes and tasks of the school and the educational content for specific levels of education. The curriculum for each subject is issued on the basis of the general education curriculum. Teachers who conduct specific classes can choose their curricula and textbooks from a list of suggested textbooks and programmes and can also develop their own curricula. The proposed curriculum must be developed on the basis of the programme principles of general education and be evaluated by a teacher with the appropriate level of vocational training and higher education related to the subject. The programme is approved for use by the head of the school, after seeking

¹⁹⁰ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

¹⁹¹ Interview with Joanna Głodkowska, 15 December 2003.

¹⁹² Details are specified in the Regulation of the Ministry of Education concerning rules of giving and organising psychological-educational support in public kindergartens, schools and educational units, 7 January 2003, Dz. U. 2003, No. 11, item. 114, (hereafter Regulation on Psychological-educational Support).

¹⁹³ Interview with Teresa Serafin, 10 December 2003.

¹⁹⁴ Act on the Education System, art. 5.

¹⁹⁵ Helsinki Foundation, *Right to education*, pp. 84–86.

opinions of teachers and parents' representatives.¹⁹⁶ The teacher is obliged to adapt the curriculum and exams to the individual needs of any student with disabilities who has obtained an evaluation for special education.¹⁹⁷ In mainstream schools, this is particularly relevant to children with *mild* intellectual disabilities as they are sometimes placed in mainstream schools and taught with students without disabilities.

Parents have the right to information concerning the progress of their child's education and to inspect tests and exams. At the beginning of each school year, teachers are obliged to inform parents of the educational requirements and the grading system (including marks based on behaviour) which will apply to their children.¹⁹⁸ According to the Ombudsman, current human rights standards specify greater participation by both children and their parents in the education process than is currently foreseen by law.¹⁹⁹ However, it is difficult to assess whether the rights of parents, including parents of children with intellectual disabilities, are respected.

Schools can also establish a Parents' Committee which can make proposals to the local authority responsible for the school, the authority responsible for educational supervision, and to the headmaster. According to monitoring carried out by the Helsinki Foundation in 2001, parents rarely complain about, or propose motions or opinions to, the responsible authority. Officials in local authorities are not prepared for complaints and motions; there are no procedures for complaints and complaints that are made tend to be only casually acknowledged. The lack of complaints suggests that parents believe their concerns will not be taken seriously by the educational system.

Integrated schools

Integrated education refers to teaching a few (three to five) students with disabilities together with children without disabilities in classes where additional educators provide support to the children with disabilities. Integrated education can take place in integrated schools or integrated sections within mainstream schools.

Local authorities are responsible for establishing public integrated schools (kindergartens, primary and lower secondary schools). Integrated classes can also be created in mainstream schools and kindergartens.²⁰⁰ Integrated schools and kindergartens are funded on the same basis as the rest of the education system. The rule "funds follow

¹⁹⁶ Details are specified in: Regulation of the Minister of National Education and Sport concerning when and what type of textbooks and curricula can be used at school, 5 February 2004, Dz. U. 2004, No. 25, item. 220.

¹⁹⁷ Regulation on Exams and Tests.

¹⁹⁸ Regulation on Exams and Tests.

¹⁹⁹ On 30 September 2002, the Ombudsman presented the Ministry of Education with a long list of comments and observations related to the rules that specify rights and authorisations of students and parents. However, these were not included in the subsequent amendment to the Act on the Education System of June 2003. Ombudsman Letter No. RPO-380368-XI/01.

²⁰⁰ Act on the Education System, art. 5.

the student” is retained, including the additional weightings for students with special needs. There is, however, also an additional weighting for pupils with disabilities attending an integrated school.

Integrated education in Poland has been developing since 1989, mostly on the initiative of parents. In 1989–1990 there was only one integrated kindergarten in Poland, but by 1990–1991 there were 12 integrated kindergartens and two integrated primary schools.²⁰¹ As shown below in Table 3, by 2003 over 16,000 children with disabilities were studying in the integrated system, in over 1,000 schools and kindergartens.

Table 3. Students with disabilities enrolled in integrated education in 2003

| | Type of school | | | | Total | |
|--|----------------|-----------------|-------------------------|-------------------|--------|-------|
| | Kindergartens | Primary schools | Lower secondary schools | Secondary schools | | |
| 1. Number of schools | | | | | | |
| Integrated schools | 298 | 505 | 164 | 41 | 1,008 | |
| Integrated classes in mainstream kindergartens and schools | 664 | 1,917 | 481 | 134 | 3,193 | |
| 2. Number of students | | | | | | |
| Total number of students with disabilities (figures rounded off) | 3,540 | 9,200 | 2,490 | 860 | 16,090 | |
| Among these students with intellectual disabilities: | mild | 682 | 1,900 | 492 | 60 | 3,134 |
| | moderate | 478 | 460 | 80 | 11 | 1,029 |

Source: J. Bogucka²⁰²

In 2003, primary schools with the status of integrated school made up only 3.4 per cent of all primary mainstream schools, while lower secondary schools made up 2.8 per cent. Integrated classes created in mainstream primary schools comprised an even lower

²⁰¹ J. Bogucka and D. Żyro, “Enrolling Children with Disabilities in Regular and Integrated schools” (in Polish), in conference proceedings “Rights of persons with disabilities – theory, practice, essential activities”, 13-14 November 2001, Office of the Ombudsman, Warsaw, June 2002, (hereafter, Bogucka and Żyro, *Enrolling Children with Disabilities*), pp. 83–87.

²⁰² J. Bogucka, “Students with disability at integrated schools”, materials from conference “Integration or segregation – problems of education of children with intellectual disabilities”, Warsaw, 28-30 November 2003. The data is supplemented with information from a telephone interview with J. Bogucka on 15 January 2004.

percentage, as compared to the total number of sections within mainstream schools, while in secondary schools the percentage was minute.²⁰³

It is estimated that in 2002–2003 about ten per cent of students with disabilities were enrolled in integrated education at the primary school level and about four per cent at the lower secondary school level. For students with *mild* intellectual disabilities this was four-five per cent and one-two per cent, respectively. It is difficult to evaluate the percentage of students with *moderate* intellectual disabilities enrolled in integrated schools, as statistics provided by the Central Statistical Office estimate the numbers of these students together with students with *severe* intellectual disabilities (who do not generally study at integrated schools).

Children with intellectual disabilities make up approximately 25 per cent of all children with disabilities in integrated education in primary and lower secondary schools. Although this seems quite a promising statistic, it must be stressed that given the high percentage of children with disabilities who have intellectual disabilities, this percentage is actually quite low. For example, pupils with intellectual disabilities make up approximately 45 per cent of all pupils with disabilities attending mainstream primary and lower secondary schools. When special schools are also included in this figure, the percentage is approximately 61 per cent.²⁰⁴

Despite this rapid increase in the number of schools that enrol children with disabilities in integrated classes, the number of integrated schools is still not adequate to meet needs, particularly at the secondary school level. Each year the number of parents who compete to place their children with disabilities in integrated schools, including pre-schools and kindergartens, is three times as great as the number of available places. There is also an uneven distribution of integrated schools throughout the country. Whether a locality has an integrated school depends on local politics and the relative ability of the locality to provide the necessary staffing and resources.²⁰⁵ Children from rural areas who would like to study in integrated schools often do not have access to them.

Children with disabilities are eligible for placement in integrated schools if they are assessed as having special educational needs and their parents request such a placement. Children without disabilities are placed in integrated schools according to the general

²⁰³ Calculation by E. Wapiennik based on data from the Central Statistical Office. In the school year 2002/2003 there were 14,810 mainstream primary schools for children and young persons in Poland (with 145,076 sections) and 5,804 mainstream lower secondary schools for children and young persons (with 70,291 sections). CSO, *Education in the School Year 2002/2003*.

²⁰⁴ Calculation: E. Wapiennik. In the school year 2002/2003, there were 75,764 pupils with disabilities in mainstream primary and lower secondary schools, including 34,037 pupils with intellectual disabilities, while in special primary and lower secondary schools there were 79,769 pupils with disabilities, including 61,677 pupils with intellectual disabilities (not including children with profound intellectual disabilities attending remedial classes). CSO, *Education in the School Year 2002/2003*.

²⁰⁵ Bogucka and Żyro, *Enrolling Children with Disabilities*, pp. 83–87.

regulations of mainstream education (according to where they live). Sometimes parents of children without disabilities do not agree to placing their children in a class of children with particular types of disabilities, such as intellectual disabilities, because they fear that the quality of education will suffer.²⁰⁶ Most schools declare themselves to be in favour of full integration, and in practice this generally means that children with many different kinds of disabilities can be enrolled in classes.²⁰⁷ However, some schools are not inclined to enrol any children with intellectual disabilities.²⁰⁸

Many integrated schools use complicated enrolment criteria because there are more children than places. One parent describes the process:

If the parents of a child with a disability want their child to be placed at our school, they must apply to the headmaster with all appropriate documents at the beginning of March in the school year before the child's compulsory education should begin. The recommendation for integrated education made by the psychological-educational counselling centre is essential, but it is not enough to enrol the child in the school. Applications are considered in April by a specially appointed committee. The committee consists of the headmaster of the school, a psychologist, a special educator, a school educator and teachers [...] Before making the final decision the committee talks to parents and observes the children during common games [...] It is a very difficult moment for all participants. Children are hopeful that this is their first day at the new school. They are very distressed when it appears that it is also the last day. They do not understand why it happened, but they see and feel that their parents are nervous. So they draw the conclusion that they are guilty for that situation. Parents are hopeful that their child is better than others and will conquer rivals for school places. For teachers, refusing participants' requests is very stressful. One of the parents compared this situation to "a market of slaves" [...] There is an opinion among teachers that the requests of parents of children with intellectual disabilities should be negatively considered.²⁰⁹

Generally, integrated classes are smaller²¹⁰ than those at mainstream schools, with 15 to 20 students, including three to five students with disabilities.²¹¹ Resource teachers,

²⁰⁶ Interview with Krystyna Mrugalska, 1 March 2004.

²⁰⁷ Bogucka and Żyro, *Enrolling Children with Disabilities*, pp. 83–87.

²⁰⁸ J. Wolska, "Pictures from the life of an integrated school", (in Polish), materials from the conference "Integration or segregation – problems of education of children with intellectual disabilities", Warsaw, 28-30 November 2003, (hereafter, Wolska, *Pictures from an Integrated School*).

²⁰⁹ Wolska, *Pictures from an Integrated School*.

²¹⁰ There are no particular rules as to the size of classes in mainstream schools. In schools examined by the Helsinki Foundation the average sizes were as follows: 23 in primary schools, 25 in lower secondary schools and 30 in secondary schools. Helsinki Foundation, *Right to Education*, p. 82.

²¹¹ The Regulation of the Minister of National Education and Sport relating to framework statutes of public kindergarten and public schools, 21 May 2001, Dz. U. 2001, No. 61, item. 624, last amendment, 26 February 2004, Dz. U. 2004, No. 43, item. 393, (hereafter, Regulation on framework statutes of public kindergarten and public schools).

special education teachers²¹² and other specialists are employed. In the school year 2002–2003 the number of resource educators and specialists employed in integrated schools and in integrated classes was as follows: 2,548 resource teachers, 469 psychologists, rehabilitation therapists and 239 occupational therapists.²¹³ The kind of additional classes the child attends (and how often) depends on the child's individual needs. In primary school (grades one to four) teachers' assistants can also be employed additionally in classes.

Integrated schools are usually equipped with teaching aids and technical equipment to make the teaching of children with special needs more productive and efficient. Teachers also supplement their qualifications by participating in professional schooling and in supplementary studies at the Master's level. This is one reason why these schools often offer a higher quality of education than students with special needs might receive at other schools.

While in general integrated schools are obliged to follow the same curriculum as mainstream schools, there are exceptions for children with *moderate* and *severe* intellectual disabilities, for whom a different curriculum is adapted. Teachers must adapt the educational requirements for all levels of disability, needs and possibilities of students with disabilities. This can include individual programmes and additional classes conducted by specialists, (for example, speech therapy).²¹⁴ Parents play an important role in their child's education, for example by contributing to programmes developed by the school that are focused on the children's upbringing and behaviour.²¹⁵ There is evidence, however, that parents are reluctant to make demands on the school because they are afraid of having their child expelled.²¹⁶

Many integrated schools offer high quality education for children both with and without disabilities. According to research, all students in integrated classes achieve better results in reading comprehension and mathematics than students from mainstream schools where there are no children with disabilities.²¹⁷ However, continuing integrated education at lower secondary and especially at secondary schools is more difficult because there are few integrated schools at those levels. Generally, students with intellectual disabilities start out in integrated schools and end up in

²¹² In some schools these teachers fulfil the role of a principal teacher organising a certain class. In other schools they support children with disabilities in classes conducted with non-disabled children, cooperate with parents and recommend and conduct individual remedial classes as necessary for certain children. Comment added after the OSI Roundtable, Warsaw, June 2004 by T. Serafin, Department of Regular and Special Education and Social Prevention, Ministry of Education.

²¹³ Bogucka, *Students with Disability*.

²¹⁴ Bogucka, *Students with Disability*.

²¹⁵ Bogucka, *Students with Disability*.

²¹⁶ Interview with Ewa Suchcicka, president, More Loved, the Association of Families and Guardians of Persons with Down's Syndrome, Warsaw, 10 December 2003.

²¹⁷ Bogucka and Żyro, *Enrolling Children with Disabilities*.

special schools as they get older. As shown in Table 3, in 2003 there were only 860 students with disabilities in integrated schools and/or classes in secondary school in all of Poland, a tiny percentage of all students with disabilities. These schools are often not prepared to enrol children who have self-care issues. A mother with a son in an integrated school described the situation of one girl who attended the same school:

In my opinion it is the best integrated school in Poland [...]. But there is one problem – there is no one to help a 12-year old girl in the bathroom. Since she started attending integrated school, she has been using diapers.²¹⁸

While integrated schools have a mandate to educate children with intellectual disabilities regardless of their degree of disability, the system works best for a child with *mild* intellectual disabilities because the necessary adaptations are fewer. The more severe the degree of intellectual disability, the more problematic the child's education is for integrated schools. In addition, the older the child is, the more difficulties arise with other non-disabled children. It is much more difficult for a child with, for example, *moderate* intellectual disabilities, to make friends with children without disabilities at the age of 15, than at the age of seven. As a result, the quality of education deteriorates and there are problems in creating bonds between children of the same age. Many children begin to feel lonely and suffer from the difference they notice between themselves and their classmates.²¹⁹ According to one mother: “when children [...] notice a different world that exists beyond their toys, the number of common subjects and interests among children decreases dramatically”.²²⁰

3.2.2 Special schools

Special schools are an integral part of the Polish educational system. Since 1 September 2003 the name “special” and the designation of disability have been omitted in the name of schools for children with disabilities or special needs, and on official notices, seals and certificates. These schools are still called “special” in practice, but to avoid stigmatisation the name “special” is officially omitted. The legislative framework for special schools is similar to that for mainstream schools.

Special schools for students with intellectual disabilities are divided into schools for students with *mild* intellectual disabilities and schools for students with *moderate* and

²¹⁸ Minutes of the conference proceedings (in Polish) of “Rights of persons with disabilities – theory, practice, essential activities”, 13-14 November 2001, Office of the Ombudsman, Warsaw, June 2002, p. 171.

²¹⁹ Interviews with: Lidia Klaro-Celej, 9 December 2003; and Ewa Suchcicka, 10 December 2003; See also: materials from the conference organised by the “More Loved” – the Association of Families and Guardians of Persons with Down's Syndrome, “Integration or segregation – problems of education of children with intellectual disabilities”, Warsaw, 28-30 November 2003 (in Polish): 1. E. Suchcicka, “Good special schools, is that possible?”; 2. Wolska, *Pictures from an Integrated School*; and 3. Kowalewska, “School for my Child”.

²²⁰ Wolska, *Pictures from an Integrated School*.

severe intellectual disabilities.²²¹ This segregation of children with different levels of intellectual disabilities into different schools is against the principle of inclusive education.

In 2001–2003 there were 783 special primary schools and 805 special lower secondary schools with 79,769 students with many different kinds of disabilities.²²² Among these were 351 special primary schools and 406 lower secondary schools for students with *mild* intellectual disabilities, and 153 special primary schools and 130 lower secondary schools for students with *moderate* and *severe* intellectual disabilities. As shown below in Table 4, in 2002–2003 a total of 61,677 students with intellectual disabilities were enrolled in special schools.²²³

Table 4. Students with intellectual disabilities in special primary schools and special lower secondary schools (2002–2003)

| | Total students in mainstream and special schools | Total students with disabilities in special schools | Students with intellectual disabilities or autism | | | | |
|------------------------|--|---|---|---------------------|--------------|---------------|-----------------------|
| | | | with intellectual disabilities | | | | With diagnosed autism |
| | | | mild | moderate and severe | profound | All | |
| Primary school | 2,982,982 | 38,040 | 23,026 | 6,521 | 1,244 | 10,091 | 31 |
| Lower secondary school | 1,709,002 | 39,033 | 27,126 | 3,576 | 184 | 30,886 | 53 |
| Total | 4,691,984 | 77,073 | 50,152 | 10,097 | 1,428 | 61,677 | 84 |

Source: Central Statistical Office, *Education in the school year 2002/2003*, CSO, Warsaw, 2003.

Counties (*poviats*) are responsible for establishing and administering special schools. They are funded and supervised in the same way as the rest of the educational system.²²⁴ Due to lack of funds, some special schools economise by, for example, decreasing the number of students, dismissing teachers and other members of staff, and decreasing the number of textbooks and teaching aids. All these activities directly influence the quality of education. A lack of funding from local authorities for financing of special schools is leading to their progressive closure.²²⁵

²²¹ Regulation on educational framework programmes.

²²² CSO, *Education in the School Year 2002/2003*, pp. LVI–LVII.

²²³ CSO, *Education in the School Year 2002/2003*.

²²⁴ In 1997–2000 there was no educational supervision in special schools. The control of school superintendents was resumed in 2001. Interview with Teresa Serafin, 10 December 2003.

²²⁵ Children's Rights Ombudsman, *Activities 2002*, p. 61.

Sometimes the local authorities which administer schools also administer the teaching programme. This outlines the weekly number of teaching hours and must be consistent with the educational framework programmes (organisation sheets), which include the number of hours weekly for every class. Included in the framework programmes for special schools is a fixed number of additional hours for individual work (individual remedial classes) conducted by a specialist. The framework stipulates ten hours per week per class and it is illegal to change the weekly number of teaching hours. However, in spite of this, authorities do sometimes compel heads of the schools to decrease the number of hours of these additional classes to save money.²²⁶ Many schools do not have adequate premises; do not receive adequate investment for renovation; and often have architectural barriers preventing access for people with physical disabilities.²²⁷

The number of places at special schools is sufficient to meet the demand, but there are waiting lists at schools with a good reputation. The educational needs of children with autism are not met adequately. At the end of 2002, few classes in the entire country were adapted to the special needs of children with autism, in terms of numbers of students and forms of help – such as teachers, teaching methods, organisation of schooling and buildings.²²⁸ Mainstream and even special schools exclude children with autism, resulting in them being either educated individually at home or at non-governmental or private centres or schools.²²⁹

Resources and support

Special schools (as well as mainstream schools with special sections) for students with *moderate* and *severe* intellectual disabilities, autism and multiple disabilities (in classes one to four in primary schools) employ teachers' assistants, responsible for care of the students (for example helping children in the bathroom or while eating). When it is justified, a teacher's assistant can also be employed in the classes. This often depends on the economic situation of the school.²³⁰

²²⁶ In the school year 2001–2002 the municipal government of Warsaw forced heads of special schools to reduce the number of hours of individual remedial classes. This was contrary to the law. Similar situations occur all over the country. Interview with Lidia Klaro-Celej, 9 December 2003. Some complaints against illegal and inconsistent interference of self-governments in the organising sheets (and decreasing the amount of hours in them) are directed also to the Children's Rights Ombudsman (for example, case no. ZII-432-3-3/03/DJ).

²²⁷ Interview with Lidia Klaro-Celej, 9 December 2003.

²²⁸ Remark by NGOs directed at the Government Plenipotentiary for Disabled Persons' Affairs and placed in Annex 5 to: "Information concerning tasks undertaken in 2002 for carrying out the resolution of the *Sejm* of the Republic of Poland from 1 August 1997, Charter of Rights for Persons with Disability", Document of the Cabinet, Warsaw 2003.

²²⁹ See for example: J. Jankowska, *Limitation of rights to education*. According to the author, this situation is due to inadequate funds, lack of a concept of how to organize such education and a lack of specialists who are able to work with children and youths with autism.

²³⁰ Regulation on framework statutes of public kindergarten and public schools.

In many regions of Poland, there are few appropriately trained counsellors (teachers responsible for counselling). Those working in special education do not always have a solid knowledge about the specifics of educating children with intellectual disabilities.²³¹ While more and more teaching aids, such as textbooks, study workbooks, curricula, aids to use special methods (such as pictures, audio tapes or video tapes) are potentially available to teachers, there is also a lack of funding to purchase this equipment, and therefore a lack of access to it.

Special schools for children with *mild* intellectual disabilities follow the same programme principles of general education as mainstream schools, with similar classes and a similar system of grading and placing students in classes. However, the curriculum of every class is adapted to the students' abilities. Classes are smaller than in mainstream schools – generally between ten and 16 students. For individual remedial classes individual programmes should be developed for every student.

Special schools for students with *moderate* and *severe* intellectual disabilities have separate programme principles of general education from mainstream schools, different classes and different rules of grading and placing students in classes (which include a descriptive evaluation). A typical class has six to eight students. Education for students with *moderate* and *severe* disabilities is based mainly on an individual teaching programme developed by teachers and specialists who work with the student on the basis of a multi-disciplinary evaluation which is carried out at least once a year.

Parents whose children attend special education classes or schools have the same rights and duties as within the rest of the education system. Additionally, in schools for pupils with *moderate* and *severe* intellectual disabilities parents should be involved in creating plans for remedial education and in implementing the relevant elements at home. They should participate in consultations relating to their child's progress and difficulties and should be provided with informational and psychological support.²³²

Respect for the rights of parents varies from school to school. Some parents state that they do not have enough influence over their child's education and say that their requests and comments are not respected. Generally, cooperation between parents and schools is inadequate, partly because many parents are simply not aware of their rights.²³³

The quality of special education depends very much on the school. In such a profession, special teachers are required to upgrade their skills in spite of their already excellent qualifications.²³⁴ According to some parents, classes are conducted in an

²³¹ Interview with Lidia Klaro-Celej, 9 December 2003.

²³² The programme principles of general education for students with moderate and severe disabilities.

²³³ Interview with Ewa Suchcicka, 10 December 2003; Parents' opinions formulated on the basis of filed forms, Zgierz, January 2004.

²³⁴ Interview with Joanna Głodkowska, 15 December 2003.

unprofessional manner with teachers using outdated methods.²³⁵ Few textbooks for obligatory subjects are adapted to students with *mild* intellectual disabilities.²³⁶ There are no specific textbooks for children with more *severe* intellectual disabilities. The audit of the Supreme Chamber of Control conducted in the school year 2002–2003 showed that in two-thirds of controlled public schools there was a lack of current textbooks adapted to the needs of pupils with disabilities.²³⁷

3.3 Education outside the school system

Education outside the education system is provided through individual teaching, and in remedial classes and residential institutions. In 2002–2003, almost 15,000 children with disabilities received individual teaching (home schooling), but the number of children with intellectual disabilities is not known. Individual teaching is intended as a temporary solution for children with severe health problems, but in some cases it can be assigned to meet the needs of the system rather than the needs of the child. Many children remain in individual teaching throughout their school education. Recently introduced Government regulations on individual teaching have been widely criticised for reducing the possibility for home schooled children to attend at least some classes at a school. Remedial classes provide education for children and young people with profound intellectual disabilities. They can be organised in kindergartens and schools; special educational care centres; non-governmental remedial centres; social care homes; community self-help homes; medical care centres; or the child's family home. In some cases, there is a lack of organisation and supervision of remedial classes and an insufficient number of specialists to organise classes. However, many non-governmental remedial centres, such as those provided by the Polish Association for Persons with Mental Handicap, provide a positive learning environment for this group of children.

Education for children with intellectual disabilities is also provided in social welfare homes, special education care centres and education care centres. In 2002 there were over 20,000 children with intellectual disabilities in special education centres and education care centres; the precise numbers in social welfare homes are not available. By law, social welfare homes must provide access to education. Children with profound intellectual disabilities in social welfare homes attend remedial classes at the home, while children with mild, moderate and severe intellectual disabilities attend a special school at the home or a neighbouring special school. Special education care centres are boarding schools where both boarders and non-boarders receive education at various levels. Education care centres do not include a school, but they must nonetheless provide education. Education care centres and special

²³⁵ Interview with Ewa Suchcicka, 10 December 2003; Parents' opinions formulated on the basis of filed forms, Zgierz, January 2004.

²³⁶ A current list of textbooks adapted to the possibilities of students with *mild* intellectual disabilities is available at the website of Wydawnictwa Szkolne i Pedagogiczne (School and Educational Publishers) at <http://www.wsip.com.pl> (accessed 10 January 2004). Prior to the educational reform, children with intellectual disabilities received free textbooks. However in recent years there were problems with funding for textbooks (see for example, Children's Rights Ombudsman, *Activities 2002*, p. 81). According to recent changes in the Act on the Education System in June 2003, textbooks and *supportive* books for special education of children with disabilities should be funded by the State budget. They are then owned by the school and lent to pupils. However, it is difficult to estimate whether this legislation will improve access to textbooks for students with intellectual disabilities. Act on the Education System, art. 71d.

²³⁷ Supreme Chamber of Control, *Report on education of persons with disabilities*.

education care centres have, for some time, been inadequately regulated. New regulations on special education care centres have now been proposed, but these have been criticised as inadequate. The Ombudsman has particularly highlighted the fact that many children from disadvantaged families are unnecessarily placed in special education care centres, and that insufficient effort was made to seek more appropriate alternatives for these children. There is also a lack of adequate coordination between the Ministry of National Education and Sport and the Ministry of Social Policy, which both have responsibilities with respect to children in these centres.

3.3.1 Home schooling

Individual teaching (home schooling) is mandated by the Act on the Education System and its implementing regulations.²³⁸ Children and young people are considered eligible for individual teaching based on an evaluation issued by public psychological-educational counselling centres.²³⁹ Individual teaching is recommended when a child's health makes school attendance impossible or difficult. When the child's health improves, the child should be educated in schools along with other children. However, an examination of schools by the Helsinki Foundation for Human Rights in 2001–2002 showed that over 80 per cent of children who were schooled at home continued to be home schooled for most of their school education.²⁴⁰

Teachers are not required to have special qualifications to teach in the individual teaching system, but if the child has an evaluation recommending special education the teacher must have qualifications appropriate to the child's disabilities. Individual teaching is financed by the Government educational subsidy and falls under the same regulations of educational supervision as the rest of the education system. It is administered by the head teacher of the school in the locality where the child lives together with the local authority responsible for funding individual teaching. The curriculum for individual teaching is adapted from the obligatory programme principles of general education, but the method of conducting classes must be adapted to the child's emotional and physical abilities.²⁴¹

²³⁸ Act on the Education System, art. 71b. Details concerning the organisation of home schooling are specified in the Regulation of the Minister of National Education and Sport on the Manner and Course of Organisation of Individual Teaching for Children and Young People, 29 January 2003, Dz. U. of 2003, No. 23, item. 193, (hereafter, Regulation on Individual Teaching).

²³⁹ The Regulation of the Minister of National Education on the evaluation of the needs for special education and individual teaching of children and youth and on detailed rules for directing pupils to special education or individual teaching of 12 February 2001, Dz. U. of 2001, No.13, item. 114, (last amendment of 29 January 2003, Dz. U. 2003, No. 23, item. 192), (hereafter, Regulation on the Evaluation of the Needs for Special Education and Individual Teaching).

²⁴⁰ Helsinki Foundation, *Right to Education*, p. 105.

²⁴¹ The weekly teaching load for home schooling is as follows: for children at zero stage: four to six hours; for children in I-III class of primary school: six to eight hours; for children in IV-VI class of primary school: eight to ten hours; in lower secondary school: ten-12 hours; in secondary school: 12-16 hours.

In the school year 2002–2003, there were 14,481 children with disabilities enrolled in individual teaching, of which 9,847 officially registered in primary schools; 4,088 in lower secondary schools; and 546 in various types of secondary vocational schools. There is no data on how many of these children have intellectual disabilities or how long they remain in individual teaching.²⁴²

According to a report by the Helsinki Foundation, some of the schools monitored economise on individual teaching by decreasing the weekly teaching load to the minimum required by law (or even below), or by delaying the decision to begin individual teaching.²⁴³ The Children's Rights Ombudsman also monitors individual teaching and has found that there is a strong tendency to decrease the number of hours for individual teaching in order to decrease expenses, thus clearly affecting the quality of education.²⁴⁴

Individual teaching is carried out in the child's home or place of residence. It is the obligation of the head of the school where the child is enrolled, within reasonable limits and taking into consideration the child's health, to ensure that children receiving individual teaching participate in school life and that they have more cohesive personal development and integration with their peers.

Since January 2003, there are new regulations concerning individual teaching.²⁴⁵ In the past, the head of the school in a particular situation could decide that individual teaching was to be conducted in school.²⁴⁶ Some schools and parents use this possibility for children who are able to come to school for individual teaching, but are not able to participate in classes with other pupils. The new regulations do not provide for such possibilities, stating only that the head of the school, to the degree possible, will allow home-schooled children to attend school life. This has led to misunderstandings concerning individual teaching and much discussion in the Polish press. Parents protested against the new regulations when they found out that, according to the new regulation, individual teaching was strictly confined to the home.²⁴⁷ The Ombudsman considered the new regulations to be a regression.²⁴⁸ In response, the Minister of Education stated that school superintendents had not

²⁴² CSO, *Education in the School Year 2002/2003*.

²⁴³ Helsinki Foundation, *Right to Education*, p. 105.

²⁴⁴ In one case parents have asked three times for more hours of teaching for their child because he had been progressing significantly. Unfortunately the *Starost*, the head of the county (*powiat*) continued to refuse to increase the number of hours because of a lack of funds. See: Children's Rights Ombudsman, *Activities 2002*, p. 61.

²⁴⁵ Regulation on Individual Teaching.

²⁴⁶ Ordinance of the Ministry of Education, 4 October 1993, *Dziennik Urzędowy MEN*, No. 29, item. 36 (now invalid).

²⁴⁷ A. Przybylska and Z. Pendel, "Get out of school" (*Won ze szkoły*) in *Gazeta Wyborcza* No. 62, 14 March 2003.

²⁴⁸ RPO-435566-XI/03.

interpreted the new regulation properly and that every child in individual teaching can also attend school with their peers.²⁴⁹ However, although there has been further discussion these new regulations are still in place.²⁵⁰

The Polish Association of Education Managers (OSKKO)²⁵¹ has stated that imposing the place of education upon a child is a violation of the child's rights.²⁵² However, so far there has been no legal challenge to the new regulations. The regulations also emphasise that the child's possibility of participating in school life is hypothetical and not compulsory. According to the regulation, creating conditions for participating in school life for children receiving individual teaching depends on the existing possibilities. For example, the head of the school can claim that the school does not have possibilities to organise activities that allow the child to participate in school life. There are also often issues concerning the transportation of children to non-compulsory school activities, especially in rural areas. This makes it easy to curtail activities that would enable a child with disabilities to actively participate in some activities with peers.²⁵³

Children often receive individual teaching for the convenience of the system and not to meet their actual needs. Recommendations for individual teaching are issued too often by public psychological-educational counselling centres and are often abused. For example, individual teaching is sometimes recommended because the child is not self-sufficient, or because there are problems with transporting the child to school.²⁵⁴ Parents can also demand individual teaching because it is more convenient for them.²⁵⁵

²⁴⁹ "Nie muszą siedzieć w domu" ("They do not have to stay at home"), in *Gazeta Wyborcza*. No. 63, 15-16 March 2003.

²⁵⁰ RPO-MAT, No. 47, p. 79. The conclusions following the audit of the Supreme Chamber of Control include the need for amendment of the regulation on the manner and course of organisation of home schooling to change the rules which limited the possibility of conducting individual teaching at schools. See: Supreme Chamber of Control, *Report on education of persons with disabilities*.

²⁵¹ Polish Association of Management in Education (Ogólnopolskie Stowarzyszenie Kadry Kierowniczej Oświaty)

²⁵² Particularly Article 23 of the UN Convention on the Rights of the Child (CRC), which states, that a child with disabilities should enjoy a full and decent life in conditions which facilitate the child's active participation in the community, and assistance shall be provided to ensure that the disabled child has effective access to and receives education, training, etc. in a manner conducive to the child's achieving the fullest possible social integration and individual development. CRC, art. 23.

²⁵³ Details relating to the attitude of OSKKO towards the organisation of individual teaching are detailed on their website at <http://www.oskko.edu.pl/oskko/stanowiskooskko-n-indywidualne.htm> (accessed 6 January 2004).

²⁵⁴ Interview with Lidia Klaro-Celej, 9 December 2003.

²⁵⁵ Interviews with Teresa Serafin, 10 December 2003; and Krystyna Mrugalska, 18 and 23 December 2003.

Individual teaching may also be imposed by the school authority to keep up the employment levels of teachers.²⁵⁶ The lower birth rate, which has resulted in fewer students, has led to an insufficient number of hours for all teachers to work in some schools, and hours can be supplemented by teaching in the individual teaching system. The local authority may try to interfere with the recommendations of psychological-educational counselling centres to provide its teachers with more work. A report by the Helsinki Foundation for Human Rights concludes that the low quality of individual teaching means that some children, through no fault of their own, are discriminated against in their right to an education.²⁵⁷

3.3.2 Education in remedial classes

Remedial classes take place in public kindergartens and schools; in special education care centres; in non-governmental remedial centres; in social care homes, in community self-help homes, in medical care centres, and at the child's family home. The head of a public kindergarten, school or other organisation that operates remedial classes is responsible for its administration, whereas the school superintendent is responsible for its educational supervision.²⁵⁸

Children and young people between the ages of three and 25 with *profound* intellectual disabilities are educated in remedial classes.²⁵⁹ These can consist of teamwork (groups of two to four persons) or individual work (in cooperation with parents). This is not unlike individual teaching. The teaching load is four hours per day for teamwork and two hours per day for individual work. Since 1 January 1996, it is no longer possible to exempt a child with *profound* intellectual disabilities from compulsory education.²⁶⁰ However, some parents remain unaware that their child has the right to participate in such remedial classes from the age of three, when the child is not yet in compulsory school.²⁶¹

²⁵⁶ Interview with Krystyna Mrugalska, 1 March 2004.

²⁵⁷ Helsinki Foundation, *Right to Education*, pp. 105–106.

²⁵⁸ The Regulation of the Minister of National Education relating to organisation of remedial classes for children and youth with profound disabilities, 30 January 1997, Dz. U. 1997, No. 14, item. 76, (hereafter Regulation on Remedial Classes).

²⁵⁹ Remedial classes are reorganised on the grounds of Article 7 of the Act on the Protection of Psychiatric Health. Detailed rules concerning their organisation are specified in the Regulation on Remedial Classes.

²⁶⁰ Act on Amending the Act on the Education System, 21 July 1995, Dz. U. 1995, No. 101, item. 504. Until this time those children were deprived of all education.

²⁶¹ Interview with Stefan Przybylski, head, Counselling Centre for Children with Multiple Disability, Warsaw, 2 and 10 December 2003. Similarly, sometimes incompetent officials refuse to continue remedial classes for persons with *profound* intellectual disabilities because they are over the age of 18 and schooling is no longer compulsory, despite the fact that they have the right to remedial classes up to the age of 25. (See: Helsinki Foundation, *Right to Education*, p. 104.)

Remedial classes for children with *profound* intellectual disabilities are conducted by a special teacher or a psychologist. The teacher's assistant also provides support during remedial classes (in groups), whereas parents are responsible for care during individual teaching. Children with *profound* intellectual disabilities attend remedial classes with individualised curricula designed on the basis of a multidisciplinary evaluation of the child.²⁶² These students are not graded, moved up, or placed in classes according to the same rules as other children and do not receive graduation certificates.²⁶³

There are cases of inadequacies in the organisation of remedial classes in some units which are outside of the education system. One example is that of community self-help homes,²⁶⁴ where children with an evaluation that stipulates the need for remedial classes are sometimes placed. These centres do not always have the appropriate conditions or a sufficient number of specialists to organise classes according to the obligatory rules. There is also a lack of educational supervision conducted by the school superintendent. This is the result of poor coordination of activities between units of the ministries responsible for education and social policy.²⁶⁵

However, the most important educational options for children with *profound* intellectual disabilities are non-governmental remedial centres, which were introduced to the educational system through the advocacy and the efforts of the Polish Association for Persons with Mental Handicap (PAPMH). The remedial classes offered by non-governmental remedial centres combine education with rehabilitation and therapy, and are seen as particularly positive learning environments.²⁶⁶

As of 1 January 2004, the regulations for financing such non-governmental remedial centres have improved. In the past, local authorities, which make the final division of funds for expenditure to schools, sometimes understated the amount of the subsidies allocated to such centres, particularly because the law was unclear. Current legislation stipulates that the subsidy for each child cannot be lower than the precise amount

²⁶² The Regulation of Ministry of Education on the organisation of remedial classes for children and youths with severe intellectual disabilities, 30 January 1997, Dz. U. 1997, No.14, item. 76.

²⁶³ Regulation on Exams and Tests.

²⁶⁴ Act on Social Welfare, 12 March 2004, Dz. U. 2004, No. 64, item. 593, (last amendment 27 August 2004, Dz. U. 2004, No. 210, item. 135), art. 18, (hereafter Act on Social Welfare). Community self-help homes are centres of day support for persons with mental disorders, including persons with intellectual disabilities. According to the activities of social welfare, they are the responsibility of communes.

²⁶⁵ OSI Roundtable, Warsaw, June 2004.

²⁶⁶ Interview with Krystyna Mrugalska, 1 March 2004.

given as a subsidy for education.²⁶⁷ These improvements are the direct result of advocacy by NGOs.²⁶⁸

Children and young people with *moderate* and *severe* intellectual disabilities and multiple disabilities can receive their compulsory schooling in non-governmental remedial centres with the agreement of their home school.²⁶⁹ In 2002 there were 90 such centres in Poland,²⁷⁰ providing services to 4,084 children (946 with *profound* intellectual disabilities; 135 with autism; and 2,036 with multiple disabilities).²⁷¹ It is difficult to establish the total number of children with *profound* intellectual disabilities attending remedial classes because data given by the Central Statistical Office is incoherent. In the school year 2002–2003, 2,806 students attended remedial classes at primary level and 524 at lower secondary level.²⁷² However, it is uncertain how these numbers should be interpreted, with respect to the data regarding pupils with *profound* intellectual disabilities outlined above.

3.3.3 Education of children in institutions

Education for children with intellectual disabilities is provided in social welfare homes (residential institutions); and in education care centres and special education care centres. Of these, the largest number of children with intellectual disabilities (almost 18,000) is to be found in special education care centres.

Social welfare homes

A social welfare home is a residential institution operating within the system of social policy, which provides services for persons who need 24-hour care because of age, illness or disability.²⁷³ There are six kinds of social welfare homes in Poland,²⁷⁴ including two types for people with intellectual disabilities: homes for children and

²⁶⁷ Act on the Education System, art. 90.

²⁶⁸ Matters concerning financing of remedial centres were conducted by the Ombudsman. Office of the Ombudsman, Information of the Commissioner for Citizens' Rights for the year 2001, (in Polish), RPO-MAT No. 44, Warsaw, 2002, (hereafter RPO-MAT No. 44), p. 222.

²⁶⁹ Act on the Education System, art. 16.

²⁷⁰ As of the 31 December 2003. Among these, 56 centres for 2,644 children and adolescents were maintained by the Polish Association for Persons with Mental Handicap (PAPMH). Polish Association for Persons with Mental Handicap, *Report for the period 3 March 2000 to 31 December 2003*, PAPMH (*unpublished*).

²⁷¹ CSO, *Education in the School Year 2002/2003*.

²⁷² CSO, *Education in the School Year 2002/2003*.

²⁷³ Act on Social Welfare art. 6 and 54.

²⁷⁴ The other four are social welfare homes for: old persons, persons with chronic diseases, persons with chronic mental illness and persons with physical disability. As of 1 January 2005 the social welfare homes for mothers with juvenile children and expecting women have been changed to support centres. Act on Social Welfare art. 56 and 151.

young persons with intellectual disabilities (for people up to the age of 30 years old) and homes for adults with intellectual disabilities.²⁷⁵ By law, education is one of the basic services that social welfare homes must provide to residents. It can include special education, remedial classes, and teaching of independent living skills.²⁷⁶ In 2001 there were 3,702 individuals with disabilities below the age of 18 years old in social welfare homes (residential institutions) but there is no information as to how many among them were people with intellectual disabilities.²⁷⁷

The education of children in social welfare homes and in other institutions is governed by the same regulations as the rest of the education system.²⁷⁸ Children with *moderate* and *severe* intellectual disabilities (and also some children with *mild* intellectual disabilities) are either educated at special schools in the social welfare home, or are provided with transportation to neighbouring special schools.²⁷⁹ Children with *profound* intellectual disabilities attend remedial classes in the social welfare home. Schools that exist in social welfare homes are supervised according to the same regulations of educational supervision as for the rest of the education system.²⁸⁰ Regardless of this regulation, the province (*voivodeship*) is obliged to supervise the quality of education in such schools, which are inspected at least twice a year by representatives of the province.²⁸¹

²⁷⁵ Social welfare homes for children and young persons with intellectual disabilities can house, in particular situations, persons over the age of 30, if they are characterised by little adaptability to changes of environment, and the period of residence in this home is longer than five years. The decision is taken in consultation with the person, family or guardians, and a psychologist. Act on Social Welfare, art. 56; The Regulation of the Minister of Labour and Social Policy on social welfare homes, 15 September 2000, Dz. U. 2000, No.82, item. 929, (hereafter, Regulation on Social Welfare Homes).

²⁷⁶ Regulation on Social Welfare Homes.

²⁷⁷ CSO, *Statistical Yearbook 2002*.

²⁷⁸ Act on the Education System, art. 3.

²⁷⁹ In 2001, social welfare homes operated nine special primary schools with 427 students, and four special secondary schools for 55 students. Kwapisz, *Special Education in 2000/2001*. Education at special schools in medical centres and in social welfare homes is governed by the Regulation of the Minister of National Education and Sport on organisation of education and conditions and forms of special care activities in special schools organized in medical centres and in social welfare homes, 27 February 2003, Dz. U. 2003, No. 51, item. 446. The regulation ensures that students who are identified as having special educational needs will receive education according to the recommendations in their assessment, in adequate conditions and with programmes that are adapted to their needs and abilities. The education is provided by teachers who have special educational training appropriate to the type of disability, as well as by other specialists who provide various therapies.

²⁸⁰ Act on the Education System, art. 35a.

²⁸¹ Regulation on Social Welfare Homes. Every social welfare home in Poland must provide services according to standards which are set in the regulations on social welfare homes. These standards were set in 2000 and the homes have until 2006 to reach them, therefore not every home has fulfilled all the requirements.

In theory, education is a major element of rehabilitation, which should maximise the potential of each individual and contribute to the independence of people with disabilities. Social welfare homes do develop individual plans to support the general development of the individual, regardless of age. However, in many homes too little attention is paid to maximizing the potential of residents, because these activities require more intensive and professional work than the provision of nursing and other basic care.²⁸² People with intellectual disabilities are therefore disadvantaged because they are not taught independent living skills.

Education care centres

A large number of children with intellectual disabilities attend special education care centres for children with various types of special needs. These public institutions consist of a boarding school and an on-site special school (or schools) where both boarders and non-boarders are educated on many different levels and provided with special education and methods of work.²⁸³

Some children with intellectual disabilities attend education care centres, which provide 24-hour care, mostly for children with behavioural disorders, and are usually managed by nuns. These differ from special education care centres in that they are purely care institutions and do not include a school, although their wards must also fulfil the compulsory education requirement.

Table 5. Children and young people with intellectual disabilities in special education care centres and educational centres (on 31 October 2002)

| | Number of centres | Numbers of children and young people | | | |
|--------------------------------|-------------------|--------------------------------------|--------------------------------|------------------------------|--------|
| | | with disabilities of all kinds | with intellectual disabilities | | |
| | | | mild | moderate, severe or profound | total |
| Special education care centres | 404 | 26,977 | 11,690 | 5,912 | 17,602 |
| Education care centres | 47 | 2,935 | 1,605 | 838 | 2,443 |

Source: CSO²⁸⁴

²⁸² Office of the Ombudsman, "Informacja Rzecznika Praw Obywatelskich na temat stanu przestrzegania praw niepełnosprawnych dzieci i młodzieży w domach pomocy społecznej", ("Information from the Ombudsman of Citizen's Rights on respect of the rights of children and young people with disabilities in social welfare homes") Warsaw, (*unpublished*). This information was prepared on the basis of inspections of nine social welfare homes and two treatment and education homes (for children with *moderate*, *severe* and *profound* intellectual disabilities) carried out by representatives of the Office of the Ombudsman in 1999–2000.

²⁸³ Act on the Education System, art. 2.

²⁸⁴ Central Statistical Office, *Education in the school year 2002/2003*, CSO, Warsaw, 2003.

Apart from the fact that both special education care centres and education care centres are specified in the Act on the Education System, there are no regulations to govern their activities. The legal status of these institutions has not been addressed since 1 July 2000. These centres have thus been operating for four years without any specific rules, especially concerning minimum standards guaranteed to the wards.

According to the old regulations, a special education care centre is a centre for children and youth with disabilities, over three years of age, who, because of their disabilities cannot attend kindergarten or school in their local area.²⁸⁵ There is now only a proposal for new regulations. However, the Ombudsman has found this proposal to be very controversial and that it does not create the legal basis for the required transformation of the system of special education.²⁸⁶ In the proposal there are no significant regulations regarding minimum standards of care and residence. Regulations concerning work (rehabilitation and education) with the child are very general. There are few regulations regarding the periodic evaluation of the need for the child to attend such a centre. The proposal also stipulates the development of additional education care centres for children who require special organisation of their education, methodology of work and special care, and ensuring a place of residence. However, in such centres there is no school and this is unintelligible in the context of providing an assurance for the realisation of the fundamental need of children with disabilities, namely the special organisation of education.

As shown in Table 5, children and young people with intellectual disabilities (mostly of a *mild* degree), comprise the largest group of children placed in these centres. However, according to the information of the Ombudsman, sometimes children with intellectual disabilities are placed there together with children with behavioural disorders.²⁸⁷ All children directed to these centres should have an evaluation on their need for a special education. As a general rule, only those children should be directed to these centres who, because of various circumstances, cannot attend integrated classes within mainstream schools or who do not have special schools in their local area. Only those children for whom daily transportation to such a centre is too difficult should live in boarding schools. However, according to the Ombudsman, in reality too many children from disadvantaged families live in these centres. The difficult financial situation of their

²⁸⁵ The Regulation of the Minister of National Education on types and rules of operating of public care centres and framework statutes of these centres, 21 February 1994, Dz. U. 1994, No. 41, item. 156, (last amendment 13 August 1999, Dz. U. 1999, No. 67, item. 758).

²⁸⁶ Office of the Ombudsman, "Informacja Rzecznika Praw Obywatelskich na temat stanu przestrzegania praw wychowanków w specjalnych ośrodkach szkolno-wychowawczych (dla dzieci niepełnosprawnych)" (*Information from the Ombudsman on respect for the rights of wards in special educational care centres (for children with disabilities)*), Office of the Ombudsman, Warsaw (*unpublished*), (hereafter, Ombudsman, *Information on the Rights of Wards*). The information was prepared on the basis of inspections of 23 special educational care centres for children with disabilities (including children with intellectual disabilities), carried out by representatives of the Office of the Ombudsman in 1998–2003.

²⁸⁷ Ombudsman, *Information on the Rights of Wards*.

parents can create a situation in which the residence of their children in special education care centres is treated as an available form of social support for the family (especially in cases where the family receives inadequate benefits from social welfare).

A significant proportion of the children currently residing in these centres should be placed in special schools, or even in mainstream schools, within their local area. Parents' organisations have protested against the placement of children in these institutions, because it easily breaks the bonds between parents and the child.²⁸⁸ Disability cannot be a reason for limiting the right of the child to live in the family. Only the need to provide really advanced professional care can be a justification for placing a child in an institution.²⁸⁹

Some children (18 per cent) are placed in these centres because a court decision has terminated parental rights, giving the State the responsibility for their care and education. Because of the lack of regulations for monitoring, however, in some institutions children have the status of a ward and in others they are treated as boarders at a boarding school, when in fact they are wards of orphanages.²⁹⁰ This is due to the strong division of competencies between the Ministry of Education and the Ministry of Social Policy, and misunderstanding between these two ministries regarding their respective responsibilities with respect to these children.²⁹¹ According to the Ministry of Education, special education care centres are not care institutions; children who reside in them come to their families for weekends and holidays and do not lose their bonds with their parents.²⁹² However according to the information of the Ombudsman, on average 20 to 30 per cent of children in such centres *de facto* stay in them during holidays.²⁹³

An example of poor cooperation between units operating within these two ministries is the case of a boy with *mild* intellectual disabilities, which was documented by the office of the Ombudsman. The court ordered permanent placement in a special education care centre. However, the boy was temporarily placed in a social welfare home for the summer holidays. Following the holidays, the special education care centres did not want to admit the child and he spent four years (1999–2003) in the social welfare home. During those four years he was not receiving legally mandated schooling because school at the social welfare home was only for students with *moderate* and

²⁸⁸ Interview with Krystyna Mrugalska, 1 March 2004.

²⁸⁹ Pronouncement of the Ombudsman of 4 May 2004, RPO/470256/04/XI.

²⁹⁰ Developed on the basis of pronouncements of the Ombudsman to the Minister of National Education and Sport on: 2 February 2002 (RPO/398773/XI/GR); 2 November 2002 (RPO-349060-XI-02/EC); and 28 January 2003 (RPO-349060-XI/02/EC).

²⁹¹ Comment added by T. Serafin, 12 February 2004.

²⁹² Letter of 24 May 2004 from the Minister of National Education to the Ombudsman on the Information stating respect for the rights of wards in special educational care centres (DKOS-WSM-022-83/04/TS).

²⁹³ Office of the Ombudsman, case no. RPO-470256-XI/04.

severe disabilities. He was offered no other form of education. Correspondence indicates that attempts were made to solve this problem, but they were not effective. The boy also directed mail to the school superintendent, stating that he wanted to be educated and that he did not want to remain in a social welfare home. He received no answer. Today the boy has been placed in a special education care centre because of the kindness of strangers with no help or support from those legally responsible for him.²⁹⁴

Some centres have serious financial problems and are not able to offer sufficient and adequate accommodation. Most of those inspected by representatives of the Office of the Children's Rights Ombudsman were large, old buildings, often in bad condition with numerous architectural barriers. Accommodation in these centres was usually intended for 70-120 children. According to the Office, the main tasks of these centres – preparing the children to become independent (to the extent of their possibilities); encouraging their integration into society and rehabilitation – were carried out to a very limited extent. In many centres too few specialists were employed to speak about professional and individualised rehabilitation. Only in a few of these inspected centres for children with intellectual disabilities (although some included children with multiply disabilities), was rehabilitation conducted based on professional equipment and the participation of a specialist.

There was also a lack of real help in working towards the transfer of children from these centres. No credible evaluation was conducted on the need for the child to attend such a centre, in the context of activities leading towards the child's return to his or her family. The majority of children, once placed in these centres, therefore remain there until the end of their education. Currently there is a lack of regulation to encourage evaluation of the need to continue education in the centre. Teachers do not have the right to make a motion, and parents do not have to follow their suggestions.²⁹⁵ In some centres there was evidence of violence among students and corporal punishment of pupils. As a punishment, children were forbidden to go home on days that they were free from classes at school, despite the fact that only a judge can limit contacts with parents.²⁹⁶

According to the opinion of the Ombudsman, in the light of the collected information about the workings of special education care centres, especially for children with intellectual disabilities, it is clear that the concept of education in these centres has not been fulfilled.²⁹⁷

²⁹⁴ Office of the Ombudsman, case no. RPO-451217/03.

²⁹⁵ Ombudsman, *Information on the Rights of Wards*.

²⁹⁶ Family and Guardianship Code, art. 113.

²⁹⁷ Ombudsman, *Information on the Rights of Wards*.

4. TRANSITION FROM EDUCATION TO EMPLOYMENT

In 2004, almost 18,000 students with intellectual disabilities were receiving vocational training and education. Most were students with mild intellectual disabilities, who continue their education in special vocational schools. However, courses taught at these schools rarely correspond to the needs of the labour market and even those students who complete such vocational education are often not integrated into the workforce. School-leavers with mild intellectual disabilities, who as adults do not meet the criteria for legal disability status, face particular problems in competing for employment on the open market. The employment services (including employment counselling) provided through the labour offices are not well adapted to the special needs of people with disabilities, so few access these services. The “Junior Programme” is an interesting new initiative intended to enable school-leavers with disabilities take up apprenticeships. However, the numbers of apprentices taken on so far is quite low and it is likely that very few of these are people with intellectual disabilities. The fact that those receiving social benefits would have to suspend their entitlements to be eligible for this programme is likely to be the main reason for this. People with intellectual disabilities are effectively excluded from continuing education and their opportunities for rehabilitation are also limited. As a result, after completing school a large number of young people with intellectual disabilities are not able to participate in any kind of activity or work and so just remain at home.

4.1 Vocational training

In Poland, vocational education is provided in various kinds of mainstream and special vocational schools.²⁹⁸ As shown below in Table 6, in 2002–2003 there were 16,405 students with *mild* intellectual disabilities and 1,372 students with *moderate* and *severe* disabilities in the different types of vocational schools.²⁹⁹ After completing lower secondary school, students with *mild* intellectual disabilities can usually only continue their education at a special basic vocational school. Although they could theoretically also continue their education in post-secondary schools, they must first undergo an interview and attend a supplementary vocational secondary school.³⁰⁰ In recent years, there has been no clear concept of secondary education for students with *moderate* and *severe* intellectual disabilities. However, as of 1 September 2004, there are special schools with three-year courses preparing students with *moderate* or *severe* intellectual disabilities (or multiple disabilities) for work. Students can earn certificates that confirm their marketable skills.³⁰¹

²⁹⁸ See Annex I. The Polish educational system.

²⁹⁹ CSO, *Education in the School Year 2002/2003*.

³⁰⁰ At the time of writing, changes in the law were being prepared in the Ministry of Education which would simplify access to broader education at the secondary education level to people with *mild* intellectual disabilities. OSI Roundtable, Warsaw, June 2004.

³⁰¹ Act on the Education System, art. 9.

Table 6. Students with intellectual disabilities in secondary schools (2002–2003)

| Type of school | | Students with disabilities | | | |
|----------------|----------------------------------|--------------------------------|---------------------|--------|-----------------------|
| | | With intellectual disabilities | | | With diagnosed autism |
| | | mild | moderate and severe | total | |
| Special | Special basic vocational schools | 15,618 | 1,326 | 16,944 | 7 |
| Mainstream | Basic vocational schools | 688 | 31 | 719 | 3 |
| | Other vocational schools | 99 | 15 | 114 | 7 |
| All students | | 16,405 | 1,372 | 17,777 | |

Source: CSO³⁰²

At the special basic vocational schools, education is based on the same programmes of general education and training in specific professions and for mainstream basic vocational school.³⁰³ Class size is between ten and 16 students, teachers have specialised qualifications and curricula are adapted to students' individual abilities and needs. However, special basic vocational schools have not invested enough in resources, have outdated teaching aids and focus on teaching skills that are no longer required or marketable.³⁰⁴ In June 2004, for the first time students from basic vocational schools took external exams confirming their vocational qualifications. Unlike the exams after primary school and lower secondary school described above, students with *mild* intellectual disabilities took the written part of this exam on the same examination sheets as non-disabled students. The only adjustment was the possibility of a 30-minute extension in the time permitted for the exam.³⁰⁵ As of July 2004, the results of these exams were not yet available. However, there is a concern that only adapting the condition and form in which this exam is conducted to the needs of students with *mild* intellectual disabilities will lead to a situation in which most students will not be able to pass this exam.³⁰⁶

In Poland there is no legislation that specifically addresses the special needs of students with intellectual disabilities in the transition from school to employment. The Act on the Education System imposes an obligation on all educational institutions to prepare their students for the right choice of profession and further education. For students with intellectual disabilities (as for all students) such preparation is provided by

³⁰² Central Statistical Office, *Education in the school year 2002/2003*, CSO, Warsaw, 2003.

³⁰³ Act on the Education System, art. 17. Students with disabilities at secondary schools are not entitled to free transport or care while commuting to school or to reimbursement of transport in cases where parents transport them to school.

³⁰⁴ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

³⁰⁵ Regulation on Exams and Tests.

³⁰⁶ OSI Roundtable, Warsaw, June 2004.

psychological-educational counselling centres and specialist pedagogical-educational counselling centres. To date, however, access to vocational information and counselling for students has been insufficient and there is greater need for such services than is currently being provided by the psychological-educational counselling centres.³⁰⁷

The introduction of school vocational consultants is one element of a new system of “vocational consulting” currently being developed in Poland. The role of the consultant will be to support the activities of the school regarding the vocational development of students. This will be achieved through the provision of group and individual counselling, teaching students about job requirements and conditions of employment; the organisation of workshops on decision-making; and the provision of assistance in planning students’ educational and professional careers.³⁰⁸ The mandate of vocational consultants will be carried out in cooperation with parents, teachers and other specialists employed at schools, psychological-educational centres and other units working for the benefit of the families, children and adolescents (such as social welfare units and NGOs).³⁰⁹ Because this is a new concept, it is difficult to predict the extent to which this new service will benefit people with intellectual disabilities. As yet, there is no information on the number of vocational consultants who will be employed in schools for children and young people with intellectual disabilities (consultants will not be employed in schools for children with *moderate* and *severe* disabilities).

4.2 Adult and life-long education

Continuing education is an integral part of the Polish educational system and therefore it is also governed by the Act on the Education System.³¹⁰ It is provided at all levels of general education (from primary school to the secondary school certificate) and vocational education (at upper secondary school level), in school as well as extramurally. The Centres for Practical Training and Continuing Education³¹¹ also

³⁰⁷ W. Kreft and A. G. Watts, “Raport krajowy o stanie poradnictwa zawodowego”, (“National Report on the Situation of the Job Counselling Service”), in *Rynek pracy*, 2003, p. 87, (hereafter, Kreft and Watts, *Job Counselling Service*).

³⁰⁸ The Regulation of the Minister of National Education and Sport concerning rules of giving and organising psychological-educational support in public kindergartens, schools and institutions, 7 January 2003, Dz. U. 2003, No. 11, item. 114, (hereafter, Regulation on Psychological-educational Support).

³⁰⁹ Regulation on Psychological-educational Support, item. 114.

³¹⁰ Key regulations on adult education are to be found in the Regulation of the Minister of National Education and Sport on continuous education centres 2003, Dz. U. of 2003, No. 132, item. 1226; and The Regulation of the Minister of National Education and Sport on the principles and conditions for holding extramural examinations 2001, Dz. U. 2001, No. 118, item. 1259, (last amendment 11 March 2003, Dz. U. 2003, No. 49, item. 412).

³¹¹ The Centres for Practical Training and Continuing Education are centres for lifelong education under the responsibility of the Ministry of Education.

play an important role. However, people with intellectual disabilities are excluded from lifelong education, reflecting the lack of organisation of the education system.³¹²

While the Charter of Rights for Persons with Disabilities ensures that people with disabilities have the right to comprehensive rehabilitation aimed at their social adaptation, there is no information concerning the number of adults with intellectual disabilities who exercise this right. A main form of social rehabilitation for people with intellectual disabilities is participation in occupational workshops, rehabilitation holidays, sport and recreation centres and other social activities. Of these, the most important are occupational therapy workshops³¹³ and various types of day centres which assist people in retaining existing skills and developing new ones.

Rehabilitation groups, occupational therapy workshops and social rehabilitation activities are operated mainly by NGOs (particularly parents' associations), but in general there are not enough places to meet demand. The problem of so-called "effectiveness" limits the participation of people with disabilities in different forms of social rehabilitation. The Ministry of Social Policy requires that participation in many centres (such as community self-help homes or occupational therapy workshops) must be time limited and should lead to a transfer to the labour market. However, there are few places to which well-trained participants can transfer. Therefore, in some cases people with disabilities are directed to a certain place not because they have such needs, but because these units exist.³¹⁴ The situation is slightly better in major cities such as Warsaw, where school-leavers with disabilities have more possibilities to attend centres that offer various forms of activity, such as occupational therapy workshops and day centres.³¹⁵ However, a large number of people with intellectual disabilities who have completed their education do not participate in any kind of activity and just stay at home.³¹⁶

4.3 Employment services

School-leavers with *mild* intellectual disabilities, who as adults do not have legal disability status, are particularly disadvantaged on the job market. After leaving school they are not eligible for social and vocational rehabilitation and other programmes created for people with disabilities, so must compete for jobs the same way as other job seekers. Neither are they attractive to employers, since employers are only eligible for subsidies or tax incentives when they employ people with legal disability status.³¹⁷

³¹² Interview with Aleksandra Malinowska and Iwona Wojtczak-Grzezińska, The Open Door Association, Warsaw, 13 January 2004.

³¹³ Occupational therapy workshops, essential for developing marketable skills, are described in the Employment Section of this report.

³¹⁴ OSI Roundtable, Warsaw, June 2004.

³¹⁵ Interview with Danuta Mochnacka, 2 December 2003.

³¹⁶ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

³¹⁷ Interview with Krystyna Mrugalska, 1 March 2004.

Like other Polish citizens, people with disabilities have the right to competent employment counselling services.³¹⁸ Currently, such counselling is provided through employment services available at the labour offices. However, people with disabilities have particular problems accessing these services, primarily because too few of the labour offices are adapted to the special needs of people with disabilities.³¹⁹ Labour office personnel are not trained to provide services to people with disabilities and the support extended to people with intellectual disabilities who are seeking employment is reduced to assistance in filling in forms.³²⁰

In 2002, only 8,500 people with disabilities used the employment counselling services offered by labour offices, representing just 9.2 per cent of people with disabilities who were registered in the labour offices in 2002. The most important services for people with disabilities, individual counselling and tests for vocational abilities, were used by just 7.6 per cent and 0.67 per cent, respectively, of the total number of unemployed people with disabilities registered in 2002.³²¹ There is no data on how many of these were people with intellectual disabilities. However, as people with intellectual disabilities rarely register in labour offices, it is clear that very few of them use the job counselling services offered by labour offices.

The “Junior Programme”, which is implemented within the context of the “First Job Programme”, is a new approach to vocational counselling and guidance for people with disabilities.³²² The programme is targeted at school-leavers with disabilities referred by the labour offices for professional apprenticeships. It includes not only the identification of vocational interests and potentially appropriate jobs, but also preparation for the person with disabilities to work with the future employer and co-workers, and preparation for the employer and co-workers to work with a colleague with disabilities. Within the framework of the programme, financial assistance is

³¹⁸ The Act on Promotion of Employment and Institutions of the Labour Market, 20 April 2004, Dz. U. 2004, No. 99, item. 1001 (hereafter Act on Promotion of Employment), art. 36 and 38.

³¹⁹ Kreft and Watts, *Job Counselling Service*, p. 87.

³²⁰ Interview with Aleksandra Malinowska and Iwona Wojtczak-Grzesińska, 13 January 2004.

³²¹ SOP-HRD 2004–2006, p. 49.

³²² The “First Job” programme of the Ministry of Economy, Labour and Social Policy is an integral part of the Government’s social-economic programme for 2003–2005 and an essential supplement to the “Entrepreneurship First” programme. These two programmes are closely connected, as the best opportunity for vocational activation of school-leavers is the development of entrepreneurship and the creation of new jobs.

granted as an occupational rehabilitation benefit to the school leaver and also to the employer and to professional advisors assisting.³²³

The numbers of apprentices taken on through this programme is still quite low. In 2002, only 34 of the 379 counties in Poland were involved in the “Junior Programme” and 74 apprentices were supported financially.³²⁴ Funding for the programme was very low, taking into account the needs of the eligible population. The financial plan for 2002 provided PLN 31,000 (€6,739) for implementing the programme”, but only 85 per cent of this was spent. By 2003, 118 counties were involved in the programme and the funding was increased to PLN 1,671,000 (€363,260), of which 90 per cent was spent. A total of 291 apprentices were supported through the programme, including 268 school-leavers.³²⁵ After completing the apprenticeship, 94 unemployed school-leavers and 20 job seekers (most with mild disabilities) were employed.³²⁶

One of the reasons for the relatively low interest in the programme is that school graduates with disabilities (particularly those with a *moderate* or *significant* degree of disability) are rarely registered as unemployed because they receive a social welfare pension. This also applies to people with intellectual disabilities.³²⁷ The only way around these regulations is for the individual to suspend his or her right to a social pension (in Poland suspension does not mean that they lose this right). However, this means that they do not receive the pension during the uncertain period when they do not know whether they will have the opportunity to participate in the apprenticeship.

There is no information on how many people with intellectual disabilities have been included so far in the “Junior Programme”. As the programme is for school-leavers with disabilities generally, people with intellectual disabilities could theoretically also benefit from it. However, as people with intellectual disabilities would have to suspend their social welfare benefits to participate, it can be presumed that their numbers are insignificant.

³²³ The school-leaver referred for an apprenticeship receives an occupational rehabilitation benefit. (This is regardless of a scholarship due to an intern according to the provisions of the Act on Employment and Counteracting Unemployment). An employer participating in the programme (with the exception of employers managing a sheltered employment facility) receive a bonus for completion of the apprenticeship by the school-leaver and reimbursement of the expenses for their remuneration. (After completing the apprenticeship, the school-leaver must be employed by the same employer for at least 24 months). The professional advisors receive a bonus for supervision of the apprentice.

³²⁴ “Informacja z realizacji planu działalności oraz planu finansowego Państwowego Funduszu Rehabilitacji Osób Niepełnosprawnych”, (“Information implementing the financial plan of the State Fund for the Rehabilitation of People with Disabilities in 2002”) in *BIFRON*, No. 1-2, July 2003, (hereafter, *BIFRON*, July 2003).

³²⁵ *BIFRON*, July 2003.

³²⁶ Telephone interview with an Officer from of the Government Plenipotentiary for Disabled Persons’ Affairs, 17 February 2004.

³²⁷ J. Karpińska, “JUNIOR – program aktywizacji zawodowej absolwentów niepełnosprawnych” (“JUNIOR – school graduates with disabilities occupational activation programme”, in *Służba Pracownicza*, No. 4/2003, pp. 5–10.

IV. Access to Employment

1. LEGAL AND ADMINISTRATIVE FRAMEWORK

Polish law guarantees the right to work and to choose a profession. Recent legislation has strengthened protection against discrimination in employment, or in access to vocational training and counselling, for people with disabilities. Poland has fully transposed the provisions of the EU Employment Directive into national legislation. The Act on Rehabilitation regulates the rehabilitation and employment of people with disabilities. It provides a definition of disability and provisions concerning the assessment of disability. The Government Plenipotentiary for Disabled Persons' Affairs is responsible for supervision of the tasks arising from the act.

The assessments of disability carried out by the Social Insurance Institute and Disability Assessment Boards are both based on medical examination and carried out by a team of specialists. There are no clear rules for carrying out the assessments, which are often open to individual interpretation and do not answer the specific needs of people with intellectual disabilities. The Disability Assessment Boards determine legal disability status and (for adults) degree of disability (low, moderate or significant). However, the definitions of the degrees of disability set out in the Act on Rehabilitation are discriminatory and not in line with international standards, in that they presume incapacity to work is automatically linked to the ability to lead an independent life. As a result, people who may not be able to lead an independent life automatically receive a recommendation for therapy only, and not for employment. The certificates issued by the boards can be stigmatising and superficial, and do not specify the kind and degree of support that is essential. Adults assessed by the boards as having a moderate or significant degree of disabilities are considered only able to work in a sheltered workplace, although they may also work in non-sheltered employment conditions if the work place has been approved as adapted to their needs. People with mild intellectual disabilities cannot receive legal disability status, which thereby excludes them from a number of legal protections. The assessment of disability carried out by the Social Insurance Institute assesses the ability of the person with disability to work (partial or total inability to work) and to live independently. This assessment determines eligibility for social benefits and also the level of the benefits received. Most people with intellectual disabilities are fully reliant on social welfare benefits (either an inability to work pension or a social pension) but cannot register as unemployed or claim unemployment benefits. However, people with all degrees of disabilities nonetheless have the right to register at a labour office as seeking employment and use the employment services provided by the labour offices.

1.1 Domestic legislation

1.1.1 National employment legislation

The Constitution provides that all persons are equal before the law and have the right to equal treatment by public authorities, and that no one shall be discriminated against in political, social or economic life, for any reason whatsoever.³²⁸ Anyone under the authority of the Polish State shall enjoy the freedoms and rights ensured by the

³²⁸ Constitution, art. 32.

Constitution; exemptions with respect to foreigners are specified by statute.³²⁹ The Constitution provides that work shall be protected and that the State shall exercise supervision over the conditions of work; and that everyone has the freedom to choose and pursue an occupation and to choose their place of work, with exceptions specified by statute.³³⁰

According to the Charter of Rights for Persons with Disability, people with disabilities have the right to work in the open labour market according to their qualifications, education and possibilities, as well as the right to vocational counselling.³³¹ If their disabilities and health require it, they also have the right to work in conditions adapted to their needs.

Poland became a member of the EU on 1 May 2004 and has implemented EU legislation pertaining to people with disabilities, including binding Community laws (EU Directives and Resolutions) and non-binding statements of principle (EU Resolutions). On 1 January 2004, the Act on Amending the Labour Code and Some Other Acts³³² entered into force, through which the provisions of the EU Employment Directive³³³ were fully transposed into national legislation.³³⁴

The following laws are most relevant to the employment situation of people with intellectual disabilities in Poland:

- The Labour Code describes the rights and duties of employers and employees and provides compulsory rules to protect the employees' interests.³³⁵ Disability is one of the criteria on the basis of which discrimination in employment is prohibited.
- The Act on Promotion of Employment and Institutions of the Labour Market (hereafter, Act on Promotion of Employment) specifies the State's obligations to

³²⁹ Constitution, art. 37.

³³⁰ Constitution, art. 24, 65, 66 and 67.

³³¹ Charter of Rights for Persons with Disability.

³³² The Act Amending the Labour Code and Some Other Acts, 14 November 2003, Dz. U. 2003, No. 213, pos. 2081, (hereafter, Act Amending the Labour Code 2003).

³³³ European Union 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 (accessed 3 September 2004).

³³⁴ Most of the information concerning the transposition of the Employment Directive to Polish legislation is from the report of Małgorzata Kiełducka, advisor of the Minister, Office of Government Plenipotentiary for Disabled Persons, "Legislation for non-discrimination of disabled persons on the labour market in Poland", Warsaw, November 2003 (unpublished). It is extended by the Act Amending the Labour Code 2003.

³³⁵ The Labour Code, of 26 June 1974, unified text, Dz. U. 1998, No. 21, item. 94, (last amendment 30 April 2004, Dz. U. 2004, No. 120, item.. 1252, (hereafter, Labour Code).

promote employment, mitigate unemployment, and focus on vocational integration.³³⁶

- The Act on Old Age Pensions and Other Benefits from the Social Insurance Fund (hereafter, Pensions Act) sets out the conditions for obtaining funds from pensions and retirement insurance and contains regulations on evaluating inability to work and the conditions for receiving pensions due to inability to work.³³⁷
- The Act on the Social Pension sets out the rules for obtaining this pension.³³⁸
- The Act on Social Employment applies to people who are socially excluded, in particular, the homeless, those addicted to alcohol or drugs, people with mental illnesses, the unemployed, persons released from prisons, and refugees.³³⁹
- The Act on Social Welfare provides general regulations concerning social welfare.
- The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities 1997 (hereafter, Act on Rehabilitation) regulates the vocational and social rehabilitation of people with disabilities.³⁴⁰

The basic obligatory principles of Polish labour legislation state that all people (with the exception of cases specified) have the right to freely choose their occupation; that no person is prohibited from working; and that the employer must respect the employee's dignity and other personal goods.³⁴¹ Equal treatment and non-discrimination standards were integrated into the Labour Code in 1996.³⁴² The latest amendments to the Labour Code in 2004 extended the prohibited grounds for discrimination to include,

sex, age, disability, race, religion, nationality, political attitudes, membership of a political party or trade union, ethnic origin, belief, sexual orientation,

³³⁶ The Act on Promotion of Employment and Institutions of the Labour Market, 20 April 2004, Dz. U. 2004, No. 99, item. 1001, (hereafter, Act on Promotion of Employment). This act replaced the Act on Employment and Counteracting Unemployment (1994).

³³⁷ The Act on Old Age Pensions and Other Benefits from the Social Insurance Fund, 17 December 1998, Dz. U. 1998, No. 162, item. 1118, (last amendment 16 July 2004, Dz. U. 2004, No. 191, item. 1954), (hereafter, Pensions Act).

³³⁸ The Act on Social Pension, 27 June 2003, Dz. U. 2003, No. 135, item. 1268 (last amendment 20 April 2004, Dz. U. 2004, No. 96, item. 959).

³³⁹ The Act on Social Employment, 13 June 2003, Dz. U. 2003, No. 122, item. 1143, (last amendment 20 April 2004, Dz. U. 2004, No. 99, item. 1001), (hereafter, Act on Social Employment).

³⁴⁰ Act on Rehabilitation.

³⁴¹ Labour Code, art. 10 and 11(1).

³⁴² The Act on Amending the Labour Code and some other acts, 2 February 1996, Dz. U. 1996, No. 24, item. 110. Article 11(2) specifies the general principle of equal legislative treatment in labour law and Article 11(3) the rule of non-discrimination which prohibits every kind of discrimination in employment, including on the grounds of disability.

employment for a specified or unspecified period and full-time or part-time employment.³⁴³

According to the Labour Code, any labour resolutions, factory regulations and statutes in enterprises of a discriminatory nature are treated as invalid by the law, as well as employment contracts and other deeds relating to employment, if they infringe on the principle of equal treatment.³⁴⁴

In accordance with the definitions set forth in the Employment Directive, a definition of direct discrimination is also now provided in the Labour Code.³⁴⁵ The definition of indirect discrimination, which before referred to equal treatment between men and women, was changed.³⁴⁶ The definition of discrimination is broad and now includes harassment, which is defined as “behaviour which has the purpose or effect of violating the dignity of a person and degrading or humiliating an employee”. Sexual harassment is also defined. Encouraging another person to violate the principle of equal treatment is also deemed to be a form of discrimination.³⁴⁷ Certain practices are specified as not constituting discrimination in employment.³⁴⁸ Among these are certain working conditions due to specific vocational demands, and practices relating to the protected status of an employee due to maternity, age, or disability. The prohibition of discrimination in employment is integrated into an employer’s obligations.³⁴⁹

The Act on Rehabilitation and a number of its implementing regulations govern the rehabilitation and employment of people with disabilities. The act provides a definition of disability and provisions concerning the assessment of disability.³⁵⁰ It also addresses the provisions of the Employment Directive concerning reasonable accommodation for

³⁴³ Labour Code, art. 11(3).

³⁴⁴ Labour Code, art. 9 para. 4 and art. 18, para. 3.

³⁴⁵ Labour Code, art. 18(3a), para. 3. Before, the definition had been set out but not specified. The present definition stipulates that direct discrimination takes place when one employee is treated less favourably than another employee in a comparable situation.

³⁴⁶ Labour Code, art. 18(3a), para. 4. Indirect discrimination is deemed to exist when a provision, criterion or practice that is neutral on its face is, in fact, discriminatory.

³⁴⁷ Labour Code, art. 18(3a), para. 5 and 6.

³⁴⁸ Labour Code, art. 18(3b).

³⁴⁹ Labour Code, art. 94.

³⁵⁰ Act on Rehabilitation.

people with disabilities and calls for “positive action”.³⁵¹ Employers must adapt the workplace to the needs of each employee, including employees with disabilities.³⁵²

In the past there has been some instability in legislation on the employment of people with disabilities. For example, since the Act on Rehabilitation was first introduced, regulations have changed more than twenty times.

In line with the requirements of the Employment Directive, Article 123 of the Act on Promotion of Employment addresses denial of employment on the ground of discrimination, which is treated as an offence, and is liable to a fine of no less than PLN 3,000 (approximately €652). Sanctions are imposed when a person cannot be employed in an available post or at the place where they received vocational training, because of sex, age, disability, race, ethnic origin, nationality, sexual orientation, political or religious beliefs or membership of a trade union. The act also specifies other non-discrimination regulations concerning access to employment,³⁵³ vocational guidance,³⁵⁴ counseling,³⁵⁵ and vocational training.³⁵⁶

With few exceptions, legislation concerning vocational and social rehabilitation and employment does not distinguish between physical and intellectual disabilities. There is, however, a distinction made for people with different degrees of disabilities (*low, moderate or significant*).³⁵⁷ Exceptions to this are the new regulations for financing the

³⁵¹ Employment Directive, art. 5.

³⁵² The rules are specified in the Regulation of the Minister of Labour and Social Policy on general rules about safety and hygiene of work, 26 September 1997, Dz. U. 2003, No. 169, item. 1650. This also includes sanitation and hygiene equipment in accordance with technical-structural rules (Annex no. 3 to the Regulation). Irrespective of this, the employer is obliged to protect the health and life of employees by assuring safe and hygienic working conditions and by carrying out technical improvements. This refers to both buildings and equipment. Labour Code, art. 207.

³⁵³ Act on Promotion of Employment, art. 36, para. 4, point 3. Placement services are based on the principle of equal treatment, which means the obligation of labour offices to assist all persons seeking work in finding employment, irrespective of their sex, age, disability, race, ethnic origin, nationality, sexual orientation, political or religious beliefs or membership of a trade union.

³⁵⁴ Act on Promotion of Employment, art. 36, para. 5. Employers are obliged to inform county labour offices about vacant posts or about places available for vocational training. Only employers' announcements of positions or internships which do not discriminate against applicants on the basis of sex, age, disability, race, ethnic origin, nationality, sexual orientation, political and religious beliefs and trade union membership are acceptable.

³⁵⁵ Act on Promotion of Employment, art. 38, para. 2, point 3. Vocational guidance is based on the principle of equal treatment, irrespective of sex, age, disability, race, ethnic origin, nationality, sexual orientation, political or religious beliefs or membership of a trade union.

³⁵⁶ Act on Promotion of Employment, art. 40, para. 6. Directing unemployed persons for training is based on the principle of equal treatment irrespective of sex, age, disability, race, nationality, political or religious beliefs or trade union membership.

³⁵⁷ These three degrees of disability (low, moderate and significant) are not the same as the four levels of intellectual disabilities (*mild, moderate, severe and profound*).

salaries of employees with disabilities;³⁵⁸ and the Regulation of the Minister of Labour and Social Policy (1998)³⁵⁹ that allows employers to reduce the quota requirement of six per cent of employees with disabilities if the employer employs people with specific disabilities, including intellectual disabilities.

Anti-discrimination bodies

The Government Plenipotentiary for Disabled Persons' Affairs is the Secretary of State in the Ministry of Social Policy responsible for supervision of the tasks arising from the Act on Rehabilitation. This supervision means coordinating and controlling the carrying out of these tasks. Other principal functions are: drafting and giving opinions on legislation concerning employment, rehabilitation and living conditions of people with disabilities; drafting of government programmes concerning people with disabilities; initiating activities which try to limit the effects of disability and reduce the barriers that make it difficult for people with disabilities to function; and cooperating with NGOs and foundations working in support of persons with disabilities.³⁶⁰

There are no specialised bodies that handle discrimination cases in employment. Labour courts and labour and social insurance courts are responsible for the examination of cases concerning labour law.³⁶¹ Proceedings are conducted in accordance with the regulations of the Code of Civil Procedure. The State Labour Inspectorate, which consists of the Main Labour Inspectorate and Regional Labour Inspectorates, is responsible for the supervision and control of employers with respect to labour law including, for example, salaries and the employment of people with disabilities. With Poland's accession to the EU, the State Labour Inspectorate, will also be responsible for providing information (upon written request) about the minimum conditions of employment and equal treatment regulations laid out in the Labour Code.³⁶²

People whose rights to equal treatment in employment have not been respected by an employer can seek redress in a labour court. According to the Labour Code the bottom limit of compensation for discrimination cannot be lower than the minimum wage³⁶³ and there is now no upper limit on compensation levels.³⁶⁴ The Labour Code imposes

³⁵⁸ Act on Rehabilitation, art. 26a. The new rules have been in force since 1 June 2004.

³⁵⁹ Regulation of the Minister of Labour and Social Policy on the kinds of conditions that permit decreasing the ratio of employees with disabilities and forms of decrease, 18 September 1998, Dz. U. 1998, No. 124, item. 820, (last amendment 17 June 2003, Dz. U. No. 125, item. 1162), (hereafter, Regulation on Ratio of Employees with Disabilities).

³⁶⁰ Act on Rehabilitation, art. 34.

³⁶¹ The Act on the Examination of Cases of Labour Law and Social Insurance by Courts, 18 April 1985, Dz. U. 1985 No. 20, item. 85, (last amendment 11 April 2003, Dz. U. 2003, No. 83, item. 760).

³⁶² The Act on State Occupational Inspection, 6 March 1981, unified text, Dz. U. 2001, No. 124, item. 1362, (last amendment 2 July 2004, Dz. U. 2004, No. 173, item. 1808), art. 8.

³⁶³ The minimum wage (gross) is PLN 824 (€179) (on 1 May 2004).

³⁶⁴ Previously the amount of compensation had been no higher than six times the minimum amount of remuneration. Labour Code, art. 18(3d).

the burden of proof on the employer that there has been no breach of equal treatment.³⁶⁵ The employee bringing a discrimination case is exempt from court fees.³⁶⁶ The employee has the right to be represented by a labour inspector, a trade union representative, or another employee of the company.³⁶⁷ Labour inspectors can begin court proceedings in support of employees (in cases dealing with labour law).³⁶⁸ Cases relating to discrimination in employment can be addressed (on general principles) to the Ombudsman. Individual local authorities can also appoint a Commissioner for People with Disabilities (Ombudsman) who will deal with all cases related to people with disabilities, not just employment cases.

1.2 Diagnosis and assessment for employment and benefits purposes

There are two main systems for the assessment of disability for adults. The Social Insurance Institute (ZUS) determines the right to social insurance benefits, including the inability to work pension and social pension.³⁶⁹ The Disability Assessment Boards are responsible for determining legal disability status and eligibility for rights other than rights to social insurance benefits.

Disability Assessment Boards

The Disability Assessment Boards exist at the county level and province level. They operate in accordance with the Act on Rehabilitation and regulations established by the Ministry of Social Policy. The boards are responsible for issuing legal disability status for children and young people up to the age of 16 (since 2002³⁷⁰), and legal disability status in one of three disability degrees for people aged over 16 years old.³⁷¹ A detailed catalogue specifies the extent of conditions and disorders which are taken into account when granting disability status. One of these is intellectual disability (“mental

³⁶⁵ Labour Code, art. 18(3b), para. 1.

³⁶⁶ Code of Civil Procedure, art. 463.

³⁶⁷ Code of Civil Procedure, art. 465.

³⁶⁸ Code of Civil Procedure, art. 462.

³⁶⁹ There are four systems that specify qualification for pensions. They exist within the Social Insurance Institute, the Agricultural Social Insurance Fund, the Ministry of the Interior and Administration and the Ministry of National Defence. Three of these systems apply to occupations such as farmers, police officers or military personnel, so are not described in the text.

³⁷⁰ Children’s Rights Ombudsman, *Activities 2002*, p. 48; The Regulation of the Minister of Labour and Social Policy on the criteria of evaluation of the disability of persons up to age 16, 1 February 2002, Dz. U. No. 17, item. 162.

³⁷¹ Act on Rehabilitation, chapter 2.

handicap”), but only of more than a *moderate* degree.³⁷² Consequently, a person with *mild* intellectual disabilities cannot obtain legal confirmation of disability status unless they have additional or multiple disabilities.

There is a detailed catalogue of conditions on the basis of which legal disability status for children is granted. A child receives a disability assessment by a Disability Assessment Board if his or her “mental or physical efficiency has been impaired” and its duration is expected to exceed 12 months.³⁷³ In addition, the child’s condition must require complete care, or assistance in meeting the child’s needs must be high in comparison with the level of support required for a non-disabled child of the same age.³⁷⁴

The Act on Rehabilitation defines a “person with disabilities” as a person who has “a physical or mental impairment which reduces, renders difficult or impossible, permanently or temporarily, full participation in the life of society, and in particular, access to employment”.³⁷⁵ The act also regulates the establishment of the legal confirmation of disability status and of the degree of disability.³⁷⁶ The act establishes three degrees of disability (*low*, *moderate* and *significant*):

- People with a *low* degree of disability have a physical or mental impairment, which decreases their capacity to work, in comparison with a person with similar vocational qualifications but without disabilities. This degree of disability also applies to people whose ability to perform social roles is limited, but can be compensated by orthopaedic or technical equipment.³⁷⁷
- People with a *moderate* degree of disability have a physical or mental impairment which means that they are unable to take up employment, or are only able to take up employment in sheltered workplace conditions. In order to perform social roles, they require the partial or periodical assistance of a third person, due to a limited constraint on their ability to lead an independent life.³⁷⁸

³⁷² The Regulation of the Minister of Economy, Labour and Social Policy on Disability Identification and Degree of Identification, 15 July 2003, Dz. U. 2003, No. 139, item. 1328, (hereafter, Regulation on Disability Identification). The Regulation of the Minister of Labour and Social Policy on the Criteria of Evaluation of the Disability of Persons up to age 16, 1 February 2002, Dz. U. No. 17, item. 162, (hereafter, Regulation on Evaluation of the Disability of Persons up to Age 16)

³⁷³ Act on Rehabilitation, art. 4a; Regulation on Evaluation of the Disability of Persons up to Age 16.

³⁷⁴ Act on Rehabilitation, art. 4a; Regulation on Evaluation of the Disability of Persons up to Age 16.

³⁷⁵ This definition only applies to people who have obtained legal confirmation of disability. Act on Rehabilitation, art. 1 and 2. The act also specifies identification of disability in children up to the age of 16.

³⁷⁶ Act on Rehabilitation, art. 3. According to the act, an inability to lead an independent life means an impairment to a degree that prevents the person from satisfying, without the assistance of others, his or her basic life needs, which include mobility and communication.

³⁷⁷ Act on Rehabilitation, art. 4, par. 3.

³⁷⁸ Act on Rehabilitation, art. 4, par. 2.

- People with a *significant* degree of disability have a physical or mental impairment which means that they are unable to take up employment or are only able to take up employment in sheltered workplace conditions. Due to a significant constraint on their ability to lead an independent life, these people require permanent or long-term care or assistance in order to participate in social life.³⁷⁹

These definitions, as they appear in the act, can be interpreted as being discriminatory in that they presume incapacity to work as automatically and strongly linked to disability status.

People with *significant* and *moderate* disabilities can also be employed in non-sheltered workplace conditions if the employer has received a positive opinion from the State Labour Inspectorate concerning the suitability of the workplace for the person with disabilities.³⁸⁰

The Disability Assessment Boards are responsible for determining the extent to which disability affects a person's ability to participate in social life and, in particular, to work and look after himself or herself.³⁸¹ Legal confirmation of disability status is issued for either a specified or unspecified period. It is granted by County Disability Assessment Boards, made up of a president, secretary, doctors, psychologists, educators, vocational counsellors and social workers. The Disability Assessment Boards are made up of evaluation teams which include at least two people from the main Disability Board. The presidents of these teams are doctors, specialists in a field related to the main condition of the person with disabilities.

The identification of the degree of disability is made upon the request of the person concerned,³⁸² who participates in the meeting along with a representative. A medical certificate, detection of main and coexisting conditions and other certificates (such as results of a psychological examination) are submitted to the doctor, a specialist in a field relating to the main condition, who evaluates the state of health of the person concerned. The evaluating team also has the option of identifying the degree of disability purely on the basis of a medical opinion, and without actually examining the

³⁷⁹ Act on Rehabilitation, art. 4, par. 1.

³⁸⁰ Act on Rehabilitation, art. 4, par. 5.

³⁸¹ During the assessment the following are considered: a) medical (and other) certificates; b) the evaluation of the state of health made by the doctor-president of the evaluation team; c) age, sex, education, occupation, and qualifications; d) the possibility of total or partial reinstatement of employability (in hitherto or other employment) by medical treatment, rehabilitation or retraining; e) limitation in ability to lead an independent life and participate in social life; and f) possibility of improvement in ability to lead an independent life and to perform social roles (by medical treatment, rehabilitation, provision in orthopaedic or technical equipment, care assistance or other actions).

³⁸² It can also be made on the request of the representative of this person, and with his or her agreement or that of representatives.

person concerned, if the president of the team recognises that the medical opinion is sufficient to submit the evaluation of the state of health.³⁸³

The person concerned can appeal against the decision of the County Disability Assessment Board at the provincial board level, while the provincial board's decision can be appealed in a labour court. If the state of health of the person with disabilities should change, the person has the right to provide information at the hearing about the change in degree of disability.³⁸⁴

The disability certificate issued by the Disability Assessment Board should include, in addition to an indication of the degree of disability, recommendations as to:³⁸⁵ suitable employment or training; employment in occupational activation workshops;³⁸⁶ participation in occupational therapy; orthopaedic appliances and supplementary aids, if necessary; access to locally available social services and social assistance entitlements (such as social care, rehabilitation and therapy services provided by social welfare units or NGOs); the need for permanent or long-term care or help from another person, in connection with severely limited ability to lead an independent life.³⁸⁷

Assessment of eligibility for social insurance benefits

In determining eligibility for social insurance benefits, legal confirmation of disability is provided by a certificate issued by the ZUS practitioner.³⁸⁸ A person identified as unable to work does not automatically qualify for a pension. The certificate issued by the ZUS practitioner is the basis for decisions relating to organs within the framework of the Social Insurance Institute. The right to a pension depends on the assessed inability to work and the inability to lead an independent life. Appeals against unfavourable decisions can be made to the appropriate labour and social insurance courts.

The ZUS practitioner is a medical specialist and must also have completed Social Insurance Institute training.³⁸⁹ Assessment is based on an examination, all previous medical or psychological assessments and any other relevant documentation. The practitioner can also make the assessment without examining the person if the medical specification is sufficient. Before making the diagnosis, the practitioner can commission supplementary documentation, particularly from other doctors, a

³⁸³ Regulation on Disability Identification.

³⁸⁴ Regulation on Disability Identification.

³⁸⁵ Act on Rehabilitation, art. 6b.

³⁸⁶ Occupational activation workshops are one type of sheltered employment in Poland.

³⁸⁷ Act on Rehabilitation, art. 3.

³⁸⁸ Details are specified in: Pensions Act; and Regulation of the Minister of Labour and Social Policy on the certification of incapacity to work for the purpose of determining the right to social insurance benefits, 8 August 1997, Dz. U. 1997, No. 99, item. 612.

³⁸⁹ The medical specialist can be a specialist in internal diseases, surgery, neurology, psychiatry, labour medicine or social medicine.

psychologist, and other medical examinations. The consulting doctor and psychologist base their opinions on the examination of the person with disabilities and by analysing the medical and vocational documentation.

The practitioner's certification of inability to work includes an evaluation of the degree and duration of inability to work and a prognosis concerning re-establishing the capacity for work.³⁹⁰ Inability to work can be permanent or temporary. Certificates can be issued for a specified or unspecified period, depending on the assessment. The certificate can stipulate total inability to work and to lead an independent life, or total inability to work, or partial inability to work. People assessed as being totally unable to work may, however, still be considered able to work under specified conditions related to social and vocational rehabilitation.³⁹¹

Certificates issued by ZUS practitioners have the same weight as certificates issued by Disability Assessment Boards. Total inability to work and inability to lead an independent life is treated on a par with a Disability Assessment Board's certificate of a *significant* degree of disability. Total inability to work is treated on a par with a certificate of *moderate* degree of disability. Partial inability to work and recommended retraining in new skills is treated on a par with a certificate of *low* degree of disability.³⁹² However, certificates issued by the ZUS practitioner do not include recommendations for any specific type of support, such as the certificates issued by Disability Assessment Boards. Individuals with certificates issued by ZUS practitioners can apply to the Disability Assessment Boards to specify recommendations for the forms of support that they require. In such cases, the degree of disability is specified in compliance with regulations relating to equivalence of certificates, whereas the recommendations are specified in accordance with an examination conducted by the doctor from such a Board.³⁹³ However, certificates issued by Disability Assessment Boards are not considered to be a basis for the payment of pensions as certificates issued by ZUS practitioners are. A person who wants to receive an inability to work pension or social pension must have a certificate issued by a ZUS practitioner.

Limitations of the assessment systems

This system of identification of disabilities is often criticised. There are no clear rules for carrying out assessments.³⁹⁴ Too often, the level of ability to lead an independent

³⁹⁰ Pensions Act, art. 13, par. 1.

³⁹¹ Pensions Act, art. 13, par. 4.

³⁹² Act on Rehabilitation, art. 5.

³⁹³ Act on Rehabilitation, art. 5a.

³⁹⁴ Interview with Danuta Mochacka, 2 December 2003. Individuals with similar intellectual levels and social skills can receive totally different certificates. For example, in certifying people with Down's Syndrome the main reason given is that the individual not only has intellectual disabilities, but also has a psychiatric diagnosis or neurological condition. Individuals in one system can receive totally different certificates than those in another system, despite the fact that they are theoretically equal. This is again due to a lack of clear rules for making assessments.

life dictates the recommendation for work. As a result, people who may not be able to lead an independent life automatically receive a recommendation for therapy only, and not a recommendation for employment.³⁹⁵ The Ombudsman receives numerous complaints every year regarding the Disability Assessment Boards' prolonged deliberations for specifying the degree of disability. These delays are usually caused by a lack of funds.³⁹⁶ Certificates are also issued by specialists with little knowledge of intellectual disabilities. In addition, assessments are made only on the basis of medical specification without an examination. Certificates are stigmatising and superficial and do not specify the kind and degree of support that is essential.³⁹⁷

The system of assessment does not address the specific needs of people with intellectual disabilities, and is more concentrated on people with physical and sensory disabilities. The criteria used to decide who is able to lead an independent life are vague and open to individual interpretation. People with *moderate* intellectual disabilities are often assessed as having only limited constraints on the ability to lead an independent life only because they do not have physical disabilities. They receive the designation of a *moderate* degree of disability by the Disability Assessment Boards and are assessed as needing only periodic care and/or assistance. However, many people with *moderate* intellectual disabilities, even if they do not have physical disabilities, require more than periodic care and/or assistance to lead an independent life. These people are also generally under *plenary* guardianship and therefore legally have no right to act alone.³⁹⁸

1.3 The role of the social welfare system

The main sources of income for people with disabilities and their families are various social welfare benefits or pensions. In 2002, the number of people with disabilities receiving income from employment was only 7.7 per cent; almost 90 per cent of families in which there was one member with disabilities declared that their main sources of income were other than from employment.³⁹⁹ People with disabilities whose main source of income is social welfare benefits or pensions usually live above the

³⁹⁵ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

³⁹⁶ RPO-MAT No 44, p. 134; and RPO-MAT, No. 47, p. 108.

³⁹⁷ Interview with Krystyna Mrugalska, 18 and 23 December 2003.

³⁹⁸ Interview with Krystyna Mrugalska, 1 March 2004.

³⁹⁹ Central Statistical Office, *Persons with disabilities and their households*.

poverty line as defined by the law⁴⁰⁰ (PLN 460, or approximately €100, per month in 2002) but not always above the social minimum.

After fulfilling certain additional conditions, people with disabilities who have received a certificate of inability to work issued by the Social Insurance Institute practitioner are eligible for either an *inability to work pension* or a *social pension*.

The *inability to work pension* is available to insured individuals who are incapable of working;⁴⁰¹ have (according to their age) fulfilled the required insurance period;⁴⁰² and are unable to work for a strictly specified period.⁴⁰³ The period of insurance required to receive an inability to work pension depends on the age at which the inability to work manifested itself, and ranges from one to five years.⁴⁰⁴ However, most people with intellectual disabilities have never worked and would not be eligible for this pension. The amount of the inability to work pension depends on the period of insurance and on the certificate issued by the Social Insurance Institute practitioner. As of 1 March 2004, the amount of the lowest total inability to work pension is PLN 562 (approximately €122). A person who is partly incapable of working receives 75 per cent of the total inability to work pension, while a person who is totally unable to work and unable to lead an independent life receives 100 per cent, plus a nursing supplement.⁴⁰⁵

⁴⁰⁰ The poverty line as defined by law is the amount that, in relation to the statute, entitles an individual to apply for financial support from the social welfare system. For 2002, the poverty line for a household with four people was PLN 1129 (€246). The corresponding amount for a household with one person was PLN 460 (€100). In 2002, 18.5 per cent of all people in Poland were living in households with a level of expenditure lower than the poverty line. Central Statistical Office, *Situation of households in 2002 in accordance with results relating to research analysing household budgets*, (in Polish), CSO, Warsaw, 2003.

⁴⁰¹ Pensions Act, art. 57. These conditions exclude people who are totally incapable of working because of a disability developing before the age of 18 and who have the right to a social pension. These persons do not fulfil the third condition required in the act, the specified period during which the disability appeared. When such a person is employed (and is paying compulsory social insurance), he or she does not have the right to a pension from insurance assigned on the basis of inability to work. Very important is the settlement of the right to social protection of persons partly incapable of working because the disability developed before the age of 18. These persons cannot receive a social pension. When they are employed and paying compulsory insurance, they still do not have the right to receive a pension from social insurance assigned on the basis of inability to work. This can happen only in the case of deterioration of health within the period of insurance (or no later than 18 months after that period) which is serious enough for the person to be assessed as totally incapable of working. Otherwise, in spite of insurance, the person would not have the right to social insurance assigned on the basis of inability to work. RPO-MAT, No. 44, p. 135.

⁴⁰² Pensions Act, art. 57a. With the exception of a person whose inability to work is caused by an accident on the way to or at work.

⁴⁰³ Pensions Act, art. 57 and 6. These are periods when the person is insured and pays fees for employment or other vocational activities. Inability to work must develop (with few exceptions) during these periods or no later than 18 months after these periods.

⁴⁰⁴ Pensions Act, art. 58.

⁴⁰⁵ The nursing supplement is PLN 144 (€31). Status as of 1 May 2004.

The inability to work pension is reduced when the person has an income (for example becomes employed) higher than 70 per cent of the average monthly wage. It is suspended when this income exceeds 130 per cent of the average wage.⁴⁰⁶

People with disabilities can receive a permanent or temporary *social pension* depending on the duration of their inability to work. However, people who receive an inability to work pension are ineligible for a social pension. The social pension is part of the social insurance system and is set at 84 per cent of the lowest amount of the total inability to work pension.⁴⁰⁷ It is available for every individual of a certain age who is totally unable to work due to an impairment which was present before the age of 18.⁴⁰⁸ When a person with disabilities receives a monthly income (for example from employment) that is higher than 30 per cent of the average monthly wage, the pension is suspended.⁴⁰⁹ This actually provides a disincentive to employment for people receiving a social pension.

Adults who are totally incapable of working can also apply for permanent benefits from the social welfare system, if their income is lower than the income criteria specified in the social welfare regulations.⁴¹⁰ The amount of the permanent benefit makes up the difference between the specified income criteria and the income of the person or family.⁴¹¹ In addition, families with a child with disabilities can also benefit from the family benefit system. Table 7, below, contains further information on the amounts payable by the different services.

⁴⁰⁶ Since 1 March 2004, it is PLN 2,960 (€643) gross.

⁴⁰⁷ Since 1 March 2004 the social pension is PLN 472 (€102), but because of the fee for health insurance and the income tax that must be paid, the net amount of the social pension is approx PLN 420 (€90).

⁴⁰⁸ It is also available in cases where the impairment has developed during education at school or at university before the age of 25, or during doctoral studies. Act on the Social Pension, art. 4.

⁴⁰⁹ Average monthly remuneration is (gross) PLN 2,332 (€507) (1st quarter of 2004). In other words the pension is suspended when the monthly income is higher than (gross) PLN 683 (€148). Status as of 1 May 2004.

⁴¹⁰ Act on Social Welfare, art. 8. In 2003, the net income for a one-person household could not exceed PLN 461 (€100). For a family, the net income per person could not exceed PLN 316 (€69).

⁴¹¹ Act on Social Welfare, art. 37. As of 1 May 2004 minimum PLN 30 (€7), maximum PLN 418 (€90) Act on Social Welfare, art. 8.

Table 7. Examples of social benefits available to people with disabilities and their families

| Type of family service | | Amount |
|---|--|---------------------|
| Maximum income (net) in household per person giving entitlement to family benefit | | PLN504 (€110) |
| Maximum income (net) in household per person giving entitlement to family benefit – for a family with a child with disabilities or a young person age over 16 with moderate or significant disabilities. | | PLN583 (€128) |
| Amount of family benefit: ⁴¹² | for the first and second child and for the spouse, | PLN43 (€9) |
| | for the third child; and | PLN53 (€11) |
| | for each consecutive child | PLN66 (€14) |
| Supplement to the family benefit | | PLN 50 –70 (€11-15) |
| Nursing service | | PLN 420 (€91) |
| Nursing allowance | | PLN144 (€31) |

Source: Act on Family Benefits 2004⁴¹³

Various regulations restrict the possibility for people with disabilities to register as unemployed in labour offices and to receive an unemployment benefit.⁴¹⁴ Every Polish citizen (and foreigner who fulfils one of the conditions specified in the statute) who is not employed can apply for the status of unemployed if they are registered in a county labour office and are capable and ready for full time employment. However, people with disabilities cannot register as unemployed if they receive an *inability to work pension* or a *social pension*; if they are not able to get at least a part-time job because of ill health; or if they receive a permanent benefit. These restrictions generally pertain to people with intellectual disabilities, who usually have the right to a social pension and so do not have all the opportunities enjoyed by people registered as unemployed. They may, however, register in a labour office as seeking employment; obtain help in finding

⁴¹² As of 1 May 2004. From 1 September 2005, the amount of the family benefit will depend on the child's age. Act on Family Benefits, art. 6 para. 2. The amount of the family benefit shown above is as of 1 September 2004. Act on Family Benefits, 28 November 2003, Dz. U. 2003, No. 228, item. 2255, (last amendment 30 July 2004, Dz. U. 2004, No. 192, item. 1963). The act entered into force on 1 May 2004.

⁴¹³ The supplement to the family benefit is assigned on the basis of education and rehabilitation of a child with disabilities up to the age of 16 and a person with *moderate* and *significant* disabilities between the ages of 16 and 24. The Nursing Service is assigned on the basis of one of the child's parents resigning from work in order to take care of a child with disabilities (up to the age of 16) or a person with *significant* disabilities between the age of 16 and 24. The Nursing Allowance (which a family is entitled to regardless of income) is due to a child with disabilities up to the age of 16. A person over 16 is entitled to a Nursing Allowance if disabled to a *significant* degree. This allowance is also due to a person with a *moderate* degree of disabilities if the disability manifested itself before the age of 21. Act on Family Benefits, art. 4-17.

⁴¹⁴ Act on Promotion of Employment, art. 2.

a job; and benefit from counselling services and vocational and other activities provided by the labour offices (see section IV. 3.2.1).

2. GOVERNMENT EMPLOYMENT POLICY

As an EU Member State, Poland receives EU Structural Funds which will be used to improve the vocational and social rehabilitation of people with disabilities and improve their level of vocational preparedness and employability. The main way in which the employment of people with disabilities is encouraged is through the quota system. However, at present most employers prefer to pay into the State Fund for the Rehabilitation of People with Disabilities rather than engage a person with disabilities. Very few people with intellectual disabilities find work through this quota system. Local governments must also implement programmes to develop and maintain the employment of people with disabilities. Targeted programmes are also created and funded from the State Fund, although none of these are specifically addressed at people with intellectual disabilities. NGOs are closely involved in providing employment opportunities for people with disabilities. In the past, they were rarely consulted on draft legislation, or on the development of targeted programmes, but recent legislation should improve coordination and partnership.

2.1 The EU and Government employment policy

During the pre-accession process, the employment of people with intellectual disabilities was not mentioned in either the *Accession Partnership* or the *Regular Reports* of the European Commission on Poland's progress towards accession.⁴¹⁵ At this time, Poland was financed by EU pre-accession funds (such as Phare, ISPA, SAPARD) and other community and bilateral programmes, and implementation of programmes co-financed by EU assistance funds continue to play an important role within the labour market. For instance, the Phare Programme and its different projects co-finance social and economic development projects addressed to individuals or groups at risk of being marginalized in the transformation process. This includes people with disabilities.

As an EU Member State, Poland now receives EU Structural Funds, which will be used to fund projects targeted at people with disabilities. For example, within the framework of Polish preparations to implement the European Employment Strategy, the Sector Operation Programme Human Resources Development (SOP-HRD) 2004–2006 was prepared as one of six SOPs to implement the National Development Plan.⁴¹⁶ Activities outlined in SOP-HRD 2004–2006 are focused, among others, on the vocational and social rehabilitation of people with disabilities, in particular as described in Priority 1, "Active policies of labour market and occupational and social integration". Within

⁴¹⁵ *Accession Partnership* documents and Regular Reports on Poland, and other documents on enlargement are available at <http://europa.eu.int/comm/enlargement/docs/index.htm> (accessed 14 January 2004).

⁴¹⁶ SOP-HRD 2004–2006.

Priority 1, Measure 1.4 “Vocational and social integration of persons with disabilities” has as its main purpose the improvement of the level of vocational preparedness and employability of people with *significant* and *moderate* degrees of disability, building capacity and establishing new instruments and improving existing ones, to increase the chances of people with disabilities on the labour market. The sum of €106,000,000 is to be allocated for projects submitted under Measure 1.4 in 2004–2006, of which 72 per cent will be allocated by the EU from the European Social Fund (ESF) and 29 per cent from the State Fund for the Rehabilitation of People with Disabilities.⁴¹⁷

2.2 National employment policy

The most important way in which the Government encourages the employment of people with disabilities is through the quota system. However, in most cases, employers prefer paying the quota requirements to the State Fund rather than employing people with disabilities.⁴¹⁸ Very few people with intellectual disabilities are employed through the quota system.

Before 1989, Poland’s system of vocational rehabilitation and employment for people with disabilities was based on cooperatives, which employed nearly all people with disabilities deemed able to work⁴¹⁹ including people with intellectual disabilities.⁴²⁰ In 1991, a new system of State financial support for the social and vocational rehabilitation of people with disabilities was adopted, based on a system of quotas obliging employers to hire people with disabilities.⁴²¹ According to the Act on Rehabilitation, employers with at least 25 employees that do not fulfil their quota of

⁴¹⁷ State Fund. Information available at <http://www.pfron.gov.pl> (accessed 20 December 2004).

⁴¹⁸ The average payment in 2002 was PLN 906 (€197) for one person with disabilities. Moreover, legislators provided reductions of payments to the Fund for employers if they buy goods or services from sheltered workplaces. The lump sum of these reductions in 2002 was PLN 752 million (€163 million). This means that the effective payment to the Fund (for not employing people with disabilities) was PLN 450 (€98) monthly per person. R. Sroczynski, “Principles of financing of vocational rehabilitation and disabled persons’ employment”, (in Polish), in conference proceedings “Polish experiences concerning vocational rehabilitation and disabled persons’ employment”, 20 October 2003, National Chamber on Economy and Rehabilitation, Warsaw, (hereafter, Sroczynski, *Principles of Financing*).

⁴¹⁹ These are cooperatives for disabled and visually impaired persons. In order to obtain financial privileges, similarly to current sheltered workplaces, disabled persons’ cooperatives were obliged to have at least 70 per cent of employees with disabilities and to ensure their medical care and medical rehabilitation. Sroczynski, *Principles of Financing*.

⁴²⁰ In 1977, 6.6 per cent of employees (13,861 people) in such cooperatives were people with intellectual disabilities. W. Otrębski, *Persons with Mental Retardation at Work*, Catholic University in Lublin, 2001, p. 55.

⁴²¹ During the first few years of the quota-subsidy system in Poland (1991–1998), the State Fund was obliged to pay employers who were employing a total of at least 50 employees, but still did not fulfil their disabilities ratio. The main aim of the change (as of 31 December 1998) was to increase the number of companies that are obliged to contribute to the Fund.

hiring at least six per cent of people with disabilities are obliged to pay a fine to the State Fund for the Rehabilitation of People with Disabilities (hereafter State Fund).⁴²² The quota of employees with disabilities in State and local authority units and cultural institutions is currently set at two per cent but by the year 2008 it will be increased to six per cent.⁴²³ The quota for schools, higher educational institutions and teacher training colleges will also increase from one per cent to two per cent in 2005.⁴²⁴

The quota requirement can be decreased if the employer hires people with a certain type of disability that makes work particularly difficult⁴²⁵ and employers can even be released from payments to the State Fund. Intellectual disability is one of the conditions which justifies this decreasing ratio of employees with disabilities. How much the ratio is decreased is based on a formula provided by the law.⁴²⁶ Payments to the State Fund can also be decreased by purchase of goods or services from an employer who employs people with *moderate* and *significant* degrees of disability.⁴²⁷

The amount of financial support given to employers depends on the degree of disability of employees; the type of disability; the type of employment (for example, on the open market or in sheltered conditions); and the disability ratio they achieve. Available support can be in the form of reimbursement of expenses;⁴²⁸ reimbursement of a part of expenses related to training;⁴²⁹ a monthly subsidy from the State Fund for

⁴²² Act on Rehabilitation, art. 21. Diplomatic agencies (such as embassies, consulates and foreign missions) are exempt from penalties. Employers conducting clearing of enterprises in bankruptcy proceedings are also exempt from this payment, as well as public and non-governmental not-for-profit organisations involved in social and vocational rehabilitation, education and care of people with disabilities.

⁴²³ Act on Rehabilitation, art. 21, para. 2a.

⁴²⁴ Act on Rehabilitation, art. 21, para. 2b. For educational institutions, the percentage of employees with disabilities is counted in a different way than for other employers. The ratio of employees with disabilities is counted as the sum of the ratio of employees with disabilities plus double the ratio of wards and students with disabilities.

⁴²⁵ Act on Rehabilitation, art. 21.

⁴²⁶ Regulation on Ratio of Employees with Disabilities.

⁴²⁷ Act on Rehabilitation, art. 22. The employer must employ at least 25 people and have at least ten per cent of employees with *moderate* and *significant* degrees of disability.

⁴²⁸ Act on Rehabilitation, art. 26. An employer who has employed people with disabilities for at least 36 months may receive reimbursement of expenses incurred for the adaptation of work places and enclosed spaces for people with disabilities and adaptation or purchase of equipment to facilitate their functioning. Employers may be reimbursed for an analysis of people with disabilities needs, which is carried out by labour medical services. These rights also apply to open market employers who have not attained the required number of employees for a disability ratio.

⁴²⁹ Act on Rehabilitation, art. 41. Partial reimbursement of expenses for training organised by employers for employees with disabilities, who will then be employed in other positions in accordance with schooling for at least 24 months. At the employer's request, up to 75 percent of expenses can be reimbursed by the Fund, but can be no more than twice the average remuneration per person. (These rights also refer to an open market employer who does not have the required number of employees for a disability ratio).

financing the salaries of employees with disabilities;⁴³⁰ or subsidies for social insurance contributions.⁴³¹

In addition to the quota system, the most significant legislative solutions to promote the access of people with disabilities to training and employment include paying the cost of training;⁴³² granting loans for start-up business activity;⁴³³ granting subsidies for payment of interest on bank loans taken to continue business activity;⁴³⁴ and, as of 1 January 2004, subsidies for social insurance contributions due from people with disabilities starting up a business for the first time.⁴³⁵

People with disabilities employed on the open market also have specific rights pertaining to working hours (they cannot work more than eight hours a day and 40

⁴³⁰ Act on Rehabilitation, art. 26(a). An employer employing persons with disabilities is entitled to a monthly subsidy from the Fund to finance their salaries to the amount of: 130 per cent of the minimum remuneration for an employee with a *significant* degree of disability; 110 per cent of the minimum remuneration, for an employee with a *moderate* degree of disability; and 50 per cent for an employee with a *low* degree of disability. An open market employer is entitled to smaller amounts than a sheltered market employer (70 per cent of amounts mentioned above or 90 per cent in the case of persons with mental illness, intellectual disabilities, epilepsy or severe visual impairment). Employers employing at least 25 persons and not having an employee disability ratio of at least six per cent are not entitled to these rights. The new rules are in force since 1 January 2004 and hence the new concept of “funds follow the person”. Previous rules referred only to employers managing a sheltered workplace. These changes were introduced in the Act on Rehabilitation by the Act on Amending the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and Some Other Acts, 20 December 2002, Dz. U. 2003, No. 7, item. 79. Previous rules were in force until 31 December 2003 and referred only to employers managing a sheltered workplace, permitting a subsidy or reimbursement of salaries of persons with disabilities if their mental illness, intellectual disabilities or epilepsy had been diagnosed, to the amount of 75 per cent of the minimum remuneration.

⁴³¹ Act on Rehabilitation, art. 25. The level of financing depends on the degree of disability and is more profitable for people with a *moderate* and *significant* degree of disability. Employers employing at least 25 persons and who do not have an employee disability ratio of at least six per cent are not entitled to these rights.

Act on Rehabilitation, art. 25, 26, 26a and 41. Small-scale employers employing up to 24 persons receive specific concessions concerning the employment of people with disabilities. On the basis of rules relating to the open labour market, employers employing at least 25 employees can also receive: a monthly subsidy from Fund resources for remuneration for persons with disabilities; reimbursement of expenses incurred by adaptation of work places; and reimbursement of part of the expenses relating to training organised by employers. Small-scale employers can also receive subsidies for social insurance contributions (for old age pensions) of people with *moderate* and *significant* disabilities (paid partially by the Fund and the State budget).

⁴³² Act on Rehabilitation, art. 40.

⁴³³ Act on Rehabilitation, art. 12.

⁴³⁴ Act on Rehabilitation, art. 13.

⁴³⁵ Act on Rehabilitation, art. 25.

hours a week), salaries and work breaks. They also cannot work overtime or at night⁴³⁶ and those with *significant* or *moderate* disabilities cannot work longer than seven hours per day and 35 hours a week. These limitations do not affect monthly income.⁴³⁷ In addition, people with disabilities have the right to additional work breaks,⁴³⁸ and persons with *significant* and *moderate* degrees of disability receive additional vacation time⁴³⁹ and the right of release from work for medical examinations and treatment, rehabilitation and to purchase or repair orthopaedic equipment⁴⁴⁰ without losing income. They can also take 21 days once a year for a rehabilitation holiday.⁴⁴¹

Targeted programmes

There are no Government programmes at the national level specifically encouraging the employment of people with disabilities. However, local governments are obliged to develop and implement such programmes.⁴⁴² Targeted programmes are also created and funded from the State Fund to encourage people with disabilities to find employment. These are addressed directly to people with disabilities or provide employers (mostly those managing sheltered workplaces) with financial aid to cover the increased expenses of employing people with disabilities and maintaining them in employment.

In 2003, the “Equalisation of compensation differences between regions” programme was initiated, and will continue to operate until 2008. One of its main purposes is to facilitate the adequate equipping of new work places for persons with disabilities for

⁴³⁶ Act on Rehabilitation, art. 15. These principles are not binding for people who work as carers and in situations where the examining doctor provides, at the request of the employee, the consent to work overtime or at night.

⁴³⁷ Act on Rehabilitation, art. 18.

⁴³⁸ Act on Rehabilitation, art. 17. This 15 minute daily break is included in work time and is intended for exercise or recreation.

⁴³⁹ Act on Rehabilitation, art. 19. The additional vacation time is ten days per year.

⁴⁴⁰ Act on Rehabilitation, art. 20. If these activities cannot be carried out after work hours.

⁴⁴¹ Act on Rehabilitation, art. 20. Additional vacation time and release from work for participation in rehabilitation together cannot exceed 21 days per year.

⁴⁴² The provincial self-government (*voivodeship*) is obliged to develop and implement a provincial strategy in social policy. In particular this must include programmes in support of the equalisation of opportunities of persons with disabilities and programmes to counteract their social exclusion and to support tasks that will lead to the employment of persons with disabilities. (Act on Social Welfare, art. 21 and Act on Rehabilitation, art. 35). Counties are also obliged to develop and implement regional social policy strategies, which in particular must include programmes supporting persons with disabilities (Act on Social Welfare, art. 19). Counties must also carry out tasks to develop and implement programmes in support of vocational rehabilitation, employment and rights of persons with disabilities (Act on Rehabilitation, art. 35a).

their needs, in both the open and sheltered labour markets.⁴⁴³ Targeted programmes also support organisations working for the benefit of people with disabilities. There is no targeted programme addressed specifically to people with intellectual disabilities, but they also stand to benefit from some of these programmes.⁴⁴⁴

Theoretically, NGOs should be consulted in the development of targeted programmes addressed to people with disabilities. For example the Board of Members of the State Fund includes a representative from an organisation working for the benefit of people with disabilities.⁴⁴⁵ In addition, the National Consultative Council for Persons with Disabilities (appointed by the Government Plenipotentiary for Disabled Persons' Affairs) is a consultative advisory body where government administration, local authorities and NGOs cooperate for the benefit of people with disabilities.⁴⁴⁶ Finally, in every province (*voivodeship*) there are Provincial Social Councils for People with Disabilities Affairs appointed by each local authority, while in every county (*powiat*) a Regional Social Council for Persons with Disabilities acts as the consultative advisory body. These councils review programmes for people with disabilities at the provincial or county levels, and evaluate their implementation.⁴⁴⁷ The provincial and regional authorities are also obliged to cooperate with NGOs working for people with disabilities.⁴⁴⁸

However, despite these rules cooperation is unsatisfactory and NGOs and Government do not take a joint approach to problem solving. Usually the Government, both at the national and local levels, implements its own ideas and activities and defends them from the intervention of civil society. The most well established NGOs do occasionally succeed in submitting amendments to proposed legislation, due to their authority and personal

⁴⁴³ E. Wapiennik and R. Piotrowicz, *Person with Disabilities in the Local Environment – Equalization of Opportunities for Persons with Disabilities in the Region of Łódź (2003)*, (in Polish), Regional Centre for Social Policy, Łódź, 2003, pp. 150–167.

⁴⁴⁴ E. Wapiennik and R. Piotrowicz, *Person with Disabilities in the Local Environment – Equalization of Opportunities for Persons with Disabilities in the Region of Łódź (2003)*, *Regional Centre for Social Policy, Łódź, 2003*, pp. 150–167. Within the framework of the majority of targeted programmes addressed directly to persons with disabilities, in 2003 financial assistance was offered to facilitate training or employment, to support employers in adapting the workplace, and to purchase equipment, particularly computers and other information technology used by people with disabilities. The programmes included Pythagoras, Student, Computer for Homer, Tele-work and Junior. These programmes are funded by the State Fund.

⁴⁴⁵ More information on the Board Members of the State Fund is available at <http://www.pfron.gov.pl> (accessed 14 January 2004).

⁴⁴⁶ Act on Rehabilitation, art. 42.

⁴⁴⁷ These bodies are established on the basis of the Act on Rehabilitation, art. 44(a-c). Members of these councils are representatives of NGOs and self-governments (in the provincial council – self-governmental representatives of the province, counties and communities; in the regional council – from the county and communities).

⁴⁴⁸ Act on Rehabilitation, art. 35.

contacts. However, with the exception of the Charter of Rights for Persons with Disabilities, no legislation has ever been adopted after official consultation with NGOs.⁴⁴⁹

This situation may be changing. In 2003, a new act on public works and volunteerism was adopted which establishes new regulations on the status of non-profit NGOs active in the area of public affairs.⁴⁵⁰ It also mandates that in future public administrations must conduct their activities in the field of public affairs with the cooperation of NGOs and other organisations specified in the act. This cooperation can take the form of delegation of certain public tasks; sharing of information; consultation on proposed laws; and advisory activities at various levels of Government. In accordance with the new act, an advisory body to the Ministry of Social Policy (the ministry responsible for social security) has also been established, composed of representatives of governmental and local authority representatives, and NGO representatives. The new act should therefore lead to a more partnership-based access to public funds.⁴⁵¹

3. EMPLOYMENT IN PRACTICE

The current high level of unemployment in Poland has particularly affected people with disabilities, who are disadvantaged in entering the work force by the negative attitude of employers, co-workers and over-protective parents. Available statistics on people with intellectual disabilities reveal that most are unemployed on a long-term basis and that their levels of employment and economic activity fall well below that even for people with other types of disabilities. Very few are employed on the open market and there is no framework for supported employment in Poland. There are only a very limited number of Government programmes which train and maintain people with disabilities in employment, such as the "Junior Programme", but these are not adapted to the needs of people with intellectual disabilities. The best example of supported employment is operated by an NGO, the Job Coach Project initiated by the Agency of Supported Employment, in Wrocław.

⁴⁴⁹ Inclusion Europe and PAPMH, *Poland report*, pp. 26–27. According to the regulation of the Prime Minister of 20 June 2002 concerning the rules for developing new legislation (Dz. U. No. 100, item. 908), before arriving at a decision on preparing the proposal for a new act, the units interested in the proposal are consulted. Moreover, proposals of new acts are published on the internet, while in preparing every proposal for an act, opinions are included in "Evaluation of the Effects of the Regulation" concerning the consultation conducted in accordance with the Resolution of the Cabinet of 19 March 2002. (MP. No 13, item. 221, with last amendment 2 July 2002, MP. 2002, No. 30, item. 482). Comment delivered from the Office of Government Plenipotentiary of Disabled Person's Affairs after OSI Roundtable, Warsaw, June 2004. It is however the choice of the unit preparing the proposals as to which social partner will be approached and to what extent consultations will be conducted, as well as the expressed opinions which will be included.

⁴⁵⁰ The Act on Public Utility and Activity of Volunteerism, 24 April 2003, Dz. U. 2003, No. 96, item. 873. Most of the rules introduced by the act have been in force since 1 January 2004.

⁴⁵¹ Further information on the advisory body is available on the website of the Ministry of Economy, Labour and Social Policy, at http://www.mgpips.gov.pl/_organizacje.php (accessed 19 February 2004).

Employers are supported in a variety of ways when they commit themselves to running one of two forms of sheltered employment: a sheltered workplace or an occupational workshop. The sheltered workplaces receive significant Government funding but employ relatively small numbers of people with intellectual disabilities, mostly of a mild degree. These workplaces are segregated and do little to develop the skills needed for employment on the open market. The workplaces have also been criticised for inadequacies such as poor working conditions and mismanagement of funds, and it is also unclear whether they will meet recent EU requirements for sheltered employment. Occupational workshops are a new form of sheltered employment in Poland and provide employment to people with more significant disabilities. However, to date Government funding for these workshops has been quite limited. A final option for people with intellectual disabilities is the occupational therapy workshops, which are day centres providing individual therapy, often run by NGOs or local authorities. They are not considered as employment, but provide participation in social and vocational rehabilitation. However, although these workshops have now trained participants capable of employment, in most cases there is no work available for them.

The end of the 1990's and the beginning of the current decade witnessed a rapid growth of unemployment in Poland, with unemployment reaching 20.6 per cent in January 2004.⁴⁵² Unquestionably, in such a difficult economic climate, the situation of people with disabilities on the labour market is unfavourable.⁴⁵³ Because people with disabilities are stereotyped as inefficient employees, employers often view their work as a form of therapeutic activity rather than a contribution to business. Employers also do not take into account differences in the abilities of people with disabilities, tending to perceive them as a homogeneous group.⁴⁵⁴ The previous neglect of social and vocational rehabilitation systems and the relatively low level of qualifications typical for people with disabilities also contribute to their risk of being unemployed or made redundant.⁴⁵⁵

There is little information available specifically about employment of people with intellectual disabilities, but the obstacles to employment for all people with disabilities also apply to them. There is a pervasive negative stereotype that people with intellectual disabilities are not able to learn, are erratic, irresponsible, and not self-reliant and thus cannot make good employees.⁴⁵⁶ There is no educational programme to change this stereotype among employers. Barriers to employment for people with intellectual disabilities also include the attitudes of parents who do not believe that their children can fulfil the role of employee or who perceive the work environment and greater independence as a danger to their child. Parents also often fear their child's loss of social pension. Therefore, they easily accept social and vocational rehabilitation, but are

⁴⁵² Information from the website of the Central Statistical Office, available at <http://www.stat.gov.pl>.

⁴⁵³ SOP-HRD 2004–2006.

⁴⁵⁴ SOP-HRD 2004–2006, p. 49.

⁴⁵⁵ SOP-HRD 2004–2006.

⁴⁵⁶ Interview with Krystyna Mrugalska, 1 March 2004.

often not ready to accept the active participation of their child in employment, for example by registering at a labour office.⁴⁵⁷

3.1 Statistical data

There is little information about the economic activity of people with intellectual disabilities and the exact number working on the open labour market. Information that is available mostly relates to people with disabilities in general. As shown below in Table 8, in general people with disabilities have much lower rates of employment than people without disabilities. In the first quarter of 2003, a total of 561,000 people with disabilities were employed, mostly in individual agriculture (40 per cent) and in sheltered workplaces (37 per cent).⁴⁵⁸ Most people with intellectual disabilities are unemployed on a long-term basis.

Table 8. Economic activity of people with disabilities (first quarter of 2003)

| | | Employment rate (per cent) |
|---|-------------|----------------------------|
| People without disabilities | | 48.4 |
| People with disabilities (Breakdown by degree of disabilities) | all degrees | 13.2 |
| | low | 20.6 |
| | moderate | 10.7 |
| | significant | 2.5 |

Source: CSO⁴⁵⁹

As shown below in Table 9, the levels of economic activity and employment for people with intellectual disabilities fall well below that of people with disabilities in general. This data comes from research conducted by the Central Statistical Office in 2000, which examined 5,356 households with a person with disabilities (the research does not cover people living in institutions), covering a total of 6,655 people with

⁴⁵⁷ Interview with Krystyna Mrugalska, 1 March 2004.

⁴⁵⁸ Central Statistical Office, *Economic Activity of People in Poland 1st quarter 2003* (in Polish), CSO, Warsaw, 2003.

⁴⁵⁹ Central Statistical Office, *Economical Activity of People in Poland 1st quarter 2003*, (in Polish), CSO, Warsaw, 2003. Numbers have been rounded off. Information concerns people with disabilities aged 15 and older, of productive age and in post-productive age.

disabilities (aged 15 years old and over and with legal disability status). The research results were then generalised.⁴⁶⁰

Table 9. Economic activity of people with intellectual disabilities (2000)

| | | Total (per cent) | People with disabilities (per cent) | People with intellectual disabilities (per cent) |
|------------------------------------|-------|---------------------|---|---|
| (1) Indicator of economic activity | Total | 56.7 | 18.7 | 8.5 |
| | Men | 64.1 | 23.4 | 7.5 |
| | Women | 50.1 | 14.2 | 9.9 |
| (2) Employment rate | Total | 47.5 | 15.6 | 6.4 |
| | Men | 54.8 | 20.0 | 4.3 |
| | Women | 40.9 | 11.4 | 9.1 |
| (3) Unemployment rate | Total | 16.3 | 16.8 | 25.1 |
| | Men | 14.6 | 14.5 | 42.1 |
| | Women | 18.3 | 20.1 | 8.3 |

Source: CSO⁴⁶¹

In 2002, the Ministry of Labour and Social Policy⁴⁶² released a special report on people with disabilities⁴⁶³ which assessed the number of people with disabilities who were unemployed, seeking jobs and registered in labour offices. The data collected observed the flow of people with disabilities through labour offices, as well as their demographic, social and economic characteristics. Prior to 2003, the data concerning people with intellectual disabilities was collected together with that on people with mental health problems. As shown below in Table 10, in 2003, out of a total of 3,134,599 people registered in labour offices, two per cent (62,267) were people with disabilities registered as unemployed, and an additional one per cent (32,276) were people with

⁴⁶⁰ Kostrubiec, *Persons with disabilities on the labour market*. The information on people with intellectual disabilities contained in Table 9 only includes individuals with legal disability status who are living in households, not those living in institutions. Indicators: (1) Indicator of economical activity: contribution of vocationally active persons (working and unemployed) within the general number of people able to work. (2) Employment rate: contribution of working people in the general population, aged 15 and over. (3) Unemployment rate: proportion of the number of unemployed people to the number of vocationally active people (working and unemployed).

⁴⁶¹ Kostrubiec, *Persons with disabilities on the labour market*.

⁴⁶² From 8 January 2003, the former Ministry of Economy and Ministry of Labour and Social Policy were merged, under the new Ministry of Economy, Labour and Social Policy.

⁴⁶³ Ministry of Economy, Labour and Social Policy, *Report on Persons with Disabilities Unemployed or Seeking a Job, Not Employed in First Half of 2003*, XVII. MPIPS report Warsaw, 2003, (in Polish) (unpublished) (hereafter, MPIPS report).

disabilities registered as seeking jobs.⁴⁶⁴ People with intellectual disabilities made up 2.7 per cent of the total unemployed and job-seeking population with disabilities combined, and most had not been employed for over two years.

Table 10. People with intellectual disabilities registered in labour offices as unemployed or seeking a job (end of the first semester 2003)

| | | Total | Breakdown by period out of work (months) | | |
|--|---------------------------------------|-------------------------|--|--------|---------|
| | | | Up to 24 | 12-24 | over 24 |
| (1) People with disabilities registered as unemployed | People with disabilities | 62,267 | 27,496 | 12,586 | 22,185 |
| | People with intellectual disabilities | 2,016 (3.2 per cent) | 738 | 368 | 910 |
| (2) People with disabilities registered as seeking a job | People with disabilities | 32,276 | 15,510 | 6,071 | 10,695 |
| | People with intellectual disabilities | 522 (1.6 per cent) | 195 | 99 | 228 |
| Total (1 and 2) | People with disabilities | 94,543 | 43,006 | 18,657 | 32,880 |
| | People with intellectual disabilities | 2,538 (2.7 per cent) | 933 | 467 | 1,138 |

Source: Ministry of Economy, Labour and Social Policy⁴⁶⁵

3.2 Employment on the open market

Very few people with intellectual disabilities are employed at all on the open market and for most supported employment is the only way for them to access the work force. However, no framework or system for supported employment has been established in Poland. The Act on Social Employment includes an article concerning “auxiliary employment”, but this form of employment has nothing to do with properly implemented supported employment for people with disabilities.⁴⁶⁶

Only regional NGOs have developed some limited initiatives. In 2003, only Wrocław had a programme of supported employment. This grew out of a cooperative venture in 2000 between the City of Wrocław and its twinned city in the United States, Charlotte, North Carolina. This programme, called the Job Coach Project, has been operating in Wrocław since 2001. The Wrocław Assembly of Persons with

⁴⁶⁴ Figures are for the end of the first half of 2003. MPIPS report.

⁴⁶⁵ Ministry of Economy, Labour and Social Policy, MPIPS report – Report on Persons with Disabilities Unemployed or Seeking a Job, Not Employed in First Half of 2003, (unpublished).

⁴⁶⁶ Act on Social Employment, art. 16-17. Moreover, regulations in this act do not concern persons with the right to a social pension, and therefore most people with intellectual disabilities.

Disabilities,⁴⁶⁷ the author of the programme, has been able to benefit from the experience of the American agency Mecklenburg Open Door in Charlotte. The Municipality of Wrocław is also a partner and is co-financing the Assembly. There is also a possibility of extending this programme beyond Wrocław.

The main purpose of the Job Coach Project was to create the Agency of Supported Employment in Wrocław for people with intellectual disabilities and people with mental health problems, in order to develop effective methods of vocational activity to improve their chances for employment and participation in society. Its secondary purpose is to develop a system of schooling for trainers of job coaches and a model for an agency of supported employment.

The Job Coach Project also involves employers. The first employer was McDonald's, followed by American Restaurants, which operates Pizza Hut and KFC restaurants, and the Holiday Inn Hotel in Wrocław. These were followed by the Town Administration of Residential Care Homes⁴⁶⁸ and the company Hectas. At the end of 2003 nine people, most with *moderate* intellectual disabilities, had jobs through the Job Coach Project and approximately 70 people were enrolled in the preparation programme to find employment. In 2004, one of the persons employed through the Job Coach Project won the Employee of the Year award in the Holiday Inn network in Poland.⁴⁶⁹

Since 1 May 2004, new regulations are in force, which were introduced in amendments to the Act on Rehabilitation.⁴⁷⁰ On the basis of these regulations, an employer employing a person with disabilities can be reimbursed from the State Fund for the costs of employing someone to assist an employee with disabilities at work. This assistance could be provided in the form of facilitating communication or carrying out operations impossible, or too difficult, for the employee with disabilities to perform. The number of hours that are used solely to help the employee with disabilities cannot exceed 20 per cent of the monthly number of hours the employee works.⁴⁷¹ It is, however, difficult to predict how these regulations will be used in practice and what impact they will have on the support of persons with intellectual disabilities in the workplace

⁴⁶⁷ Wrocław Assembly of Persons with Disabilities associates over 40 NGOs working for the rights of persons with disabilities.

⁴⁶⁸ Municipal Council of the Social Welfare Homes (Miejski Zarząd Domów Pomocy Społecznej).

⁴⁶⁹ Information delivered via e-mail by coordinators of the Job Coach Project on 19 February 2004.

⁴⁷⁰ Act on amending and repealing some acts in connection with membership of the Republic of Poland in the European Union, 20 April 2004, Dz. U. 2004, No. 96, item. 959.

⁴⁷¹ Act on Rehabilitation, art. 26d.

3.3 Sheltered employment

3.3.1 Sheltered workplaces

Sheltered workplaces are created on the basis of a contract that the State makes with employers who commit themselves to fulfil certain obligations and criteria. In return, employers receive a set of tax releases and subsidies from the State Fund. An employer who employs at least 25 people⁴⁷² and whose enterprise fulfils the criteria specified in the Act on Rehabilitation can apply for the status of a sheltered workplace. The employer must maintain between 30 and 40 per cent of employees with disabilities, depending on their degree of disability.⁴⁷³ The sheltered workplace must be adapted to the needs of people with disabilities; have available emergency and professional medical care; and offer guidance and rehabilitation. Since 1 January 2004, protected labour employers receive support for financing the salaries of employees with disabilities.⁴⁷⁴

Social insurance expenditures for people with disabilities employed in sheltered workshops are partly financed by the State Fund and partly by the State budget.⁴⁷⁵ In addition, an employer managing a sheltered workplace may receive from the State Fund⁴⁷⁶ a subsidy of up to 50 per cent of interest on bank credits; reimbursement of training expenses; and a one-time loan to protect work places for people with disabilities working in the enterprise.⁴⁷⁷

In December 2003, 2,864 sheltered workplaces employed approximately 349,800 people, including 208,800 employees with disabilities (approximately 60 per cent). Of these, 11 per cent are cooperatives. In 2003, cooperatives employed approximately 20

⁴⁷² The minimum number of employees needed for application for sheltered workplace status has been increased from 20 to 25 in accordance with the amendment of the Act on Rehabilitation of 20 December 2002.

⁴⁷³ Act on Rehabilitation, art. 28. At least 40 per cent (people with moderate and significant disabilities should make up at least ten per cent of all employed people); or at least 30 per cent (if the people are visually impaired, mentally ill or have intellectual disabilities and a moderate or significant level of disabilities).

⁴⁷⁴ Act on Rehabilitation, art. 26a. The amount made up 130 per cent of the minimum remuneration in cases of persons with *significant* disability, 110 per cent with *moderate* disability, 50 per cent with *low* disability. As of 1 June 2004, these amounts increased to 75 per cent of the minimum remuneration in cases of persons with mental illness, intellectual disabilities or epilepsy and persons with severe visual impairment.

⁴⁷⁵ Act on Rehabilitation, art. 25.

⁴⁷⁶ Act on Rehabilitation, art. 32.

⁴⁷⁷ Act on Rehabilitation, art. 31. The sheltered workplace receives some tax releases and benefits but ten per cent must be transferred to the Fund and 90 per cent to the vocational disabled persons' rehabilitation fund in the enterprise. The vocational rehabilitation fund is used for funding medical, social and vocational rehabilitation and insurance of people with disabilities.

per cent of all people with disabilities working in sheltered workplaces.⁴⁷⁸ Most employees with disabilities (approximately 66 per cent) have a *low* degree of disability; approximately 30.5 per cent have a *moderate* degree of disability; and approximately 3.5 per cent a *significant* degree.⁴⁷⁹ Male employees make up the majority of the work force.⁴⁸⁰ According to research conducted by the State Fund, the more significant the degree of disability, the lower the income.⁴⁸¹

At the end of 2001, an estimated 4.8 per cent of all employees with disabilities in sheltered workplaces were people with intellectual disabilities (9,560 people).⁴⁸² The majority (70 per cent) had a *low* degree of disability; 26.8 per cent had a *moderate* degree of disability; and 3.2 per cent a *significant* degree.⁴⁸³ In December 2002, 19,864 people whose main disability is intellectual, mental illness or epilepsy were employed in sheltered workplaces, or 9.5 per cent of all employees with disabilities.⁴⁸⁴ Further details are presented below, in Table 11.

⁴⁷⁸ Information delivered from the provincial offices (*voivodeships*) up to 13 April 2004, to the Office of the Government Plenipotentiary for Disabled Persons' Affairs. The information does not include 79 sheltered workplaces that have not fulfilled their duty to report to the Ministry of Economy, Labour and Social Policy, which means that in December 2003 these enterprises could not have the status of sheltered workplaces.

⁴⁷⁹ Information from December 2002, Department of Analyses and Research at the State Fund for Persons with Disabilities Rehabilitation.

⁴⁸⁰ The proportion of women to men in 2001 was four to six among all employees, as well as among employees with disabilities. State Fund for the Rehabilitation of People with Disabilities, Report from research. Sheltered Employment Facilities in 2001, Warsaw, October 2003 (*unpublished*), available at <http://www.pfron.org.pl> (accessed 10 January 2005), (hereafter, State Fund for Rehabilitation, *Report*).

⁴⁸¹ The average monthly salary was PLN 1,322 (€287), and the average monthly salary of employees with disabilities was PLN 1,128 (€245); (all amounts in gross). In 2001 the average monthly remuneration for employees with a low degree of disability was PLN 1,140 (€248), with moderate disability it was PLN 1,119 (€243) and with significant disability it was PLN 1,004 (€218). The average monthly remuneration in Poland in 2001 was PLN 2,061 (€448). State Fund for Rehabilitation, *Report*.

⁴⁸² Analysis of the data according to main diagnoses of persons with disabilities is difficult because of the methodology used in the research. It could be estimated that at the end of 2001, approximately 9,560 persons with intellectual disabilities were employed in sheltered workplaces, including: 6,690 people with a low degree of disability; 2,590 with a *moderate* degree; and 280 with a *significant* degree. Calculations are based on the results from research mentioned above State Fund for Rehabilitation, *Report*, Table 24, p.30) The number of people with disabilities employed in sheltered workplaces during the same period (199,167), is in accordance with data from the Fund. Calculation by E. Wapiennik.

⁴⁸³ State Fund for Rehabilitation, *Report*.

⁴⁸⁴ More precise numbers of people with intellectual disabilities employed in sheltered workplaces can only be given together with individuals whose main cause of disability is mental illness and epilepsy.

Table 11. Employment in sheltered workplaces (December 2002)

| | Total | Degree of disabilities | | |
|--|---------|------------------------|----------|-------------|
| | | low | moderate | significant |
| Employees with disabilities of all types | 208,414 | 137,391 | 63,114 | 7,396 |
| Employees with intellectual disabilities, mental illness or epilepsy | 19,864 | 11,838 | 7,370 | 656 |

Source: State Fund for the Rehabilitation of People with Disabilities⁴⁸⁵

Sheltered workplaces absorb nearly all the funds expended by the State (through the State Fund and the Budget) on support for the employment of people with disabilities. In 2002, the amount of public aid provided to sheltered workplaces employing people with disabilities was €587 million (or €263 monthly per employee with disabilities). If releases for clients of these enterprises are also included, the amount of public aid was €761 million (or €335 monthly per employee with disabilities). However, despite such a high degree of public aid, these enterprises only employed a small number of people with disabilities and mostly those without *significant* disabilities.⁴⁸⁶ This was one of the reasons behind changes to the system of supporting the employment of people with disabilities, with the introduction of the rule “funds follow the person”, whereby the support is given to the person with disabilities, not to the employer.⁴⁸⁷

Sometimes sheltered workplaces have been criticised for exploiting employees and violating their rights. In cases addressed to the Ombudsman, people with disabilities complain, above all, about poor working conditions, and that employers do not respect their rights as to duration of work, and employ them for overtime and night work.⁴⁸⁸ Sheltered workplaces are not adapted to the specific needs of people with intellectual disabilities.⁴⁸⁹ As they are, by definition, segregated environments, they do not prepare people with intellectual disabilities for working on the open market.

Numerous inadequacies of sheltered workplaces have also been revealed during monitoring conducted by the State Labour Inspectorate in 2000–2002. Among these were problems such as poorly adapted workplaces and a lack of investment in improving work safety and hygiene. This is usually explained by the poor financial state of these enterprises. Employers economise on salaries and training, and by employing people with disabilities for overtime work. Employers have very low

⁴⁸⁵ Information received from the Department of Analysis and Research at the State Fund for the Rehabilitation of People with Disabilities in December 2002.

⁴⁸⁶ M. Mrugalska, “*Problem nas wszystkich*”, (“*The Problem of Us All*”), in *Rzeczpospolita*, 31 December 2003.

⁴⁸⁷ Comments submitted to EUMAP by the Office of the Government Plenipotentiary for Disabled Persons’ Affairs on the present report in draft form, June 2004.

⁴⁸⁸ Written comments delivered by an official from the Office of the Ombudsman, 20 January 2004.

⁴⁸⁹ Interview with Aleksandra Malinowska and Iwona Wojtczak-Grzezińska, 13 January 2004.

awareness about the rights of employees with disabilities (for example the duration of work or additional vacation) or regulations on the proper adaptation of workplaces and equipment, to the needs of people with different types of disabilities.⁴⁹⁰

Management of the resources of the enterprises' vocational rehabilitation fund is also poor. Reviews conducted by the Supreme Chamber of Control in 1999 and 2002 showed that only ten per cent of sheltered workplaces used all the resources of the fund for carrying out different forms of rehabilitation. In over 50 per cent of them, money from this fund was spent on operating expenses, electricity, heating and investment not always directly connected with the needs of people with disabilities.⁴⁹¹

The status of sheltered workplaces within the context of Poland's accession to the EU is ambiguous. It is unclear whether Polish legislation is consistent with new rules adopted under a European Commission regulation on state aid to employment.⁴⁹² Not all sheltered workplaces may fulfil the requirements of sheltered employment as specified in this regulation and could lose the additional aid assigned to workplaces that offer sheltered employment. Moreover, as most of the people working in sheltered workshops have only a low degree of disability, it is not clear whether this would meet the definition of sheltered employment in the recommendation, for "people unable to take up work on the open labour market."⁴⁹³ Unquestionably, these new rules will require amendments in Polish legislation, particularly in the regulations of public aid for enterprises and in the Act on Rehabilitation.⁴⁹⁴

3.3.2 Occupational workshops

Occupational workshops are a new form of sheltered employment in Poland.⁴⁹⁵ Their main purpose is to offer employment to people with *significant* disabilities to prepare them for life in an open environment, through social and vocational rehabilitation and

⁴⁹⁰ L. Zając, "Protection of work of persons with disabilities in the light of the State Labour Inspectorate controls" (*unpublished*). Text available at <http://www.niepelnosprawni.info/labeo/app/cms/x/2585> (accessed 20 January 2005).

⁴⁹¹ Supreme Chamber of Control, *Report on the 'control' results of the management of the vocational rehabilitation fund in sheltered workplaces*, SCC, Łódź, 2003.

⁴⁹² Commission Regulation (EC) No 2204/2002, O.J. relating to the Treaty to State Aid for Employment of 2002 L 337/3. According to the Rules of Regulation Aid for Employment, under certain conditions specified in the regulation, there is no requirement for notification. The aim of the regulation is simplification for State Members' activities in this field.

⁴⁹³ Commission Regulation (EC) No 2204/2002, art. 2.

⁴⁹⁴ See, for example, official letters from the Government Plenipotentiary for Disabled Persons' Affairs to the President of the National Economic and Rehabilitation Chamber (*Krajowa Rada Gospodarczo-Rehabilitacyjna*) from 2003, available at <http://www.kigr.pl/> (accessed 20 February 2004).

⁴⁹⁵ Act on Rehabilitation; Regulation of Minister of Labour and Social Policy on occupational workshops, 21 January 2000, Dz. U. 2000, No. 6, item. 77, (last amendment 18 June 2003, Dz. U. 2003, No. 132, item. 1229).

support for a complete, independent and active life (according to their individual possibilities).

Occupational workshops can be established by counties or communes, or by NGOs whose statutory purpose is the social and vocational rehabilitation of people with disabilities. They must attain the required disabled employee ratio, with the proportion of employees with a *significant* degree of disability in relation to other employees depending on the activity of the enterprise.⁴⁹⁶ The creation and operation of such enterprises is financed by the State Fund and the local authority.⁴⁹⁷ Social insurance is financed partly by the State Fund and partly by the State budget.⁴⁹⁸

Occupational workshops were introduced into the legislation in 1998 through the advocacy and the efforts of the Polish Association for Persons with Mental Handicap. Unfortunately, until the end of 2002 the State Fund was only able to support 11 such enterprises.⁴⁹⁹ Amongst them, in mid-2003 seven workshops were actually operating and several more were being created. These occupational workshops were employing approximately 200 persons with *significant* disabilities, among them 40 persons with intellectual disabilities. Although more occupational workshops are being established, there are still very few employing people with intellectual disabilities.⁵⁰⁰ The first one, called Central Kitchen, was created in 2000 in Stargard Szczeciński and is run by the Polish Association for Persons with Mental Handicap. It now employs approximately 40 persons with intellectual disabilities and produces and distributes meals and manages a delicatessen.⁵⁰¹

⁴⁹⁶ The ratio is 2.5 to one if its main activity is production, 2.75 to one if its main activity is production and service, and 3.0 to one if its main activity is service.

⁴⁹⁷ Act on Rehabilitation, art. 25. Reimbursement of persons with disabilities to the amount of 100 per cent of the minimum remuneration, reimbursement of remuneration of persons employed in rehabilitation services, costs of materials, energy, financial or non-financial services and others that are essential for carrying out rehabilitation, costs of transport and commuting of persons with disabilities, costs of training persons with disabilities.

⁴⁹⁸ Act on Rehabilitation, art. 25. The Fund pays the cost of old age pensions and other benefits which the employee is obliged to pay himself and the State pays the cost of the old age pensions and other benefits which is the obligation of the employers. The Fund also pays the premium for insurance against personal injury.

⁴⁹⁹ At the end of 2002 there were five institutions, one was being created, four were in the process of signing contracts and one contract was cancelled because the county head (*starosta*) did not fulfil the duty (see J. Kania, "Zakłady aktywności zawodowej w latach 2000–2002" ("Occupational workshops"), in *Zakłady Pracy Chronionej*, No. 12, 2002).

⁵⁰⁰ "Zakłady aktywności zawodowej", ("Occupational Workshops") in *BIFRON*, September 2003, No. 3-4, pp. 4–8.

⁵⁰¹ Reports on the economical and rehabilitation activity of the occupational activation facility, Central Kitchen in 2001 and 2002, material accessed by PAPMH.

Occupational workshops receive tax incentives, but funds obtained from tax breaks and profits from business activity must be invested back into the enterprise.⁵⁰² The amount of basic remuneration for an employee with a *significant* degree of disability depends on the contract between the organiser (the local authority or the NGO who can establish the occupational workshops) and the local authority of the province (*voivodeship*). It is a specific percentage of the minimum remuneration but can be financed from the resources of the State Fund up to 100 per cent of the minimum wage. The level of financial support is proportional to the length of the working day, which can be shorter than seven hours per day.

Employees in occupational workshops with a significant degree of disability are entitled to medical, social or vocational rehabilitation. Each employee has a specially developed individual rehabilitation programme which is evaluated at least once a year. For an employee who reaches an adequate general level of vocational skills, a programme of employment is developed on the basis of which the manager of the enterprise supports the employee in looking for an appropriate work place on the open market.

3.3.3 Occupational therapy workshops

Besides the two forms of sheltered employment described above, occupational therapy workshops should also be mentioned. These are not places of employment for persons with disabilities, but play an important role in social and vocational rehabilitation, especially of persons with intellectual disabilities.⁵⁰³ Participants in such workshops do not have the status of an employee and do not sign an employment contract. These units, however, offer people with disabilities an opportunity to participate in social and vocational rehabilitation so as to gain, or regain, employability through occupational therapy. The workshops have been operating since 1991 as day centres which conduct non-profit activities. They can be administered by NGOs, local authorities and other units such as foundations or sheltered workplaces.

The creation and operation of occupational therapy workshops is financed by the State Fund. In the next few years, however, their level of financing will be decreased by 60 per cent for start-up costs (by 2006) and by 70 per cent for operating costs (by 2008). These units will have to look for other sources of funding and it is difficult to predict how the situation will develop in the coming two years.

To participate in occupational therapy workshops, individuals must have disability certificates and, apart from an indication of the degree of disability (usually *significant*

⁵⁰² Funds are assigned for additionally equipping workplaces and equipment to help the disabled in every day independent life, participation in local social life, preparing them to work outside the sheltered workshop, creating housing and providing recreation.

⁵⁰³ Act on Rehabilitation, art. 10; and Regulation of the Minister of Labour and Social Policy on details of rules for creation, operation and financing of occupational therapy workshops, 30 September 2002, Dz. U. No. 167, item. 1376.

or *moderate*), a recommendation for participation in occupational therapy. Therapy is based on an individual rehabilitation programme. Those participants who contribute to “economic training” (in which the main aim is to teach people with disabilities how to deal with money) have the right to receive pocket money of up to 20 per cent of the minimum wage.⁵⁰⁴ The income from selling products or services made in these workshops within the framework of a therapy programme is committed (in agreement with the participants) to expenditure on their participation in social activities organized by the workshop.

At the end of 2003, 505 such workshops were in operation with approximately 16,000 participants with disabilities.⁵⁰⁵ Most of the participants are people with intellectual disabilities, often with multiple disabilities and disability status to a *moderate* or *significant* degree. In 2001, people with intellectual disabilities made up 72 per cent of all participants. Most occupational therapy workshops (55 per cent) were operated by NGOs.⁵⁰⁶ Sadly, although after more than ten years of activity they have produced participants who now have the potential to become employees, suitable work places have not been made available for them.⁵⁰⁷

⁵⁰⁴ The minimum salary (gross) is PLN 824 (€179), as of 1 May 2004.

⁵⁰⁵ Information from the Office of the Government Plenipotentiary for Disabled Persons' Affairs after OSI Roundtable, June 2004.

⁵⁰⁶ Ministry of Economy, Labour and Social Policy, *Occupational Therapy Workshops. Report from Research*, Office of the Government Plenipotentiary for Disabled Persons' Affairs, Warsaw 2003 (unpublished).

⁵⁰⁷ Interview with Krystyna Mrugalska, 1 March 2004.

V. Conclusions

General

In Poland, the rights of people with intellectual disabilities are guaranteed in the Constitution and other legislation and Poland has ratified most important international human rights instruments, with the exception of the revised European Social Charter and Protocol No. 12 to the ECHR. Nevertheless, people with intellectual disabilities still face numerous problems in the practical application of these laws and in exercising the rights to which, in theory, they are entitled. One important factor is that assessment procedures for placing people under guardianship are often not sufficiently comprehensive and the courts usually impose *plenary*, rather than *partial*, guardianship for people with intellectual disabilities. This means that they lose most of their civil and economic rights. To ensure the fuller social inclusion of people with intellectual disabilities the courts should wherever possible impose *partial* guardianship, rather than *plenary* guardianship, for people with intellectual disabilities, so that they can exercise their rights to the fullest possible extent.

The development of policy to improve the situation of people with disabilities in Poland is hampered by the lack of systematic and credible information and compiled statistical data on the situation of people with intellectual disabilities. Most available data either treats people with disabilities as a homogenous group, or subsumes information on people with intellectual disabilities together with people with mental health problems or other types of disabilities. It also does not include people with *mild* intellectual disabilities, who do not have legal disability status. This practice does nothing to increase understanding of the particular situation of people with intellectual disabilities. The most complete information and credible data concerns children and young people of school age, although data is not comprehensive here either. To improve understanding of the situation of people with intellectual disabilities in Poland, the Central Statistical Office should in future gather consistent, complete and continuous statistics concerning people with intellectual disabilities.

The implementation of policy and programmes for people with intellectual disabilities is also impeded by the strong division of competencies among the ministries responsible for health, education and social policy. This obliges people with intellectual disabilities to apply to different institutions for various services. For instance, the evaluation of a child for access to early intervention is administered by units financed by the Ministry of Health; early development support is provided through the educational system; and the assessment of a child's disabilities for the purpose of obtaining benefits and services is carried out in accordance with many procedures and by different units. This exposes the child to stress and repeated examinations, and the parents to unnecessary bureaucracy, costs and exhaustion. To improve coordination between the various ministries responsible for developing and providing services for people with intellectual disabilities and their families the Government should create a common strategy and regulations of cooperation and monitor its implementation.

Many forms of support for people with intellectual disabilities now exist, thanks in part to the important efforts of NGOs. However, although these NGOs have taken on many of the tasks associated with the rehabilitation and education of people with intellectual disabilities, the Government and local authorities do not treat them as equal partners. To improve coordination and improve the services available to people with intellectual disabilities and their families, the Government should prepare and implement a consistent and comprehensive programme of support. This should cover all periods of life (from early intervention to care of the elderly) and should include material, psychological and social support.

Access to education

In spite of the many positive changes in the educational system in Poland over the past few years, the quality of education of children and young people with intellectual disabilities is often still disappointing, and most are still educated in special schools rather than in the mainstream education system. According to the law, pupils with intellectual disabilities have the right to education in every type of school, as well as the right to be educated together with students without disabilities of the same age in mainstream schools. However, these schools are not adequately prepared for the education of pupils with intellectual disabilities and in practice parents are often pressured into agreeing to the education of their children in special schools, special education care centres, or through individual teaching.

Changes to the educational system are rarely made in consultation with organisations working for the benefit of children with intellectual disabilities and even more rarely in an effective manner. Financial problems often compound existing problems in the functioning of the educational system. Because of the lack of effective monitoring, often even good laws do not ensure that they are effectively carried out in practice. Further problems result from the ineffectiveness of local authority officers. Although there is a lack of sufficient statistical data, conclusions can be drawn that children with intellectual disabilities are included in pre-school education in very small numbers. Additionally, the lack of sufficient initiative at the stage of early intervention and early support development means that children with intellectual disabilities are often provided with rehabilitation only at the age of six or seven.

The assessment of children for educational purposes is carried out by multidisciplinary teams and is based on a multidisciplinary diagnosis. However, such an evaluation is rarely carried out more than once, and is usually schematic because the teams must recommend a form of education that already exists, but which may not be suited to that individual's needs. This is despite the developing concept of individual curricula and the obligation of teachers to make appropriate adjustments to the content of curricula in accordance with students' individual abilities. Assessments are rarely challenged, in spite of clear procedures created for this purpose. Many pupils with intellectual disabilities begin their education in special schools or individual teaching and stay in such systems until the end of their education. To ensure that the potential

of children and young people is realised in full, the Government should reform assessment procedures, moving from a one-time evaluation to a longer diagnostic process with regular reviews.

The well organised, integrated and inclusive education of children with intellectual disabilities is still a new and developing concept. Integrated schools, which can serve as a successful example in the organisation of teaching pupils with intellectual disabilities together with students without disabilities of the same age, often have problems in dealing with the education of children with *moderate* intellectual disabilities. Children with *severe* and *profound* intellectual disabilities are not placed in integrated schools at all. There is a general problem in the availability of integrated schools for children in rural areas. Integrated schools have proved a popular and effective option for the education of children with intellectual disabilities. To enable more children to benefit from this form of education, the Ministry of Education should now take steps to increase the number of such schools, throughout the country.

The education of children with intellectual disabilities in non-integrated mainstream schools suffers from a lack of adequate support. Although children with intellectual disabilities, their families and teachers all have the right to psychological-educational support, in practice, they have difficulties in gaining access to this support. Despite the improvement in the quality of teachers' qualifications, and their great interest in various forms of continuing vocational training, the preparation of teachers to work with pupils with intellectual disabilities is disappointing. The majority of teachers in mainstream schools do not have the qualifications to work with these students, and special educators are scarce and not well prepared. There are also few specialists prepared to work with children and young people with more severe multiple disabilities. Finally, there is poor cooperation between the teachers themselves in various educational units and with other specialists.

For those children who receive education outside the education system, the low quality of individual teaching discriminates against their right to an education. A large number of children and young people with intellectual disabilities also attend special education care centres (boarding schools), often without justifiable reason. This causes a breakdown in bonds between children and their families and adversely affects their development. The quality of education and the level of fulfilment of other needs of the wards in these centres are questionable. To ensure that children with intellectual disabilities wherever possible receive education within the education system, the Ministry of Education should review the practice of individual teaching to ensure that this form of education is an education of last resort. In addition, the Government should ensure that students attending boarding schools are guaranteed by law certain standards of care and education, and that the need for these children to attend this type of school is periodically reviewed.

The educational possibilities and quality of education at the secondary level are also problematic. Young people with *mild* intellectual disabilities often attend special vocational schools that are inadequate to answer the needs of the modern labour market.

A significant percentage of school-leavers do not continue their education on a secondary level after lower secondary school (*gymnazjum*). A well-organised educational programme, which should prepare students with more severe intellectual disabilities for the world of work, is in its early stages of organisation. There is no lifelong education for people with intellectual disabilities. Various forms of social rehabilitation for adults are organised primarily by NGOs and are not available to everyone. There is no support for people with intellectual disabilities to make the transition from education to employment. School-leavers with intellectual disabilities can rarely take advantage of targeted programmes aimed at school-leavers. Their right to social pensions and the lack of understanding of the variety of intellectual disabilities constitute additional barriers.

Access to employment

The current high level of unemployment in Poland has particularly affected people with disabilities. People with intellectual disabilities face even more barriers than other people with disabilities, including the negative attitude of employers and co-workers, and the overwhelming majority are not able to access any form of employment on the open market. Recent legislation has strengthened protection against discrimination in employment for people with disabilities and Poland has transposed the provisions of the EU Employment Directive into national legislation. In the longer term, this should undoubtedly have a positive impact on the employment situation of people with disabilities in general. However, the Government should now undertake a careful review of how the directive has been adopted and interpreted in Poland, to ensure that all its provisions are fully implemented with respect to the specific needs of people with intellectual disabilities.

The procedures used to assess disability for employment purposes and access to social security benefits can prove one barrier to the employment of people with intellectual disabilities. At present, such assessments are mainly based on a medical examination, are not well adapted to the special needs of people with intellectual disabilities and can be inconsistent. The Ministry of Social Policy and the Ministry of Economy and Labour should therefore jointly undertake a reform of all assessment procedures. These should in future be based on clear criteria designed specifically for people with intellectual disabilities and should, in particular, focus on the opportunities for their social inclusion, rather than on evaluating what they cannot do. The assessments should aim to determine the support needed by people with intellectual disabilities to be able to access employment on the open market.

Most adults with intellectual disabilities are reliant on social security benefits, in most cases the *social pension*. However, present regulations constitute a “benefits trap” for people receiving social pensions who want to work, in that the *social pension* is suspended if income from employment exceeds 30 per cent of the average monthly wage. Another disincentive to employment is that people with disabilities with the right to a *social pension* do not have the right to receive an *inability to work pension*, a higher amount, even if they are employed (and paying compulsory social insurance). Such a situation also affects people with intellectual disabilities who do not have the

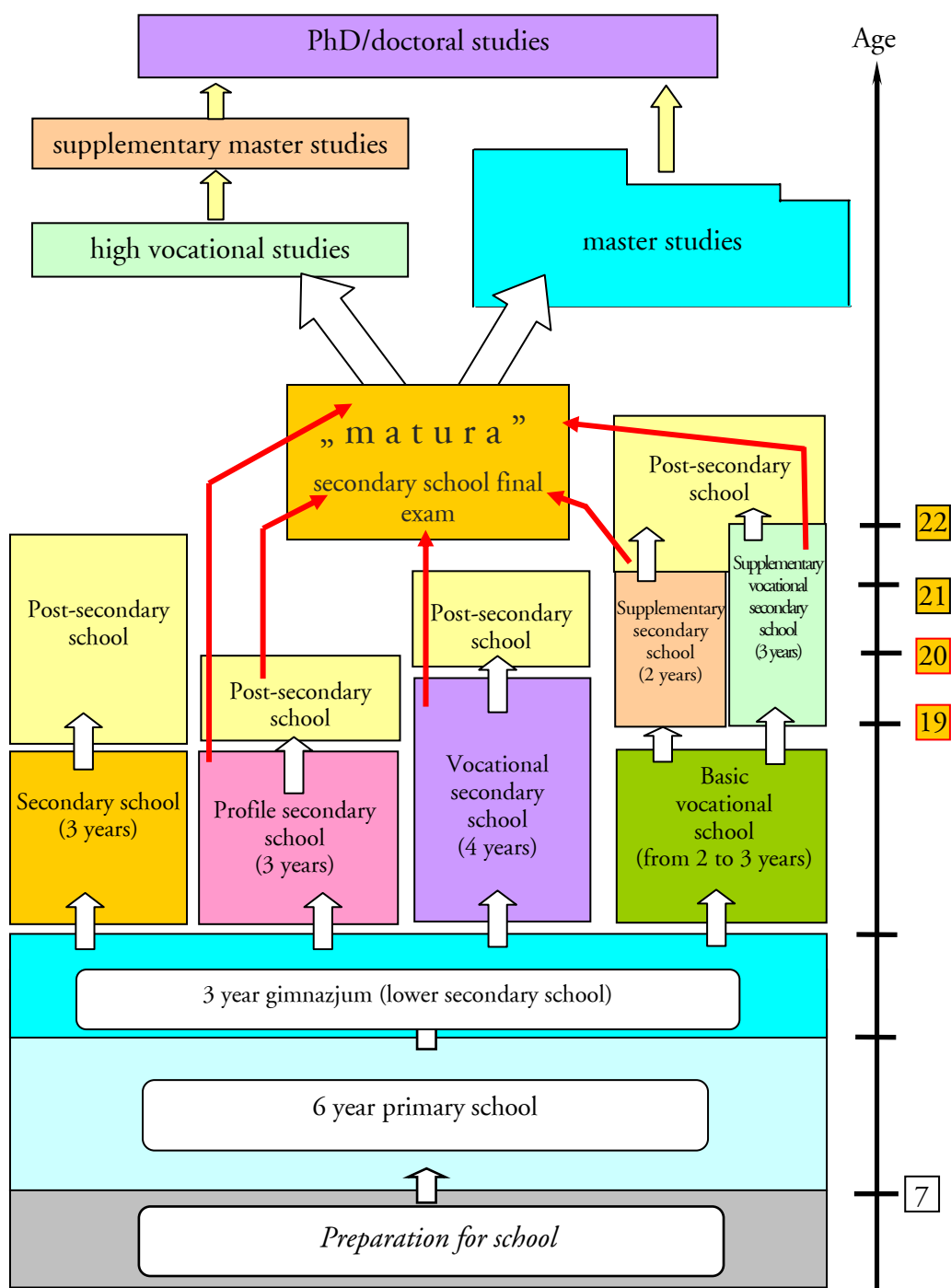
right to a *social pension* and are partially incapable of working. Even if they are employed and paying compulsory insurance, they still do not have the right to receive an inability to work pension.

The main way in which the employment of people with disabilities is encouraged is through the quota system. However, most employers prefer to make payments rather than engage people with disabilities, so very few people with intellectual disabilities find work in this way. In addition, none of the targeted programmes implemented by local governments are specifically addressed at people with intellectual disabilities, despite the fact that many could undoubtedly benefit from such programmes. This is particularly the case for adults with *mild* intellectual disabilities who do not receive disability status. They must compete for employment on the same basis as other adults, yet are disadvantaged by the fact that most attended special schools and so did not receive the education required to find employment under present labour market conditions. In addition, they do not receive employment services tailored to their particular needs (in particular, vocational counselling, training, guidance and placement). To improve this situation, the Government should first seek to gather more detailed data on the employment situation and level of vocational training of people with *mild* intellectual disabilities. This should then be used as the basis for developing coherent policy and targeted programmes aimed at furthering their integration into the labour market.

At present, the largest numbers of people with intellectual disabilities are found in sheltered workshops, rather than in employment in companies on the open market. There are two main forms of sheltered employment in Poland. Although most Government funding goes towards supporting sheltered workplaces these only employ a relatively small number of people with intellectual disabilities, and mostly of a *mild* degree. By contrast, occupational workshops, which play an important role in providing training and employment for people with more significant disabilities, have only received limited Government funding.

However, even those people with intellectual disabilities who are able to gain employment skills and training in sheltered work environments are not provided with the support they need to then take the vital next step and access employment in a company on the open market. For example, occupational therapy workshops have been able to train a number of participants with intellectual disabilities who are capable of employment, but in most cases there is simply no work available for them. The main reason for this is that at present there is no framework for supported employment in Poland. One of the most important steps which the Government could make towards promoting the employment of people with intellectual disabilities, is therefore to introduce legislation on supported employment. This would provide the basis for establishing a national system of supported employment which would at last provide real employment opportunities for people with intellectual disabilities and so promote their fuller inclusion into society.

ANNEX 1. The Polish educational system



ANNEX 2. Legislation cited in the report

Constitution

The Constitution of the Republic of Poland, 2 April 1997, Dz. U. 1997, No 78.

Laws and Acts

The Act on Amending and Repealing Some Acts in Connection with the Membership of the Republic of Poland in the European Union, 20 April 2004, Dz. U. 2004, No. 96, item. 959.

The Act on Amending the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and Some Other Acts, 20 December 2002, Dz. U. 2003, No. 7, item. 79.

The Act on Amending the Act on the Education System, 21 July 1995, Dz. U. 1995, No. 101, item. 504.

The Act on Amending the Act on the Education System and some other Acts, 23 August 2001, Dz. U. 2001, No. 111, item. 1194.

The Act on Amending the Act on the Education System and some other Acts, 27 June 2003, Dz. U. 2003, No. 137, item. 1304.

The Act on Amending the Labour Code and Some Other Acts, 2 February 1996, Dz. U. 1996, No. 24, item. 110.

The Act Amending the Labour Code and Some Other Acts, 14 November 2003, Dz. U. 2003, No. 213, item. 2081.

The Act on Family Benefits, 28 November 2003, Dz. U. 2003, No. 228, item. 2255 (last amendment 30 July 2004, Dz. U. 2004, No. 192, item. 1963)

The Act on Incomes of Units of Territorial Self-government, 13 November 2003, Dz. U. 2003 No 203, item. 1966.

The Act on Old Age Pensions and Other Benefits from the Social Insurance Fund, 17 December 1998 Dz. U. 1998, No. 162, item. 1118 (last amendment 16 July 2004, Dz. U. 2004, No. 191, item. 1954) (*Pensions Act*)

The Act on Promotion of Employment and Institutions of the Labour Market, 20 April 2004, Dz. U. 2004, No. 99, item. 1001 (*Act on Promotion of Employment*)

The Act on Public Utility and Activity of Volunteerism, 24 April 2003, Dz. U. 2003 No. 96, item. 873.

The Act on Rules that Introduced the Reform of the Education System, 8 January 1999, Dz. U. 1999, No. 12, item. 96.

- The Act on Social Employment, 13 June 2003, Dz. U. 2003, No. 122, item. 1143 (last amendment 20 April 2004, Dz. U. 2004, No. 99, item. 1001) (*Act on Social Employment*)
- The Act on Social Pension, 27 June 2003, Dz. U. 2003, No. 135, item. 1268 (last amendment 20 April 2004, Dz. U. 2004, No. 96, item. 959)
- The Act on Social Welfare, 12 March 2004, Dz. U. of 2004 No. 64, item. 593 (last amendment 20 April 2004, Dz. U. 2004, No. 99, item. 1001) (*Act on Social Welfare*)
- The Act on the Charter of Teachers, 26 January 1982, unified text 2003, Dz. U. 2003, No.118, item. 1112 (last amendment 15 July 2004, Dz. U. 2004 No. 179, item. 1845) (*Act on Charter of Teachers*)
- The Act on the Commissioner for Civil Rights Protection 15 July 1987, unified text in Dz. U. 2001, No. 14, item. 147
- The Act on the Education System, 7 September 1991, unified text in Dz. U. of 2004, No. 256, item. 2572 (*Act on Education System*)
- The Act on the Examination of Cases of Labour law and Social Insurance by Courts, 18 April 1985, Dz. U. 1985 No. 20, item. 85 (last amendment 11 April 2003, Dz. U. 2003, No. 83, item. 760)
- The Act on the Ombudsman for Children, 6 January 2000, Dz. U. 2000, No. 6, item. 69
- The Act on the Protection of Mental Health, 19 August 1994, Dz. U. 1994, No. 111, item. 535 (last amendment of 22 December 2000 in Dz. U.2000, No.120, item. 1268) (*Act on the Protection of Mental Health*)
- The Act on State Occupational Inspection, 6 March 1981, unified text, Dz. U. 2001, No. 124, item. 1362 (last amendment 2 July 2004, Dz. U. 2004, No. 173, item. 1808)
- The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 27 August 1997, Dz. U. 1997, No. 123, item. 776 (last amendment 20 April 2004, Dz. U. 2004, No. 99, item. 1001) (*Act on Rehabilitation*)
- The Civil Code, 23 April 1964, Dz. U. 1964, No. 16, item. 93 (last amendment 2 July 2004, Dz. U. 2004, No. 172, item. 1804), Art. 13, 16 and 17 (*Civil Code*)
- The Code of Civil Procedure, 17 November 1964, Dz. U.1964, No. 43, item. 296 (last amendment 2 July 2004, Dz. U. 2004, No. 172, item. 1804) (*Code of Civil Procedure*)
- The Family and Guardianship Code, 25 February 1964, Dz. U. 1964, No. 9, item. 59 (last amendment 17 June 2004, Dz. U. 2004, No. 162, item. 1691) (*Family and Guardianship Code*)
- The Labour Code, of 26 June 1974, unified text Dz. U. 1998, No. 21, item. 94 (last amendment 30 April 2004, Dz. U. 2004, No. 120, item. 1252) (*Labour Code*)

Resolutions of the *Sejm*

The Charter of Rights for Persons with Disability, Resolution of the *Sejm*, 1 August 1997, *Monitor Polski*, 1997, No 50 (*Charter of Rights*)

Regulations

Ministry of National Education and Sport
(prior to October 2001 – Ministry of National Education)

The Regulation of Minister of National Education and Sport on educational framework programmes (framework organisation sheets) in public schools, 12 February 2002, Dz. U. of 2002, No. 15, item. 142 (*Regulation on educational framework programmes*)

The Regulation of Minister of National Education on the organisation of remedial classes for children and youths with profound intellectual disabilities, 30 January 1997, Dz. U. 1997, No.14, item. 76.

The Regulation of Minister of National Education on the programme of general education, 15 February 1999, Dz. U. 1999 No. 14, item. 129.

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