



## **EUROPEAN EMPLOYMENT STRATEGY A NEW SOLUTION TO THE DISADVANTAGEOUS POSITION OF ETHNIC MINORITIES ON THE ESTONIAN LABOUR MARKET?**

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*The present research proposes a conceptual framework for discussion of the position of and challenges facing ethnic minority groups on the Estonian labour market. The research discusses the national policy on employment and ethnic relations against the background of the European Community's employment and anti-discrimination policy. The aim of the research is to examine how the key priorities of the European Employment Strategy and European Anti-Discrimination Policy have been put into practise in the Estonian national context. The research reveals that due to 1) specific problems that ethnic minorities face (inadequate knowledge of the state language, legal status and ethnic discrimination) and 2) great statistical differences in (un)employment, wage levels, and occupational distribution, state measures targeting particularly this group are needed. The national policy in the field of employment and anti-discrimination should pay more attention to the problems faced by ethnic minorities through developing state action plans and programmes taking into consideration the specific needs of this group within the population. Failure to adequately address the causes leading to the existing statistical differences among ethnic groups may aggravate economic and social problems, while wasting scarce resources on ineffective (and costly) policy instruments, putting Estonia's achievement of the European Employment Strategy objectives into jeopardy.*

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## **Preface**

The employment policy meets an increasing attention from the professionals of various disciplines and goes beyond the sphere traditionally dominated by the pure economic analysis. The multidisciplinary approach to the regulation of employment relations reflects the changing international reality and understanding of the complex relationships between the state and individuals as well as between private individuals on the labour market.

The national employment policy in Estonia, the former-Soviet Republic and now a new member state of the European Union is particularly fascinating. The Estonian post-Soviet economic and legal transformation together with the ethnic/linguistic divide of the society (legacy of the former regime) provides an interesting example for a study of a national employment policy which has to address the economic reform in the context of the complex ethnic composition of the society.

The complexity of the ethnic composition of the Estonian society is rooted in the fact that approximately one third of the population of Estonia belongs to ethnic minorities whose mother tongue is predominantly Russian. The Russian language is strongly associated with the previous communist regime. Thus the existence of ethnic Russians who speak Russian language in the Estonian society creates uncomfortable feelings among many Estonians.

From the beginning of the 90s it became evident that ethnic minority group is lacking behind ethnic Estonians on the Estonian employment market in terms of employment and remuneration levels, however is advanced in terms of unemployment rates. Thus the emerging national employment policy had to be developed in the context of the statistical data suggesting disadvantageous position of ethnic minority group as well strong social and political sentiment against Russian speakers.

The task of addressing the disadvantageous position of non ethnic Estonian on the labour market during 90s proved to be over difficult for the employment policy. The national employment policy during 90s tried to abstain from addressing the issue of the disadvantageous position of ethnic minorities on the labour market in any significant detail. The reserved position in relation to the position of ethnic minorities on the labour market adopted by state authorities is well explained in the overall context of high political sensitivity of the minority issue in Estonia.

The public discussions of the policies related to ethnic minorities so far have been built around the human rights protection paradigm. The discussions on the rights of minorities and rights of majority inevitably trigger the highly emotional and heavily debatable issue of the historical past of Estonia. Thus, attempts to address the current issues related to the position of ethnic minorities in Estonia most often end up in the discussions on the historical truths which very often don't have the only right answer.

Consequently, the retrospective reference to the history that necessary accompanies the discussion on the minority rights leads to a continuous cycle of the same arguments (history can not be changed) leading to only a very minimal progress toward the rational discussion of the acute problems including disadvantageous position of ethnic minorities on the labour market.

The European Union membership and as a consequence more structural approach to the national employment policy planning, implementation and evaluation based on the European Employment Strategy (EES), opens the issue of the disadvantageous position of ethnic minorities on the Estonian labour market in the new prospective.

The socioeconomic framework of the EES which suggests that if any particular group is disadvantaged on the labour market the state should take legal and economic measures to remedy the situation allows for an important step forward from the conventional paradigm of discussion of minority related issues in Estonia.

The present research is the first attempt towards the facilitation of the discussion on the issue of the disadvantageous position of ethnic minorities on the labour market in the context of the EES. The starting ground for the discussion on the issue of the ethnic minorities on the labour market is the current day situation. The ultimate questions for the research then is not who is to be blamed for the existence of the problem ethnic minorities or the state but rather *what is done to remedy the disadvantageous position of ethnic minorities and whether the policy choices adopted by the state have been effective in resolving the problem*. Thus, as suggested above, the attempt is made to make a step forward and perhaps away from the conventional discussions of the issue of ethnic minorities on the labour market.

The suggested approach to the discussion of the position of ethnic minorities on the labour market by no means undermines the possible human rights claims of both ethnic minority and majority groups. On the contrary, the present research stresses the importance of employing various instruments across different policy areas to remedy the position of the disadvantageous group on the labour market, for example through the implementation of the Community Directives on equality and non-discrimination.

## I. Introduction

The evaluation of the situation and opportunities of ethnic minorities in the labour market in Estonia requires an understanding of the policy mix cutting across different fields including economic, employment, social and anti-discrimination policies both at the national, the European Union and international level. Estonia's aspiration to join the EU hinges in part on its compliance with existing EU law and policy. Thus EU employment policy provides the backdrop to any consideration of Estonian labour market policy.

Prior to the Treaty of Amsterdam, the European Community's employment policy was limited to individual measures in the spheres of structural, social, education and youth policy. The Amsterdam European Council brought the 'promotion of employment' to the level of one of the objectives of the EU and 'a matter of common concern' for MS.<sup>1</sup> In addition to that, the new Title VIII, has been added to the Treaty of the European Union.<sup>2</sup>

The new Title VIII establishes a coordinated employment strategy designed to encourage a skilled and adaptable labour force and promotes labour markets that are responsive to the economic change. Although the direct responsibility for employment policy remains with the member states (MSs), post Amsterdam developments progressively increase the role of the Community in the employment policies of the MSs. As a consequence, EU policy on employment becomes essential element of the national policy of the MS. Estonian national policy on employment therefore must be framed not only by national demands, but also by the guidelines and standards established in the EU. During the accession negotiations, Estonia did not request any transitional period or derogation with respect to employment policy and declared that on accession to the EU, it is prepared to adopt and implement the *acquis* in this chapter in full.<sup>3</sup>

The European Union *acquis communautaire* on employment and social policy covers wide variety of issues such as labour law, equality of treatment -- between men and women, and irrespective of ethnic or racial origin -- as well as areas such as social dialog, employment and social protection.<sup>4</sup> The vital parts of the Community *acquis* in the field of employment are the European Employment Strategy (EES), European Social Policy Agenda (ESPA) and the European Social Fund (ESF).<sup>5</sup> All the above mentioned Community documents address the issue of ethnic minorities and aim to ensure that real progress towards the objectives set up by the Treaty take place. *The European Employment Strategy* emphasises the importance of an inclusive society with anti-discrimination policy as one of the tools to achieve this goal. *The European Social Policy Agenda* under the title on "Quality of Social Policy: sets the objective to "prevent and eradicate poverty and exclusion and promote integration and participation of all into

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<sup>1</sup> Treaty Establishing the European Community, Article 2, Official Journal C 325 of 24 December 2002, [http://www.europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.003301.html](http://www.europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html)

<sup>2</sup> Ibid, Title VIII, Articles 125-130.

<sup>3</sup> Estonia closed the chapter of social policy and employment for the negotiations with the EU on 5 October 2000. Chapter 13 of the Accession Negotiations – Social Policy and Employment, [http://www.vm.ee/eng/euro/kat\\_309/2783.html](http://www.vm.ee/eng/euro/kat_309/2783.html)

<sup>4</sup> For comprehensive overview of the Community legislation in the area of employment and social affairs, see [http://europa.eu.int/comm/employment\\_social/legis\\_en.html](http://europa.eu.int/comm/employment_social/legis_en.html) (last accessed on 15.03.2004).

<sup>5</sup> The European Employment Strategy, Council Decision of 22 July 2003, 2003/578/EC, Official Journal of the European Union, L1 97, 5. 8.2003; The European Policy Social Agenda, Communication from the Commission to the Council, The European Parliament, The Economic and Social Committee and the Committee of the Regions: Social Policy Agenda, Brussels, 28.6.2000 COM (2000) 379 final.

economic and social life".<sup>6</sup> To achieve this objective, the Agenda identified the list of specific actions. *The European Social Fund*, one of the four structural funds of the EU and the main financial instrument for the European Employment Strategy provides funding for the large scale projects for programmes targeting the development of 'employability' of people living in EU.<sup>7</sup>

In addition to the Community actions mentioned above, a number of EU measures have been initiated to specifically address the issue of discrimination on the labour market. In 2000 two Directives have been adopted by the Community based on Article 13 of the Treaty which signify the new approach to the issue of discrimination in employment.<sup>8</sup> In addition to the adoption of the "hard law" measures such as the Racial Equality Directive and the Employment Equality Directive the number of large scale Community wide actions were initiated as well. Among the most recent Community initiatives is a 5-year EU-wide campaign to combat discrimination on the grounds of racial and ethnic origin, religion and belief, age, disability and sexual orientation.<sup>9</sup> The primary focus of the campaign in the first year is on the workplace discrimination.<sup>10</sup> The main target groups of the campaign are trade unions and employers.<sup>11</sup>

The rationale for the increasing attention to the employment discrimination and the complex approach to the issue across the number of community Actions is clear - in order to achieve the economic goals set up by the Lisbon Summit of "world's most competitive and dynamic knowledge-based economy" it is vital to co-ordinate the employment policy at the European level and involve all (including women, minorities, disable people and other disadvantaged groups) in achieving this target.<sup>12</sup>

The "European understanding" links the successful socio-economic development of MSs to the 1) adoption of active labour market measures targeted specifically towards ethnic minority groups, and 2) combating discrimination through active measures promoting diversity at the workplace and this perspective is crucial to Estonia's success as well. As it will be argued below, the national policy in the field of employment does not specifically address the needs of this group within the population. Moreover, so far Estonia has made only very modest progress on the development and practical implementation of the anti-discrimination policy, not to mention the programs involving 'cultural mainstreaming'.

The academic and policy research on the economic discrimination of ethnic minorities on the labour market in Estonia is very limited. Representatives of the disadvantaged groups who may be victims of labour market discrimination have no effective recourse in the Estonian legal system. In addition, employers and employees as well as professional associations are not well informed of their rights and obligations regarding non-discrimination on the labour market. In this respect, a coordinate national employment and anti-discrimination policy addressing the needs of ethnic minorities and emphasizing social inclusion is urgently needed in Estonia.

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<sup>6</sup> Communication from the Commission to the Council, The European Parliament, The Economic and Social Committee and the Committee of the Regions: Social Policy Agenda, Brussels, 28.6.2000 COM (2000) 379 final.

<sup>7</sup> The European Social Fund (ESF) is the main financial tool through which the European Union translates its strategic employment policy aims into action. The ESF was set up by Treaty of Rome, Article 124.

<sup>8</sup> The Racial Equality Directive 2000/43/EC; The Employment Equality Directive 2000/78/EC.

<sup>9</sup> The legal basis for the campaign is the Council Decision of 27 November 2000 Establishing a Community action programme to combat discrimination (2001 to 2006), 2000/750/EC.

<sup>10</sup> More information on this campaign is available at its official website : <http://www.stop-discrimination.info/> (last accessed on 15.03.2004).

<sup>11</sup> "For Diversity - Against Discrimination": Diamantopoulou acts to boost awareness of new EU anti-discrimination rules IP/03/840, 16 June 2003, p.2. (web site - speeches).

<sup>12</sup> The documents on the Lisbon European Council (March 2000) available at [http://ue.eu.int/cms3\\_applications/applications/newsroom/loadBook.asp?BID=76&lang=1&cmsid=347](http://ue.eu.int/cms3_applications/applications/newsroom/loadBook.asp?BID=76&lang=1&cmsid=347) (last accessed on 12.02.2004).

The present research is organized according to the following structure. Following the Introduction (Section I), Section II provides a more detailed discussion of the European Employment Strategy, in particular the Social Inclusion objective together with the Community policy to combat discrimination fuelled by Article 13 of the Treaty. The second part of Section II then addresses the Estonian national policy in the field of employment specifically relating to ethnic minorities. Section III evaluates in more detail the position of ethnic minorities on the Estonian labour market through the analysis of statistical data. In search of a possible explanation for substantial statistical differences among ethnic groups, Section IV then addresses the issue of labour market discrimination as one of the possible causes. The research concludes, in Section V, with a set of specific policy recommendations in the field of employment and anti-discrimination policy.

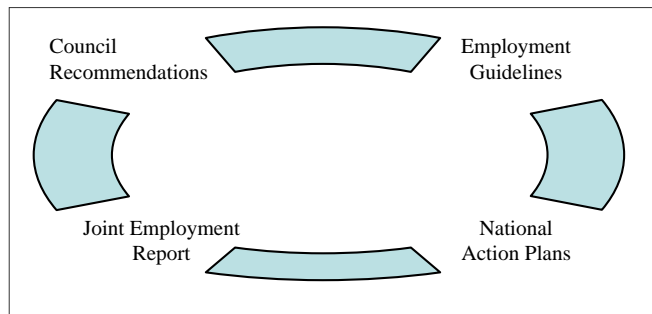


## ***II. Ethnic Minorities in the Labour Market Policies of the EU and Estonia***

### *1. European Framework for discussion of the position of Ethnic Minorities on the Labour Market (European Employment Strategy and Anti-Discrimination Policy)*

#### *European Union Employment Strategy*

Based on the new provisions in the Employment title, title VIII of the Treaty, the Luxemburg Jobs Summit in November 1997 launched the **European Employment Strategy (EES)**, also known as 'the Luxemburg process'. The Strategy determines the direction and the aims of the European Union in the sphere of employment and social affairs and calls MSs to co-ordinate their employment policies around four common pillars for priority actions -- employability, entrepreneurship, adaptability and equal opportunities. The three main objectives set up by the Strategy and as reaffirmed in the 2003 Employment Guidelines are 1) full employment, 2) quality and productivity of work, and 3) a cohesive and inclusive labour market.<sup>13</sup> The strength of the EES is that it not only established a set of common objectives and targets but also introduced a continuous programme of annual planning, monitoring, examination and re-adjustment of policies. This so-called 'open method of co-ordination' is built around several components: employment guidelines, national action plans, joint employment reports and recommendations.



Member States each year at the European Council define a joint European employment strategy, called “**Employment Guidelines** for the EU.” The Employment Guidelines represent a set of objectives that are grouped under four "pillars" together with horizontal objectives<sup>14</sup>. On the basis of these Guidelines, MSs draw up **National Action Plans (NAPs)** that describe how Guidelines are put into the practice at the national level.<sup>15</sup> The NAP presents the progress achieved in the MS over the last 12 months and the measures planned for the coming 12 months.

The National Action Plans, based on the indicators elaborated and approved by the EU's Employment Committee, are examined jointly by the Commission and the Council. As a result of the examination of the NAPs, the **Joint Employment Report (JER)** is presented to the European

<sup>13</sup> Council Decision of 22 July 2003 on guidelines for the employment policies of the Members States (2003/578/EC) 5.8.2003 L 197/13 Official Journal of the European Union

<sup>14</sup> Ibid, footnote 13.

<sup>15</sup> 2003 National Action Plans for the existing 15 Member States available at [http://europa.eu.int/comm/employment\\_social/employment\\_strategy/03\\_national\\_en.htm](http://europa.eu.int/comm/employment_social/employment_strategy/03_national_en.htm) (last accessed on 15.03.2004).

Council.<sup>16</sup> On the proposal of the Commission the, Council issues country-specific recommendations.<sup>17</sup>

In 1999, in accordance with the provisions of the Accession Partnerships, a co-operation process on employment was initiated by the Commission with candidate countries, including Estonia. The purpose was to prepare candidate countries for the common procedure currently followed by the member states. The first step in this co-operation process was the preparation of the **Joint Assessment Paper** (JAP).<sup>18</sup>

A JAP was prepared by the Government of Estonia and the European Commission, Directorate General for Employment and Social Affairs.<sup>19</sup> The document was signed by the Minister of Social Affairs of Estonia and the Commissioner for Employment and Social Affairs in March 2001. The Joint Assessment Paper defined the fundamental challenges facing the country in the field of employment which must be met in order to ensure the implementation of EES and accession to the EU.<sup>20</sup> The main priorities identified by the JAP include:

1. Full implementation of the reform of initial vocational education and training, together with measures to increase completion rates in upper-secondary education
2. Expansion of continuing training provision to increase re-training opportunities for adults, including opportunities related to the needs of the information society
3. Ensuring that the tax and benefit systems are coordinated to provide adequate incentives for the creation of employment and for unemployed and inactive people to take up employment
4. **Expansion of active labour market programmes, while ensuring that these remain targeted on the most disadvantaged job-seekers**
5. Providing the Public Employment Service with the resources and structures needed to allow it to manage active programmes effectively and to engage more actively with the unemployed
6. Developing a tighter focus in relation to regional aspects of employment policy in order to concentrate more closely on the regions worst affected by unemployment
7. Speedy progress in implementing measures to support an increased role for the social partners in the formulation and implementation of employment policies
8. Continued implementation of measures to address gender differences in the labour market
9. Continuing the Government's work on establishing the institutional structures necessary for the implementation of ESF, taking account of the policy priorities outlined in the JAP

Source: *Joint Assessment of Employment Priorities in Estonia, p 24-25*

The measures addressing the ethnic differences in the labour market are not included as a specific priority under the JAP. The only specific mentioning of non-Estonian speakers is in the priority

<sup>16</sup> The Joint Employment Report 2003/2004 adopted by the Council of the European Union on 5 March 2004 available at [http://europa.eu.int/comm/employment\\_social/employment\\_strategy/report\\_2003/jer20034\\_en.pdf](http://europa.eu.int/comm/employment_social/employment_strategy/report_2003/jer20034_en.pdf) (last accessed on 01.01.2004).

<sup>17</sup> 2003 Recommendations have been adopted on 22 July 2003 by Council Recommendation 2003/579/EC on the implementation of Member States' employment policies, Official Journal L 197/22 5.8.2003.

<sup>18</sup> Joint Assessments of Employment Policy in the Candidate Countries available at [http://europa.eu.int/comm/employment\\_social/employment\\_analysis/japs\\_en.htm](http://europa.eu.int/comm/employment_social/employment_analysis/japs_en.htm) (last accessed on 15.03.2004).

<sup>19</sup> Joint Assessment of Employment Priorities in Estonia available at [http://europa.eu.int/comm/employment\\_social/employment\\_analysis/japs/estonia\\_en.pdf](http://europa.eu.int/comm/employment_social/employment_analysis/japs/estonia_en.pdf) (last accessed on 15.03.2004).

<sup>20</sup> Ibid, footnote 19.

related to the 'expansion of active labour market programmes, while ensuring that these remain targeted on the most disadvantaged job-seekers'.<sup>21</sup> The most disadvantaged groups as identified by the JAP are: (1) the long-term unemployed, (2) young people, (3) persons who have dropped out of basic school, (4) disabled persons, (5) the older workforce, (6) non-Estonian speakers and (7) persons without any professional education or qualification.

It is important to stress the wording used in the JAP. Instead of using 'ethnic minority,' the term 'Non-Estonian speakers' is used. This refers to the fact that the most disadvantaged group as identified by the JAP and the Government are not the ethnic minorities at large, but only those who don't speak Estonian. Interpreting this provision narrowly leads to the conclusion that the problems of ethnic minorities are restricted to the Estonian language only or that the problem can be solved by implementing language instruction programs in Estonian. The questionable validity of this approach will be discussed in the following Sections.

The next step in the co-operation between national authorities and the Commission after adopting the JAP was a joint monitoring of the progress in achieving the priorities established in the JAP. To this purpose in the beginning of 2003, **Communication "Progress in the implementation of the Joint Assessment Papers on employment policies in candidate countries"** was published.<sup>22</sup> The **Supporting Document to the Communication** provides a review of current labour market performance, a general assessment of employment policies for each area identified in the JAP, as well as key issues for the future.<sup>23</sup>

The Communication, addressed to all candidate countries, again stressed the need to ensure social cohesion and integration of ethnic minorities.<sup>24</sup> The Commission underlined the fact that most of candidate countries have significant ethnic minority groups that are in a disadvantageous position in the labour market and are at high risk of social exclusion and poverty.<sup>25</sup> The Commission stressed the need to intensify efforts in the candidate countries to better tailored educational provisions to the needs of minorities and to speed up integration.<sup>26</sup>

The supporting document to the Communication provided country specific information. In the part of the supporting document related to Estonia, the Commission, inter alia, pointed to the evidence that "belonging to an ethnic minority and lack of national language skills is among the risk factors for unemployment."<sup>27</sup> In this respect, the Commission indicated that for the Estonian state to develop appropriate policy measures, *a review of the relationship between ethnic origin, language skills, regional disparities and sectoral concentration and labour market outcomes is needed.*<sup>28</sup>

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<sup>21</sup> Id.

<sup>22</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Progress on the implementation of the Joint Assessment Papers on employment policies in candidate countries", COM (2003) 37 final of 30/01/2003 available at [http://europa.eu.int/comm/employment\\_social/employment\\_analysis/communication/Comm\\_0037\\_en.pdf](http://europa.eu.int/comm/employment_social/employment_analysis/communication/Comm_0037_en.pdf) (last accessed on 12/02/2004).

<sup>23</sup> Commission staff working paper, Supporting document to the Communication "Progress in the implementation of the Joint Assessment Papers on employment policies in candidate countries", SEC (2003) 200 of 18/2/2003.

<sup>24</sup> Supra, footnote 22, p.7.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Supra, footnote 23, p. 13.

<sup>28</sup> Ibid, p.13.

Following the Communication, a series of high-level talks between national authorities of the candidate countries and the European Commission took place. During her visit to Estonia which took place on 4 and 5 June 2003, Ms. Odile Quintin, the European Commission's Director-General for Employment and Social Affairs, again pointed to the statistical evidence that indicates that minorities and non-Estonian groups are almost twice as likely to be unemployed as are Estonians.<sup>29</sup> She noted that although factors such the concentration of minorities and non-Estonian groups in certain sectors and regional disparities may contribute to the existing statistical differences, "more evidence is needed on what the real situation is with regard to opportunities for these groups and how best to address the difficulties they find themselves in."<sup>30</sup> In addition, Ms. Quintin urged Estonia "to complete the full transportation of EU anti-discrimination legislation before next year's accession."<sup>31</sup>

The **updated Communication** reflecting changes in the employment policies of the accessing countries was published by the Commission at the end of 2003.<sup>32</sup> The updated Communication reflecting on the progress in addressing key policy issues underlines that "integrating people at a disadvantage and achieving inclusive labour markets remain major issues to increase labour supply and promote social cohesion".<sup>33</sup> The Commission in the updated Communication again stresses that "more rigour in the implementation of integration strategies directed at the disadvantaged, and the ethnic minorities ..." is need in the accessing countries.<sup>34</sup>

Addressing the unemployment risk among non-native population in Latvia and Estonia the Communication pointed that unemployment risk remains high. The Commission stressed that "Estonia needs to monitor the efficiency of employment programmes targeted at the disadvantaged regions in which the non-Estonian population are concentrated".<sup>35</sup>

The **updated Supporting Document** published at the end of 2003 points to the existence of the same problems related to ethnic minorities as in the beginning of 2003. The supporting document again provides that "Belonging to an ethnic minority and lack of national language skills seem to be risk factors for unemployment" and urges national authorities to pay special attention to risk groups, inter alia, the ethnic minorities.<sup>36</sup>

Thus, various documents accessing the implementation of the European employment policy by Estonia stress a need to pay special attention to ethnic minority group, to develop appropriate policy measures and conduct a review of the relationship between ethnic origin, language skill and regional disparities on the labour market. In addition to European employment policy

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<sup>29</sup> Press Release "Estonian employment and social policies get ready for EU accession" by Delegation of the European Commission in Estonia, <http://eng.euroopalit.ee/page.asp?menu=418&action=kuva&artid=305> (accessed 02.02.2004)

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on "Progress in implementing the Joint Assessment Papers on employment policies in acceding countries" (COM(2003) 663 final of 06/11/2003).

<sup>33</sup> Ibid, footnote 32, p. 7.

<sup>34</sup> Id, p 8.

<sup>35</sup> Id, p 8.

<sup>36</sup> Commission staff working paper, Supporting document to the communication on "Progress in implementing the Joint Assessment Papers on employment policies in acceding countries", SEC (2003) 1361 of 24/11/2003, pp. 10-11.

implementation the issue of adopting anti-discrimination policy has been constantly on agenda in high level discussion between Estonian and EU Commission.

### *European Union Anti-Discrimination Policy*

The European Employment Strategy is the most important document addressing the issue of discrimination against national minorities on the labour market; however, it is not the only Community initiative to combat discrimination. The Article 13 of the Treaty and directives based on this article provide a strong legal basis to combat discrimination in all fields of life, including employment. Along with the European Employment Strategy, Community actions in the field of protection of national minorities (as well as other disadvantaged groups) through measures combating discrimination are rather recent. To empower the existing Article 12, during the Lisbon Summit a new Article to the Treaty of the European Union -- Article 13 -- was added. Based on the new Article 13, two Community Directives targeted at the reduction of discrimination have been adopted.

The Community Directive 2000/43 – the **Race Equality Directive** – calls for implementing the principle of equal treatment of people, irrespective of racial or ethnic origin, in employment and training, education, social security, healthcare and access to goods and services.<sup>37</sup> The Directive contains definitions of direct and indirect discrimination, harassment and victimisation. Moreover, the Directive provides victims of discrimination with the right to make a complaint through a judicial or administrative procedure, associated with appropriate penalties for those who are found to have engaged in discrimination. Another important element of the Directive relates to the provision for the establishment in each MS of an organisation to promote equal treatment and provide independent assistance to victims of racial discrimination. The Race Directive came into force in July 2003, providing a solid legal framework to combat all forms of discrimination in the MSs.<sup>38</sup>

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<sup>37</sup> The second directive adopted based on the Article 13 is the Equality Directive 2000/78. This directive implements the principle of equal treatment in employment and training irrespective of religion or belief, sexual orientation and age in employment and training. The directive does not specifically address discrimination on ethnicity.

<sup>38</sup> The more detailed discussion of the provisions of the Race Directive as relates to the Estonian context provided in the Section (IV).

## ***2. The issue of national minorities on the Estonian labour market in the discourse of the Estonian national policy on employment***

Three levels of coordination of employment policy can be discerned in the process of preparation for the accession of Estonia to the European Union. At the first level, the so-called Community level, community-wide policy on employment agreed on among the MSs, and the European Employment Strategy must be adopted. At the second level, which is the realm of both the national authorities and the Community, the Joint Assessment paper was adopted. And at the third level, the annual adoption of the Republic of Estonia Employment Action Plans takes place at the national level. The annual evaluation mechanism established by the Community is intended to ensure the actual implementation of objectives established at level one through actions taken at levels two and three.

On the national level in Estonia, the **employment policy** is co-ordinated by the Ministry of Social Affairs. The Ministry prepares the annual Republic of Estonia Employment action plan summarizing the official policy on employment, reviewing the main problems on the labour market and suggesting the actions necessary in the field of employment for the next year. Based on the actions specified in the Employment Action Plan, more specific programmes are developed and implemented. The Employment Action plan is the fundamental basis for actions in the field of employment at the national level. The Ministry of Social Affairs also is an implementing agency for the purpose of the European Social Fund.

Main strategic **labour market** documents on the national level are:

- Estonian National Development Plan for the implementation of the EU structural funds SPD 2004 - 2006 Programme Complement (approved on 27.04.2004)
- Estonian National Development Plan for the Implementation of the EU Structural Funds SPD 2004 – 2006 (approved on 15.01.2004)
- Republic of Estonia Employment Action Plan 2003 (finalized - June 2002)
- Republic of Estonia Employment Action Plan 2002 (finalized 2001)
- Republic of Estonia Employment Action Plan 2000 4th q –2001
- National Development Plan 2000-2002. Labour market
- NPAA- National Programme for the Adoption of the Acquis 1999, 2000, 2001, 2002-2003; Social Policy and Employment Chapter.
- Ministry of Social Affairs Strategic Action Plan 2000-2010 (approved by the Minister of Social Affairs in April 2000)

In respect of **inter-ethnic relations** the following programme have been adopted

- State Integration Programme 2000-2007

The most recent documents in the field of employment policy are the Republic of Estonia *Employment Action Plan 2003* and the *2003 Estonian Monitoring Report for the Commission Review on National Programme for the Adoption of the Acquis 2002-2003* finalized on 27 June 2003. These two documents were adopted after the JAP had been signed. The 2003 Estonian Monitoring Report was also adopted after the first *Communication “ Progress in the implementation of the Joint Assessment Papers on employment policies in candidate countries”*

along with the supporting document had been adopted and high-level talks with the Director General on Employment and Social affairs had taken place. The timing of the adoption of the national document indicates that the objectives, guidelines and the suggestions expressed by the European Commission should have been noted by national authorities in drafting the documents mentioned above.

The Republic of *Estonia Employment Action Plan 2003* on numerous occasions refers to the EU employment strategy and EU employment guidelines as guiding principles. Specifically, on page 4, "The Action Plan ... has been structured in compliance with the EU employment guidelines while the mentioned actions arise from the current needs of the Estonian labour market."<sup>39</sup> As discussed above, one of the objectives of the European Employment Strategy, i.e. level one, is an inclusive society with a non-discrimination policy as an integral part of achieving this goal.

An inclusive society means participation of all in labour relations, adoption of active measures targeting disadvantaged groups (specifically including ethnic minorities),<sup>40</sup> taking proactive measures to promote diversity at the workplace and combat discrimination. The level one policy clearly emphasises the importance of addressing issues related to the position of ethnic minorities on the labour market. To this end, one of the objectives of the JAP, level two, is the "Expansion of active labour market programmes, while ensuring that these remain targeted on the most disadvantaged job-seekers."

The most disadvantaged job-seekers as identified in the Estonian JAP include (1) the long-term unemployed, (2) young people, (3) persons who have dropped out of basic school, (4) disabled persons, (5) older workers, (6) non-Estonian speakers and (7) persons without any professional education or qualification. Consequently, we may conclude that level two, although in a restrictive manner by only mentioning non-Estonian speakers, does refer to ethnic minorities as the disadvantaged jobseekers in need of special attention through national programs.

At level three, the Estonian Employment Action Plan 2002 determines risk groups in the Estonian labour market "...as comprising the (1) young in the age group 16-24, the (2) disabled, the (3) long-term unemployed, (4) mothers with small children, (5) job seekers who have lost their qualification, (6) people at pre-pension age, (7) people released from penal institutions, (8) non-Estonian population etc."<sup>41</sup> The list of groups is broader than that in the JAP (level two) or the EES (level one). Moreover, the list in the Employment Action Plan 2002 is not exhaustive, leaving open the possibility of including other relevant groups.

However, the same report also states that "Due to limited financial resources, special attention will be paid to risk groups whose competitiveness in the labour market is the lowest. The target groups in the present action plan are the young, the long-term unemployed and the disabled."<sup>42</sup>

The Employment Action Plan 2003 follows the same policy line and determines risk groups to include only (1) the young, (2) the long-term unemployed and (3) the disabled -- without addressing any other groups as identified in the JAP. The other four disadvantaged groups,

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<sup>39</sup> Estonia employment Action Plan 2003.

<sup>40</sup> Guideline in 2003 EES Guidelines, before guideline 9. Specifically mentioning of ethnic minorities, disabled and migrant workers.

<sup>41</sup> Employment Action Plan 2002, p.19.

<sup>42</sup> Id, p.4.

including non-Estonian speakers, as identified in the JAP, remain outside the scope of direct state action programs under the Employment Action Plan.

As a consequence, the objectives set on level one can be found in level two planning, but do not find practical realization at the national level (level three). This apparent lack of correspondence among the three levels is not apparent in the communications between the Estonian authorities and the Commission. In reporting on the progress in the adoption of the Acquis, in the **2003 Estonian Monitoring Report for the Commission Review on National Programme for the Adoption of the Acquis 2002-2003**, the broad list of risk groups included in the 2002 Employment Action Plan is repeated. The next sentence directly following the list of risk groups states that "Special attention shall be paid to the young, disabled and long-term unemployed." There is no explicit statement in the report, however, that in fact the official labour market policy is limited to those three risk groups only. Naturally, the understanding of the broad list of risk groups included in the Monitoring report may be misleading, not reflecting the actual policy in the field of employment on the national level.

The Employment Action Plan 2003 which reflects the official labour market policy and intends "to provide an overview of the labour market related problems in Estonia, implementation of the labour market policy and actions (direction) necessary to improve the situation" does not specifically address the needs of ethnic minorities as a disadvantaged group on the labour market.

Under Section 1.4 of the Action Plan, 'Main Problems,' there is no specific mention of ethnic minorities or even the more narrowly defined group of non-Estonian speakers. The only indirect reference that could be related to ethnic minorities is found in the discussion of problems in Ida-Viru County in the section addressing large regional disparities. 80% of the population of Ida-Viru County, where unemployment rate – 20,6% -- is the highest in the country, belongs to an ethnic minority.<sup>43</sup>

It should be noted that the 'Background' part of the 2003 Action Plan, in the section 'Changes in the labour market in 2000-2001,' does provide statistical data that acknowledge almost a two fold difference in the unemployment rate between ethnic Estonians and ethnic Russians. The report states that, "The unemployment rate among non-Estonians is higher than among Estonians (16.3% and 8.7 % respectively)." However this does not lead to the inclusion of this issue under the 'Main Problems' section.

The national policy on the integration of society, **State Integration Programme 2000-2007** addresses the issue of national minorities on the labour market through programs aimed at teaching the Estonian language to ethnic minorities. The Integration Programme only focuses on the need for language training of ethnic minorities without more broadly addressing the reasons behind the disadvantageous position of ethnic minorities on the labour market. Under the Sub-Programme III "Teaching Estonian to Adults," a number of projects took place in 2001 including:

- Free basic Estonian language training for 192 serving compulsory military service.
- Reimbursement of 50% for the language training costs under the EU Phare Estonian Language Training Programme "Interest" to 2,012 trainees;

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<sup>43</sup> The unemployment rate of 20,6 % refers to the first quarter of 2004. The data is based on the information presented at the official web page of the Statistical office of Estonia, News Release No.53 of 25.05.2004 , available at <http://www.stat.ee/136506> (last accessed on 25.05.04).



- 600 unemployed people of Ida-Viru county received free Estonian language courses;
- 82 state officials participated in a labour exchange programmes.

The state Integration Programme does not mention any obstacles to the participation of ethnic minorities on the labour market other than their inability to communicate in the Estonian language. The Integration programme does not provide for any other actions to evaluate the position of ethnic minorities on the labour market. The question of possible discrimination based on ethnicity is not addressed.

As a consequence, the Integration Programme does not include programs to combat discrimination in the workplace. The programme also doesn't provide for any programmes aiming at the promotion the equality of opportunities for ethnic groups, for example, involving recruitment procedures, promotions and dismissals from the workplace.

In addition to national programmes, the research projects addressing the Estonian employment policy in the light of the accession to the EU usually leave out any in-depth discussion of the evidence and real situation regarding the opportunities of ethnic minorities on the labour market. This is the case, for example, with the recently published country report, "EU Enlargement and its Impact on the Social Policy and Labour Markets of Accession and Non-Accession countries," which analyses the Estonian labour market, social and migration policies in light of EU accession.

The report provides a great wealth of valuable information on the overall situation, however not on the opportunities of ethnic minorities on the Estonian labour market. While there is an active debate in the academic community concerning the linguistic and political issues related to national minorities, only handful researchers are addressing the question of economic discrimination against minorities in the workplace. To date, no policy analysis concerning the position of ethnic minorities in the Estonian labor market has been conducted.

As has been argued above, National Programmes on employment and integration and research projects addressing the situation of national minorities in Estonia have been undertaken only to a very limited degree. This may lead to the logical conclusion that ethnic minorities in the Estonian Labour market do not face problems that need to be addressed by the national authorities. The validity of this argument will be evaluated in the next section (Section III).

### **III. The Position of Ethnic Minorities on the Estonian Labour Market**

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The aim of the Section III is to analyse the statistical data relevant to the position of ethnic groups on the labour market. Are ethnic minorities disadvantaged? Do they face specific problems on the Estonian labour market due to discrimination based on ethnic or national origin? The evaluation here is based on the available statistical data on employment, unemployment, sectoral and occupational distribution of work and wages, as well as published research projects and reports. The evaluation concludes with –an assessment of whether, in the framework of the objectives and guidelines of the European Employment and Anti-Discrimination Policy, state actions specially targeted to ethnic minorities are necessary.

Thus this section does not aim to re-open the long standing discussion on the rights of Estonian majority versus rights of the ethnic minorities and consequently contribute to the discussion on which ethnic group has more legal and moral rights to impose restrictions on other group. As have been pointed in the previous paragraph and as it needs to be stressed again this section analyses the *existing* situation of ethnic minorities on the labour market with the aim to establish whether within the meaning of the European Employment Strategy the ethnic minority group in Estonian is to be considered as disadvantageous group on the labour market.

Inevitably in discussing the statistical data the questions as to the possible causes of the disadvantageous position of ethnic minorities arise. However this section is not a comprehensive study of the possible causes of the disadvantageous position of ethnic minorities on the labour market. More elaborate long-lasting study based on scientific methods is necessary to determine the relevant causes and the respective weight of those factors in the overall position of ethnic minorities. This section only highlights the possible causes of the disadvantageous position of ethnic minorities without providing an in-depth analysis of all factors that may contribute to the current situation.

This approach is consistent with the principles of the European Employment Strategy. The EES is based on the understanding that if the particular group is disadvantaged on the labour market (irrespective of the factors which lead to this position) the state should take active measures to address and remedy the position of this group.

This section is structured as following: it starts with a brief note on the demographic and ethnic composition of the Estonian labour market and the regional settlement of minority groups, followed by the analysis of the statistical data on the situation of the ethnic minorities. The second half of the section addresses state policies including language and citizenship policies that, in addition to the national employment policy, may contribute to the difficulties faced by ethnic minorities on the labour market.

#### ***1. Demographic/Ethnic Composition of the Estonian Labour Market in the 1990s and at the time of the EU accession***

Estonia is one of the smallest countries in Europe with the population of less than 1,5 million. The economically active population is approximately 632,849, less than half the population. In terms of the EU market, therefore, the Estonian workforce represents only 0.3% of the EU total. In the EU context, Estonia has one of the highest proportion of ethnic minorities. In 1989, the foreign-born population accounted for over 26% of the total Estonian population and 36% when second generation individuals are included.<sup>44</sup> This is five to six times more than in Germany, France or Sweden and three times higher than the European average.<sup>45</sup>

The national minority of Estonia is predominantly of Russian ethnicity with Russian as their mother tongue. By joining EU two Baltic countries of Estonia and Latvia bring 1,054,421<sup>46</sup> people with Russian ethnicity into the European integrated market (a larger number than the Estonian speaking population of 930,219). As a consequence, issues related to the position of this ethnic group have broad policy implications not only in Estonia, but in the European Union as well.

At the end of WWII, Estonia became a part of the Union of the Soviet Socialist Republics (USSR) and the 'Soviet Period' in Estonia began. Heavy industry and all-Union production became the heart of the economic policy of the Estonian Soviet Socialist Republic. In terms of human resources, Moscow encouraged an extensive migration of people to Estonia to meet the labour shortage in the soviet republic. During the period from 1945 to –1950, about 241,000 people immigrated to Estonia from other Soviet republics and then in the years between 1961 and 1970, another 95,000 arrived.<sup>47</sup>

The last census conducted in 2000 indicates that even after the extensive emigration of ethnic Russians from Estonia that took place in the 1990s, a substantial proportion of Estonian population belongs to the ethnic Russian minority. Since ethnic Russian emigration from Estonia is not projected to continue at the same rate as during the 1990s, we can expect the current ratio of ethnic Russians to ethnic Estonians to persist for the foreseeable future.

Population census adjusted to 2002 indicates that

**Table 1 (Ethnic Composition of Estonian Population, 2002)**

Total Population	1370052	%					
Estonian	930219	68	<p><b>Ethnic Composition of the Population of Estonia, 2000</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Estonian</li> <li><input type="checkbox"/> Russian</li> <li><input type="checkbox"/> Ukrainian</li> <li><input type="checkbox"/> Byelorussian</li> <li><input type="checkbox"/> Finnish</li> <li><input type="checkbox"/> Tatar</li> </ul>				
Russian	351178	26					
Ukrainian	29012	2					
Byelorussian	17241	1					
Finnish	11837	1					
Tatar	2582	0					

<sup>44</sup> Social Trends, Tallinn, Statistikaamet, 2000.

<sup>45</sup> Id.

<sup>46</sup> Central Bureau of Statistic of Latvia,

[http://www.csb.lv/atekstis.cfm?tem\\_kods=tsk&datums=%7Bts%20%272002%2D01%2D25%2013%3A00%3A00%27%7D](http://www.csb.lv/atekstis.cfm?tem_kods=tsk&datums=%7Bts%20%272002%2D01%2D25%2013%3A00%3A00%27%7D) (last accessed on 1.11.2003).

<sup>47</sup> Immigration Law and Human Rights in the Baltic States, Comparative Study on Expulsion and Administrative Detention of Irregular Migrants, Dr. Joanna Apap, p. 23.

As the table above shows, the mother tongue of the majority of the ethnic minority population is not Estonian. According to the 2000 census, the mother tongue of 32% of the population is something other than Estonian. Slavic languages such as Russian, Ukrainian and Belorussian are the mother tongue of 29% of the population and the remaining 3% speak Finish, Latvian, etc.

Contrary to the process that took place in other European countries where the foreign-speaking population gradually learned the local language, the ethnic minority population in Estonia did not learn the local language during 'Soviet Period.' Soviet policy discouraged the use of local languages in the Baltic republics. Ethnically diverse newcomers from other parts of the USSR who settled in Estonia often had knowledge of the Russian language, but often lacked knowledge of the Estonian language and culture. However, this was not an obstacle to pursuing educational and employment opportunities.

The whole state system was built de facto on the use of two languages: Russian and Estonian. The educational system was bilingual, providing for a free choice to undertake education in Estonian or Russian language at all levels of the educational system. The mass media, culture and academic research were conducted in both languages. However the system of teaching of Russian language to Estonians in schools was much more comprehensive than the system of teaching of Estonian to Russian speakers.

This resulted in the fact that usually Estonians had a knowledge of Estonian and Russian languages while Russian speakers were limited to only one language, i.e. Russian. Regardless of linguistic abilities and ethnicity, the entire population of the Estonian SSR had the same political and legal rights, as well as the same access to social benefits and programmes. Those rights were undoubtedly subject to the restrictions, limitations and incomprehensive absurdities of the Soviet regime. Nevertheless, the inability to master the Russian or Estonian language was not a decisive factor in determining rights or access to social services or opportunities.

Statistical data from the Soviet period reveal that 80% of non-native Estonian speakers and 30 % of non-native Russian speakers did not speak another language; this would indicate that it was possible to live in Estonia speaking only one language or the other during that era.

Summarising the linguistic competencies of the population of Estonian during the Soviet time it may be said that

- 1) knowledge of Russian was economically speaking more valuable than knowledge of Estonian;
- 2) the system of teaching of Estonian was neither advanced nor comprehensive;
- 3) inability to master the Estonian language was not an obstacle to educational or employment opportunities or social benefits;
- 4) the Russian speaking population generally did not learn to speak Estonian while the majority of Estonians spoke both Estonian and Russian.
- 5) This meant that a significant proportion of the population residing in Estonia at the beginning of 1990's had only limited competence in the newly declared state language.<sup>48</sup>

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<sup>48</sup> After independence Estonia adopted one state language policy.

The question of the linguistic competence of the population is crucial in the Estonian context. The 'language issue' continues to be a very sensitive matter and a stumbling block in domestic politics. After the dissolution of the Soviet Union, the Estonian language became the only official language of the country. The Language Law adopted in 1995 established the compulsory level of competence for certain professions in both the public and private spheres. A newly created Language Inspectorate insures the implementation of the law. This rapid, 'overnight' change in language policy meant that ethnic minorities were deprived of the time and education necessary to master the Estonian language and created new economic and psychological challenges for minorities.

The Estonian labour market mirrors the overall demographic composition of the state. According to statistical data, 67% of the employed are ethnic Estonians. There are also relatively similar division of the labour market according to mother tongue. The Estonian language is native to 68% of employed; the Russian language is native for 29 % of all employed.<sup>49</sup>

Table 2 (Total population by mother tongue)

	Mother tongue total	Estonian	Russian
Employed	544650	370792	160282
Per cent	100,00	68,08	29,43

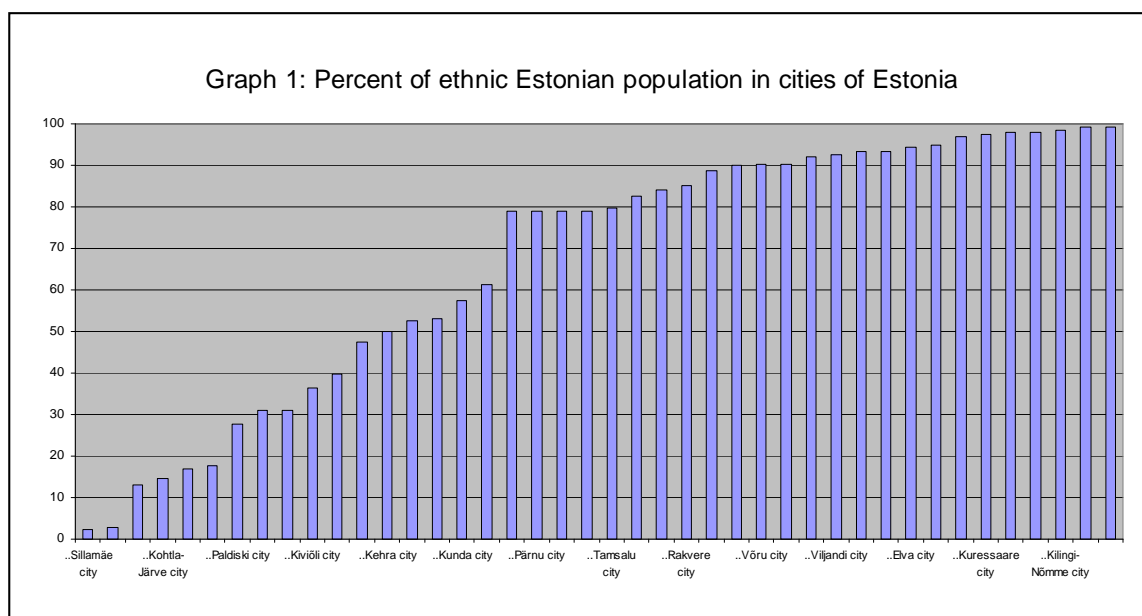
Table 3 (Employed population by mother tongue)

	Ethnic nationality Total	Estonian	Russian	Other ethnic Nationalities	Ethnic nationality unknown
Economic activity total	632849	421422	168286	42443	698
Per cent	100,00	66,59	26,59	6,71	0,11
Employed total	544650	372767	135683	35627	573
Per cent	100,00	68,44	24,91	6,54	0,11
Unemployed total	88199	48655	32603	6816	125
Per cent	100,00	55,17	36,97	7,73	0,14

### *Geographic Distribution of Minorities*

In geographic terms, national minorities live predominantly in cities (93 %) with only 7% living in rural areas. Out of 42 cities, in 26 cities national minorities constitute to more than 10% of the population; in 22 cities, they constitute more that 20%, and in 17 cities more than 30% of the population. In 13 cities, ethnic minorities comprise more than half the population. The statistical data indicates that not only Ida-Virumaa County has a significant proportion of ethnic minorities but also other counties and cities in Estonia also have a substantial proportion of ethnic minorities. This indicates that in discussing the problems related to the position of ethnic minorities on the Estonian labour market, it is not sufficient to address only the Ida-Virumaa region.

<sup>49</sup> Statistical Office of Estonia, Economically Active Population, 31 March 2000 by Age, Sex, Place of Males and Females, Whole Country.



## 2. Statistical Evidence<sup>50</sup>

In the absence of discrimination, we would expect the proportion of ethnic minorities among the unemployed, and across occupational groups and sectors of economy to correspond approximately to the ethnic composition of the country. Moreover the wages for equal work should be similar irrespective of ethnic nationality, particularly if we controlled for educational attainment. In itself the statistical differences among ethnic groups is not unconditional proof of discrimination. There are a number of socio-economical and historical factors that may contribute to the differences. At the same time, the substantial statistical differences may indicate the disadvantageous position of a particular minority group which may, among other factors, be caused by direct or indirect discrimination in the country.

The evaluation presented below is based on the national statistical data, Integration Monitoring Reports and research publications. The statistical data related to the educational attainment, employment/unemployment rates, job levels and earnings, and economic and occupational distribution of work of ethnic groups on the labour market are collected by the Estonian Department of Statistics. The ethnically differentiated data is public and available for the analysis. The Department of Statistics since 1995 annually conducts *The Labour Force Surveys*, collecting data on the economic activity of the population, employment and unemployment, inter alia, by ethnic nationality and language spoken. *The Population Census 2000*, collected a variety of data on the education and economic activity of the population. Moreover, *Integration Monitoring Reports 2000 and 2002*, published by the State Integration Foundation, provides statistical data and sociological surveys on the opinions and attitudes of people in Estonia with different ethnic and social backgrounds. In addition, four main research publications addressing the issue of national minorities on the labour market are the Kroncke/ Smith “The wage effects of

<sup>50</sup> The present Section will introduce the reader with the basic outline of the available statistical data on education, unemployment, occupation representation and remuneration. For more advanced sociological data review please see M.Pavelson & M.Luuk “Non-Estonians on the Labor Market”, infra footnote 51.

ethnicity in Estonia”, Professor Majre Pavelson article " Non-Estonians on the labour market"<sup>51</sup>, Estonian Human Development Report 2001 and the OECD publication "Wage determinants in Estonia, Latvia and Lithuania".

A. *Level of Education and (return on investment in education for) ethnic groups*

Education is one of the key factors determining success on the labour market. A potential employee’s level of educational attainment is relevant in accessing employability and therefore is also relevant to assessing patterns of employment across ethnic groups. If the level of educational attainment is relatively comparable among the ethnic groups then the (un)employment level and the remuneration for work should be relatively similar. Conversely, if educational attainment is unequally distributed across ethnic groups, then we would expect to see different employment patterns reflecting differences in education. The problem might then be discrimination not on the labour market, but rather differences in educational opportunities across social groups. In the Estonian context, the relative proportion of people with no primary education, to those with general secondary education, vocational secondary education or higher education among the economically active population is roughly comparable across ethnic groups.

Table 4 Educational attainment by nationality.

	Males and females		Russian (%)	Other ethnic nationalities	Ethnic nationality unknown
	Ethnic nationality total (%)	Estonian (%)			
Whole country					
Total					
Educational attainment total	100	67	26	6	1
No primary education, illiterate	100	59	30	10	1
No primary education, literate	100	71	25	4	0
Primary education	100	71	24	6	0
Basic education	100	72	22	5	0
General secondary education	100	66	27	7	0
Vocational education	100	61	30	9	0
Vocational basic education	100	65	29	6	0
Vocational secondary education	100	66	28	6	0
Vocational secondary education after secondary education	100	54	37	9	0
Professional secondary education after basic education	100	72	22	6	0
Professional secondary education after secondary education	100	55	35	9	0
Higher education	100	66	27	7	0
Master's degree	100	83	10	8	0
Doctor's/candidate of sciences degree	100	85	9	6	0
Educational attainment unknown	100	42	29	7	23

<sup>51</sup> Pavelson, Marje & Luuk, Mai (2002). “Non-Estonians on the Labour Market: A Change in the Economic Model and Differences in Social Capital” in M. Lauristin & M. Heidmets (Eds.) *The Challenge of the Russian Minority. Emerging Multicultural Democracy in Estonia*. Tartu University Press, pp. 89-116.

### **The average level of educational attainment across ethnic groups is comparable.**

The average level of education among ethnic groups will probably not remain comparable. As of 2003, it is still possible to obtain the primary, basic, secondary, vocational and higher education in minority languages. Primary, basic and secondary education is provided by the state, free of charge to all in either the Estonian or Russian language. The bi-lingual educational system in Estonia has a deep roots going back to the 'Soviet period'. State-funded higher education in minority languages is very limited. Only a very limited number of programmes in few state universities are fully or partially provided in the minority language. At the state universities, ethnic minority students comprise only 10% of the student body. The situation is 'remedied' by a number of private institutions that provide higher education in minority languages. However many of the state-licensed private universities do not have state accreditation of their programmes. Local employers do not value the degree received in small private institutions without state accreditation to the same extent as the degree received at the state universities. Postgraduate degrees in minority languages are nearly non-existent. This may explain the fact that already now statistical data indicates that ethnic minorities are 4 times less likely to acquire a master or doctorate degree.<sup>52</sup>

The educational situation of ethnic minority groups in Estonia during last 5 years has been extensively discussed in the Estonian society and the new educational reform has been suggested and approved by the Parliament. The proposed educational reform is aimed at the gradual transformation of the bi-lingual educational system at the elementary and secondary schools to the monolingual Estonian language system of education.

The proponents of the educational reform argue that the transformation to the monolingual education system will guarantee equality of opportunity in the access to the Estonian state universities and on the labour market among ethnic groups. The argument is based on the hypothesis that if minority youth learn the Estonian language, then they will enjoy equal treatment with the native Estonian-speaking youth. Competence in the Estonian language is seen as the only possible guarantee of equality for further educational and labour market opportunities.

This argument is strongly opposed by the representatives of national minorities. In their view, the above-mentioned reform will in fact even further exacerbate the existing differences on the labour market. The monolingual system of education without adequate resources will effectively undermine the level of educational attainment of minorities, further limiting their opportunities on the labour market. Without mastery of the Estonian language, opportunities for minority youth whose mother tongue is not Estonian to attend universities is limited

Given the substantial proportion of Russian speakers in elementary and secondary schools, an in-depth study of the possible effects of the proposed educational reform on the ethnic minority groups is needed. It is also essential to evaluate whether available financial and human resources will allow effective implementation of the proposed educational reform.

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<sup>52</sup> Population Census 2000, data available at <http://www.stat.ee> (Table: population by educational attainment and ethnic nationality).



The danger remains that the lack of the competent teachers able to provide Estonian language instruction to native Russian speaking pupils will lead to a decline in the quality of education received by ethnic minority children. Moreover, low competency in the Estonian language and an inability to follow the educational program in their mother tongue may lead to higher dropout rates among minority students. Taken together, the reform may increase ethnic tensions, as the hostility of ethnic minority groups toward the majority grows. Further problems on the labour market are likely.

### *B. Unemployment*

As we may conclude from the above discussion, the level of educational attainment is comparable across ethnic groups. The same cannot be concluded regarding unemployment rates. The unemployment rate of ethnic minorities is 14,9 % as compared with 7,9 among the Estonian majority. The highest unemployment rate is among minority females –(15,3%) and the lowest is among the majority females –(6,9%). The difference in the unemployment rate is slowly increasing, approaching a 7 percentage point difference in the year 2002.

Table 5, unemployment rate among ethnic minorities and ethnic Estonians, Statistical Office of Estonia, 2002

Year	Estonians (%)	Ethnic minorities (%)	Percent point difference
1997	7,8	13,2	5,4
1998	7,9	13,6	5,7
1999	9,8	16,5	6,7
2000	11,1	18,0	6,9
2001	10,4	16,8	6,4
2002	7,9	14,9	7,0

The high unemployment rate of national minorities is often explained by the single fact that minorities live in the county with the highest unemployment rate. According to the Estonian Employment Action Plan 2003, the average higher unemployment level of non-Estonian population is caused by the fact that :“...most non-Estonians live in Ida-Virumaa region, which in general has the highest unemployment level.”

The regional distribution data presented above demonstrate that this is clearly not the case. While Ida-Virumaa County has a high concentration of Russian-speakers, minorities are widely spread throughout the country. This is also relevant in relation to the number of unemployed in the country. Harju County, to which the capital city of Tallinn belongs, has 14,958 unemployed and the Ida-Viru County has 12,770 unemployed of Russian ethnicity. In relative terms, Harju County has even more unemployed ethnic minorities than does Ida-Virumaa.

Table 6, The number of unemployed in the Harju and Ida-Viru counties

	Ethnic nationality total	Estonian	Russian	Other ethnic nationalities	Ethnic nationality unknown
Males and females					
Whole country	88199	48655	32603	6816	125
HARJU COUNTY	30850	12219	14958	3609	64
IDA-VIRU COUNTY	16825	2458	12770	1574	23

Nevertheless, the Ida-Virumaa region is facing a substantial hardship in the post 'Soviet period' due to the sectoral restructuring of the Estonian economy. The economic transition from a command economy to liberal market mechanisms in the 1990s led to the rapid decline of the primary and secondary sectors and a rise in the tertiary sector. This caused the first wave of unemployment. The substantial differences in regional unemployment levels started to appear.

Ida-Virumaa County -- traditionally an industrial region -- and south eastern part of Estonia -- the agricultural region -- suffered the most from the changes. The unemployment level remains high in both regions. The second wave of unemployment was caused by factors related to the Russian economic crisis of 1998, the fast economic development of Estonia, investment in new technology and especially information technology, which in turn led to a significant increase labour efficiency and thereby reducing the demand for labour. Both waves of layoffs led to higher unemployment rates among ethnic minorities.

The first wave of unemployment reduced the level of employment of non-Estonian speakers because the secondary sector traditionally employed many Russian speakers. The second wave of unemployment affected non-Estonians more widely because they lacked the "connections" or social network that made it possible for many Estonians to find other employment, receive training etc.

**Unemployment is a significant problem of the Estonian labour market, especially for ethnic minorities whose unemployment rate (14,9%) is almost twice as high as that of native Estonian speakers...**

### *C. Sectoral and Occupational Distribution of Work*

While the educational attainment of the various ethnic groups in Estonia is comparable, the same is not true with respect to unemployment levels, which are on average two times higher among minorities. Differences in occupational distribution also exist. Ethnic minorities are strongly underrepresented (less than 4%) among senior governmental officials, the judiciary and legislators. Less than 10% of research and development, advertising, public relations department managers, sociologists, anthropologists and related professionals, public service administrative professionals, college and higher education teaching professionals, social work professionals, legal and related business associate professionals are ethnic minorities.

During the transition, only 12% of ethnic minority managers with higher level positions were able to keep their position, as compared to 45% of the ethnic Estonians. Among the ethnic minorities who have upgraded their occupational position during last 10 years, 37% had a university education. The comparable figure among Estonians was only 21%. Among university-educated ethnic minorities, roughly as many have been downgraded as upgraded in their position. However, in comparison with university-educated ethnic Estonians, the number of downgraded ethnic minorities is two times higher.

Thus, for ethnic minorities the importance of education for promotion is greater than for ethnic Estonians. For Estonians, other factors beside education – age and better contacts with the local community networks -- are more important. The share of university-educated people who have lost their jobs is 6% in both groups. Consequently, for university-educated ethnic minorities, entering the labour market is more difficult than keeping a job.

Contrary to the common opinion widely held outside of Estonia, there is no evidence suggesting that Estonians were forced into lower paid jobs or work in less desirable fields during the Soviet period.<sup>53</sup> The statistical data indicates that at the end of 1980s Estonians employed in education, science, public management and services held mainly white-collar and top specialist positions. The agriculture and forestry sectors were predominantly Estonians as well. At the time, agriculture was the most gainful branch of economy.<sup>54</sup> Non-Estonians speakers were predominantly industrial and construction workers, mainly employed in chemical and building material industries.<sup>55</sup> The ethnic composition of engineers and the health care specialists was roughly similar. The share of Estonians among top managers of production companies followed the total share of Estonians among the employed.<sup>56</sup> Kruusvall suggests that during Soviet period, Estonians as a ‘titular nation’ had preserved a better position in several spheres of economic and cultural life than was true for other national groups within the Soviet Union. Differences in occupational distribution during Soviet era did not put Estonians in an economically disadvantageous position.<sup>57</sup> In terms of social capital, it might be argued, this ethnic group enjoyed a preferential starting point in the process of socio-economic transition of the 1990s. Based on the above-mentioned factors it is difficult to justify the present day situation on the labour market that in fact establishes a ‘preferential treatment’ of ethnic majorities justified by the fact of the historical inequalities of the ‘Soviet period’ on the labour market.

Moreover for the present day progressive economic development of the Estonian society it should be irrelevant what was or was not the case during the Soviet period. Democratic societies should be based on the principles of equality and justice, not retribution for past injustices. If the Soviet system was unjust, establishing “reverse discrimination” now is just as bad; in fact, it perpetuates the societal schisms that communism created.

**In terms of occupational distribution, ethnic minorities are strongly underrepresented (less than 4%) among senior governmental officials, the judiciary and legislator. Less than 10% of those working in research and development, advertising, public relations, as well as**

<sup>53</sup> Supra, footnote 51, p 92.

<sup>54</sup> Id, p. 93.

<sup>55</sup> Id, p.93.

<sup>56</sup> Id, p. 93.

<sup>57</sup> The position of ‘titular nations’ in other 15 Socialist republics may be drastically different.

**department managers, sociologists, anthropologists and related professionals, public service administrative professionals, college, university and higher education teaching professionals, social work professionals, legal and related business associate professionals are ethnic minorities.**

#### *D. Remuneration*

Although ethnic minorities hardly differ from the majority in terms of education, unemployment rates and occupational representation differ markedly, as discussed above. These differences also extend to salary and pay scales. The study by Kroncke and Smith released in 1999 analysed potential wage discrimination based on ethnicity on the Estonian labour market.<sup>58</sup>

Using standard wage decomposition methodology, the study analysed the wages of full-time employees in the years 1989 and 1994. The results of the study were striking. In 1989, there was no evidence of discrimination while in 1994, 'substantial evidence of discrimination against ethnic Russians' could be found. The study stressed the need to address the issue of economic discrimination based on ethnicity while acknowledging that Estonian policy-makers show little interest in the issue.

Data from the Labour Force surveys continuously points toward wage discrimination based on ethnicity. According to the Labour Force Survey in 2000, the average wage difference between ethnic groups in Estonia was 16%. Another more recent study conducted a group of OECD commissioned experts– entitled, "Determinants of earnings in Estonia, Latvia and Lithuania" further 'investigated the factors that determine wages, using the conventional technique of estimated multivariate earnings functions.'<sup>59</sup>

The study finds that the ethnic wage gap in Estonia in 2000 was already about 18% which is in comparison with a 1994 study suggests about a 4 percentage point increase. The results of the OECD study again suggest that only a limited part of the observed wage gap can be explained by factors such as education, economic sector and nine main occupation groups.

The concentration of ethnic minorities in the low-wage sectors and economically depressed regions has a negative impact on wages but can only partially explain wage differences. These factors are offset by the fact that a substantial proportion of minority workers are employed in the capital city where wages tend to be significantly higher.

The Report suggests that among the three Baltic States, only in Lithuania can a substantial part of the gross wage differential be explained by measurable employee characteristics. In Estonia, occupation alone (nine main groups) explains pay gaps of only 4.2%. The negative wage effects of occupational segregation are largely offset by other known factors that actually seem to favour minorities, including sector, region and size of enterprises. Some 55% of all non-Estonian-speaking employees compared with 30% of Estonian-speaking employees worked in firms with over 50 workers. Because big enterprises pay relatively high wages, controlling for firm size *increases* the unexplained ethnic wage gap by 2 percentage points.

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<sup>58</sup> C. Kroncke & K. Smith, The wage effects of ethnicity in Estonia, *Economics of Transition*, Mar 1999, Vol. 7 Issue 1, p. 179.

<sup>59</sup> M. Hazans, R. Eamets & J. Earle, *Determinants of Earnings in Estonia, Latvia and Lithuania*, OECD, 2003, p.1.

The research concludes that "a residual part of the ethnic wage gap must be ascribed to unobserved characteristics. Although these probably include language skills, it has often been assumed in other countries that such residuals measure discrimination."<sup>60</sup> The apparently unjustified ethnic wage gap in Estonia in 2000 was about 18% (!). The corresponding gap in Latvia and Lithuania is 7 %, which is similar to the estimated wage gap between Blacks and Whites in the United States.<sup>61</sup>

In spite of the detailed evidence of ethnic wage discrimination, the Estonian national policies on employment and integration do not acknowledge or address the issue of the wage gap among ethnic group. The growing wage gap among ethnic groups, as have been pointed above in 1989 there were no evidence of wage discrimination against any ethnic group, in 1994 the ethnic discrimination against Russians in terms of wages was 14% and in 2000 this number climbed to 18%, is not acknowledged neither in JAP or Estonian Employment Action Plan.

**The data presented under the 'Statistical Evidence' part of the present research points to the existence of substantial differences in unemployment levels, occupational representation and wage levels among ethnic groups with relatively similar educational attainment.**

In summary the position of ethnic minorities on the Estonian labour market is characterized by the following factors:

- 1) Estonian Labour force has a large proportion (34%) of ethnic minorities.
- 2) Ethnicity is strongly correlated with mother tongue. Most ethnic minorities speak a mother tongue other than Estonian. The Slavic languages -- Russian, Belorussian and Ukrainian -- are the most widely used by national minorities.
- 3) Ethnic minorities are not concentrated in only one region, but live all around the country.
- 4) The educational attainment of the economically active population does not vary considerably across ethnic groups. 27,4% of Estonians and 27,9% of the Russian ethnic minority has a general secondary education. Higher education is obtained by 19,33% of Estonians and 18,02% of people belonging to ethnic minorities.
- 5) The level of unemployment on average is significantly higher among ethnic minorities. The average unemployment rate among ethnic minorities is 14.9% as compared to 7.9% for ethnic Estonians.
- 6) Unemployment differences are especially striking among some groups, for example, minority women. The unemployment rate of ethnic Estonian women with higher education is 2,15%. The same indicator for ethnic Russian women is 10,79%.
- 7) In terms of occupational distribution, ethnic minorities are strongly underrepresented-- less than 4% among senior governmental officials, the judiciary and legislators. Less than 10% of those working in research and development, advertising, public relations, as well as department managers, sociologists,

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<sup>60</sup> Id.

<sup>61</sup> Id, p.12.

anthropologists and related professionals, public service administrative professionals, college, university and higher education teaching professionals, Social work professionals, legal and related business associate professionals are not native speakers of Estonian.

8) Among 180 legislators in the country, there is only 1 (!) woman belonging to an ethnic minority group. The percentage of ethnic minority women among directors and chief executives is 4,5% and among general managers 6%.

9) Ethnic minorities make up more than 40% of labourers in mining, construction, manufacturing and transport, machine operators, assemblers, sewers, embroiderers and related workers and stall and market salespersons. Only 27% of prison guards and 7% of hand or pedal vehicle drivers are ethnic Estonians.

10) A study conducted for the OECD in 2003 on the determinants of earnings in Estonia, Latvia and Lithuania found that among the three Baltic countries, ethnic wage discrimination is strongest in Estonia. The unjustified ethnic wage gap in Estonia was 18%.

11) The unjustified wage gap in Estonia has increased about 4 percentage points since 1994.<sup>1</sup>

The substantial differences across ethnic groups reflected in the statistical data point to the disadvantageous position of minorities and possible evidence of discrimination on the Estonian labour market.<sup>62</sup>

As discussed in Section II, the European Employment Strategy puts increasing emphasis on the promotion of social inclusion. In 1999, the Employment Guidelines have included a separate guideline concerning the integration of disadvantaged groups in the labour market.

Specific attention to the disadvantaged potential workers and more particularly disabled people, ethnic minorities and immigrants was introduced to make the active policies for these groups more visible within the European Employment Strategy. **The disadvantaged groups within the meaning of the EES are groups that experience particular difficulties in acquiring relevant skills and in gaining access to, and remaining in, the labour market.** It repeatedly stressed that ethnic minorities, disabled and migrant workers are the groups that most often fall under this definition.

Statistical data available in Estonia clearly indicate that ethnic minorities experience significantly greater hardship on the labour market. The growing gaps in unemployment, wages and occupational distribution do not reflect a successful policy of social inclusion. The second part of Section III evaluates whether ethnic minorities experience particular difficulties in gaining access to and remaining in the Estonian labour market.

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<sup>62</sup> The question of discrimination is discussed further in Section IV of this report.

### 3. Difficulties facing ethnic minorities on the Labour Market

The national policy on employment evaluated in Section II pointed to the low interest among public authorities regarding ethnic discrimination on the labour market. At the same time, the statistical picture provided in the first part of Section III demonstrates that substantial ethnic differences exist on the labour market.

The second part of Section III addresses in more detail particular difficulties that may contribute to the disadvantaged position of ethnic minorities and affect their labour market opportunities. While other factors may contribute to the disadvantageous position of ethnic minorities on the labour market, this study addresses only two issues: language and citizenship policies. This choice is supported by a recent sociological survey showing that young Estonians believe that citizenship and language skills are the most important factors in determining who gets good jobs in Estonia.<sup>63</sup>

As a consequence, language and citizenship policies are material factors that need to be addressed in order to improve the opportunities available to ethnic minorities in the labour market. *The aim of this part is to evaluate if and how state language and citizenship policies influence(ed) the employment opportunities of ethnic minorities.* The emphasis is on the practical requirements and the implementation of the language and citizenship policies as related to the labour market.<sup>64</sup>

#### A. Language Policy

The analysis of the *language policy* in the context of the Estonian labour market is necessary for two reasons. First, a substantial number of non-native speakers of the Estonian language are on the labour market; and second, strong normative regulations on proficiency and use of Estonian language have been established by law.

In terms of language, the Estonian labour pool is broadly divided into two major groups: native Estonian speakers and non-native Estonian speakers. Employment is largely contingent on the ability to communicate in Estonian. According to the data provided by the Statistical Office of Estonia, Estonian is the native tongue of 68% of all employed persons. Every third employed person is a non-native Estonian speaker.

Among non-native Estonian speakers, their average competence in the Estonian language remains rather modest.<sup>65</sup> According to the EMOR Survey released in the beginning of the 2003, approximately 251,000 non-native Estonian speakers in the age range between 15 to 59 have been employed or will have a job in the next two years; “However, virtually none of them possessed the required knowledge of Estonian...”<sup>66</sup>

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<sup>63</sup> BBC Monitoring International Reports, March 28, 2003, Estonian Ethnic Integration is not working.

<sup>64</sup> The work by no means directly aims to contribute to the extensive academic research on the criticism, justification or needs for the present language and citizenship policies.

<sup>65</sup> See for example, Aleksei Gunter, Russian Minority Slow in Learning Estonian, The Baltic Times, January 9, 2003. It has been argued that more than a decade after independence, attempts to get non-Estonians to speak the official language have been ineffective.

<sup>66</sup> As summarized in Aleksei Gunter, Russian Minority Slow in Learning Estonian, The Baltic Times, January 9, 2003.

Nevertheless, there are strong normative regulations established by law on proficiency and use of the Estonian language for both public and private sector employees. The official language policy is based on Article 6 of the Constitution. The provision stipulates that 'the state language of Estonia shall be the Estonian Language'.<sup>67</sup>

The subsequently adopted *Language Act* regulates the requirements for proficiency in the Estonian language and use of the Estonian and foreign languages.<sup>68</sup> The Act stipulates that the official language of Estonia is Estonian<sup>69</sup> and any language other than Estonian is a foreign language.<sup>70</sup> The Language Act regulates the requirements for proficiency in the Estonian language and establishes Estonian as the language of public administration at national and local levels, the language of correspondence, the language of reporting, the language of information and the language of registration plates.

The Act grants the right to use the Estonian language in dealings with the public administration and the right to receive answers from state agencies in the Estonian language. In addition, the Act establishes penalties for violating the requirements regarding the use of Estonian language.

The major issues arising from the language policy as related to the labour market are the following:

- a) Mandatory requirements for proficiency in Estonian;
- b) State certification system; confirming the level of Estonian language proficiency; the role of the Examination and Qualification Center and Language Inspectorate;
- c) The obligation of the employer to ensure that every employee has the necessary level of proficiency in the Estonian language for the position held;
- d) The dismissal of an employee for the inability to master the Estonian language at the level prescribed by law; and
- e) The authority and competence of the Language Inspectorate.

### *Mandatory requirements for proficiency in Estonian*

The mandatory requirements for proficiency in the Estonian language are established by the Language Act and further defined by the Regulation of the Government of the Republic No. 164 of 16 May 2001. The requirements do not apply to persons who work in Estonia temporarily as foreign experts or foreign specialists,<sup>71</sup> nor to persons who have acquired basic, secondary, vocational secondary or higher education in the Estonian language. For that reason, the requirements for proficiency in the Estonian language apply to a greater degree to ethnic minorities who as a rule were educated in Russian.

The mandatory requirements for proficiency in the Estonian language are established for

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<sup>67</sup> Constitution of the Republic of Estonia, Article 6.

<sup>68</sup> Language Law, Article 2<sup>1</sup>.

<sup>69</sup> Ibid, Article 1.

<sup>70</sup> Ibid, Article 2 (1).

<sup>71</sup> Ibid, Article 4 (6).



- companies,
- non-profit associations and foundations, by employees thereof, and
- sole proprietors.<sup>72</sup>

Three levels of proficiency in the Estonian Language have been established: basic level, intermediate level and advanced level.<sup>73</sup> The list of professions requiring the Mandatory Levels of Proficiency in Estonian for Employees of Companies, Non-Profit Associations and Foundations and for Sole Proprietors is established by the Regulation of the Government of the Republic No. 164 of 16 May 2001 and summarised in the table below.

Table 7 (Levels of Proficiency in Estonian language and corresponding occupations)

Level of proficiency	Occupation <sup>74</sup>
Basic level- limited oral and elementary written proficiency in Estonian. The person can manage in familiar language situations, understands clear speech on everyday topics, understands the general meaning of uncomplicated texts and can complete simple standard documents and write short texts for general use <sup>75</sup> ;	<ol style="list-style-type: none"> <li>1) drivers of public transport vehicles (except masters of ships and aircraft pilots) and locomotive and train drivers;</li> <li>2) service and sales staff whose duties include providing information concerning the characteristics, price, origin and conditions for use of the offered goods or services and which, in the public interest provided for in subsection 2<sup>1</sup> (2) of the Language Act, must be done in Estonian;</li> <li>3) personal care workers</li> </ol>
Intermediate Level - oral and limited written proficiency in Estonian. The person can manage in various language situations, understands speech at normal speed, understands the contents of texts on everyday topics without difficulty and can write texts relating to his or her area of activity; <sup>76</sup>	<ol style="list-style-type: none"> <li>1) service and sales staff who provide compulsory insurance services provided for by law and who advise clients in this field;</li> <li>2) service and sales staff who are engaged in selling or handling goods which may be hazardous to the life and health of persons, public safety or the environment and who advise clients in this field;</li> <li>3) heads and deputy heads and teachers (except teachers of the Estonian language and of subjects taught in Estonian) of private schools providing pre-school, basic, secondary or higher education and whose duties include ensuring the safety of pupils and students in the private school;</li> <li>4) health associate professionals whose duties include communication with patients and communication of information;</li> <li>5) rescue workers;</li> <li>6) harbour pilots;</li> <li>7) security staff whose duties are related to ensuring public order or who carry weapons or use special equipment in connection with the performance of their duties.</li> </ol>
Advanced Level - oral and written proficiency in Estonian. The person can express himself or herself freely irrespective of the language situation, understands speech at high speed, understands the contents of more complicated texts without difficulty and can write	<p>Language proficiency at the advanced level is required from the following employees:</p> <ol style="list-style-type: none"> <li>1) teachers of the Estonian language and of subjects taught in Estonian;</li> <li>2) doctors, pharmacists and psychologists;</li> <li>3) masters of ships and aircraft pilots (except harbour pilots);</li> </ol>

<sup>72</sup> Ibid, Article

<sup>73</sup> The levels of the Estonian language proficiency have been changed considerable number of times.

<sup>74</sup> Regulation of the Government of the Republic No. 164 of 16 May 2001, Mandatory Levels of Proficiency in Estonian for Employees of Companies, Non-Profit Associations and Foundations and for Sole Proprietors.

<sup>75</sup> Supra, footnote 68.

<sup>76</sup> Id.

texts which are different in style and function. <sup>77</sup>	4) employees who organise air, sea or railway traffic and communicate corresponding information.
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The Act provides strong legal protection of the Estonian language. A number of categories of employees in the public and private sectors<sup>78</sup> who have acquired education in a language other than Estonian are required to take an Estonian language proficiency examination.

The present arrangement of the educational system in which the largest ethnic minority can acquire an education in Russian, means that the language proficiency examination is mostly applicable to this group. In practical terms, a representative of an ethnic minority who has graduated from an educational institution in which the language of instruction was other than Estonian and who seeks employment in the public sector or that part of the private sector regulated by the provisions of the Language Act, must pass a language proficiency examination.

Graduates of Estonian language educational institutions are not required to pass a language proficiency examination. The Act does not provide any obligations or rights with respect to the language of national minorities for employees in emergency and healthcare services, even in regions where minorities constitute a substantial proportion of the population.

The mandatory requirements in practice prove to be very difficult for ethnic minorities to comply with. Indeed, the EMOR survey reveals that 43% of an estimated 67,000 employed non-Estonians who under the law are required to have an Estonian language proficiency certificate do not possess them.

### *State certification system*

To confirm the existing level of proficiency in the Estonian language, the exam must be administered by the State examination and qualification centre. Persons who have successfully passed the Estonian language exam are issued a certificate of proficiency in the Estonian language. Apart from the issues related to the numerous changes in the system of language proficiency evaluation,<sup>79</sup> does obtaining a language certificate in accordance with the procedure established by law serve as an effective guarantee that this employee satisfies the conditions established in law? In other words, does an individual who holds a position, which under the law requires an intermediate level of proficiency in the Estonian language, automatically fulfil the legal requirement by obtaining the appropriate language certificate?

The jurisprudence of the Estonian courts suggests that possession of the language certificate itself does not 'protect' employee from inspections by the Language Inspectorate, which may find that the actual linguistic ability of the employee is below the level of certificate which she/he holds.

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<sup>77</sup> Id.

<sup>78</sup> The detailed description of occupations requiring the mandatory level of Estonian language is discussed later in the text.

<sup>79</sup> The issues related to the numerous changes in the system of language proficiency evaluation will not be addressed in this report.

In this case, the inspector may issue a warrant to the employer. The employer in turn has the right to dismiss the employee for not fulfilling the requirements established by law.

In other words, the employee bears the ultimate responsibility for compliance. As a result, the employee must complete the examination procedure established by law and obtain the certificate of the level necessary for the position. On the other hand, the certificate in itself does not guarantee that this particular employee will not be dismissed by the employer.

The reasoning that the court has developed in this respect is based on the understanding that, according to the law, the employee in the areas covered by the law must have a certain level of actual language proficiency, not a particular certificate. This argument, however, remains unsatisfactory since the underlying purpose of issuing and obtaining the language proficiency certificate is to establish the legal level of proficiency of the individual.<sup>80</sup>

It is unclear then why an employee needs a certificate for proficiency if the actual knowledge of the language, which will be continuously accessed by the Language Inspectorate, is what matters legally. In this respect, it is worth noting the recent decision of the Estonian Supreme Court. The case that reached the Supreme Court addressed the following question: Can a public employee who effectively fulfils her work-related duties without any dissatisfaction expressed by the employer be dismissed because the position formally requires a higher level of proficiency in language than what the employee can demonstrate?

The courts of the first and second instance answered positively. The Courts have found that if the employee does not have the level of proficiency as required by the Language Act, she can be lawfully dismissed. In this respect, the courts did not take into the consideration the fact that an intermediate level of knowledge that the dismissed employee possessed was sufficient to fulfil all work-related duties.

The Supreme Court, having agreed with the lower courts on the importance of the protection of the use of the Estonian language, nevertheless stated that this should not preclude the court from evaluating the actual ability of the employee to fulfil her job-related duties. In light of this reasoning, the Supreme Court referred the case back to the Appeals Court for review. The Supreme Court instructed the lower courts that if the employee is able to fulfil her work-related duties, the court must consider whether the law stipulating that all higher officials, no matter their position or duties, must have a higher level of proficiency in the Estonian language, is proportional and in accordance with paragraph 5, part 2 of the Language Act.

The Court stressed that according to the Act, public officials must have proficiency in and use the Estonian language at a level which is necessary for the fulfilment of the official obligations and job requirements.

The reasoning of the Supreme Court in the above mentioned case is revolutionary. The issues related to the possible disproportionate burden of the language proficiency was usually set aside as breaching the fundamental aim of protecting the Estonian language as required by the Constitution.

For example, in the case 3-4-1-1-98, the Constitutional Review Chamber of the Supreme Court of Estonia stated that, "...the protection and use of the Estonian language are established as

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<sup>80</sup> The language proficiency is tested by the panel of experts of the State examinational and qualification committee.

constitutional goals and the state power is to secure the achievement of the goal. Thus, the steps to ensure the use of the Estonian language are constitutionally justified".<sup>81</sup> The Constitutional Review Chamber thus made any argument contesting the proportionality of the Estonian language requirement in relation to the "constitutional aim" very difficult.

In assessing the proportionality, the Language Inspectorate stated that the point of departure in the development of the language policy is the Constitution of Estonia. "We have a right and obligation to protect our language. With this our Constitution must be above the interests of the European Union as well as other countries and international organizations."<sup>82</sup>

*The obligation of the employer to ensure that every employee has the necessary level of proficiency in the Estonian language for the position held.*

Another important issue influencing labour market practices related to language policy is the obligation of employers to ensure that employees' knowledge of the Estonian language is in conformity with legal requirements.<sup>83</sup> Failure to comply is punishable by a fine of up to 200 fine units.<sup>84</sup> Therefore, the law imposes an obligation on employers to ensure that their employees have adequate proficiency in the Estonian language as prescribed by the Language Act. If their actual proficiency does not correspond to the level of the certificate he/she holds or the position held, the employer has a right to demand that an employee improve his or her level of proficiency, even if the employee already possesses the appropriate language.<sup>85</sup>

Insufficient Estonian language proficiency or the lack of the language certificate may be grounds for termination of the employment contract by the employer.<sup>86</sup> An employer has the right to terminate an employment contract entered into for an unspecified or specified term prior to the expiration of the term of the contract on the basis of the unsuitability of employee for his or her office or work due to inadequate professional skills.

The professional skills, inter alia, include: insufficient language or communication skills, lack of the document which is a mandatory precondition for such work or the failure of the employee to develop his or her professional knowledge including proficiency in the official language if it is necessary for the performance of his or her work. Therefore, the employee holding a valid certificate at the level of proficiency prescribed by law may be dismissed by the employer based on the unsuitability for his or her office or work to be performed if his /her actual level of proficiency does not correspond to the level prescribed by law.

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<sup>81</sup> Decision 3-4-1-1-98 of the Constitutional Review Chamber of the Supreme Court of 5 February 1998, Review of the petition of the President of the Republic, dated 30 December 1997, to declare the Amendment Act to the Language Act and the State Fees Act unconstitutional.

<sup>82</sup> About the Estonian language policy yesterday, today and tomorrow. March 2003, Ilmar Tomusk, the head of the Language Inspectorate, the speech of 14.03.2003 on the conference of the mother tongue which was held in the Tartu University Library Conference Room. Available at

<http://www.keeleinsp.ee/index.php3?lng=0&s=menu&ss=content&news=141&id=34>

<sup>83</sup> Supra, footnote 68.

<sup>84</sup> Supra, footnote 68, Article 26<sup>4</sup>.

<sup>85</sup> Ilmar Tomusk, language requirements, Information Bulletin of the Interest program 2002, 06.11.2002.

<sup>86</sup> Employment Contracts Act, Art 86.4 and Art. 101.1 (2).

Consequently, who has the right to evaluate the 'actual' level of proficiency of the employee? As stated above, a language certificate alone does not legally establish the individual's actual level of proficiency. The courts have found that the employer has a right to evaluate the actual level of proficiency of the employee. The actual level of language proficiency of the employee must be evaluated objectively against the work related duties, rights and obligations of the particular employee as described in the employment contract or the work description.<sup>87</sup>

The evaluation report also must be written in front of the qualification committee or other competent body. This line of argument by the court again is ground-breaking. The court in fact tries to balance the rights of the employer to dismiss the employee because of insufficient language skills. The court emphasizes the need to evaluate objectively the language skills against the background of the actual work performed by the employee and as set out in the employment contract.

It is worth noting that the present case as well as the case referred to above are recent jurisprudence. The tests and the reasoning developed by the upper courts will be communicated and applied by the lower level courts. The employers and employees who may find themselves in a similar situation should know their rights and obligations. The recent jurisprudence in the higher courts is most likely influenced by the increasing awareness of the judges on the EU standards. Moreover the EU accession oversight and monitoring, particularly of the higher courts by the EU has probably impacted the recent court decision.

#### *Competence and authority of the Language Inspectorate*

The language policy is administered by the Language Inspectorate, which is a governmental institution under the jurisdiction of the Ministry of Education. The primary task of the Inspectorate is to ensure that the Language Act and other legal acts regulating language use are observed. Non-observance of the Language Act may result in warnings or written orders, depending on the supervisory actions and the extent of the non-observance, and also fines can be issued based on the principles of the Administrative Procedures and Misdemeanours Procedures legal acts.<sup>88</sup>

The Language Inspectorate exercises the given public authority to supervise the fulfilment of language policy requirements in 20-25 organisations per week. The findings of those supervisory 'raids' may be found on the web page of the Inspectorate. In the first half of the year 2003, the Inspectorate has made 1165 administrative acts as supervisory controls of employees in the public and private sectors. Among the 1165 administrative acts, 923 were related to non-observance of the Language Act. During the same period, 43 misdemeanour procedures were initiated. The statistical data also shows that the execution of earlier warnings issued by the Language Inspectorate was not possible in 128 cases due to the fact that the person to whom the warning had been addressed had left the workplace, the organisation has been liquidated or other reasons.

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<sup>87</sup> Civil case nr. II-2-177/02 Kohtla Jarve Soojus vs. Antonina Jakobson.

<sup>88</sup> The Brief History of the Language Inspectorate available at <http://www.keeleinsp.ee/index.php3?lng=1> (last accessed on 01.11.2003)

It is difficult to infer from this number how many employees were dismissed from the position because of the Inspectorate warning. The case law suggests that a warning by the Inspectorate is not compulsory, but rather a recommendation. But an employer can expect further inspections and therefore may be tempted to dismiss the employee based on the evaluation of the Language Inspectorate. It should be noted that the Language Inspectorate is the competent state body with the authority to evaluate an individual's actual level of proficiency in the Estonian language.

Thus, as it has been discussed above, the elaborate system of regulation and supervision of the level of proficiency and use of the Estonian language in the public and private employment sectors has been established by the state. Likewise, ethnic minorities experience particular difficulties in complying with the language proficiency requirements. It should be also stressed that it has been specifically provided by the law as early as 1992 that "The applicants for the proficiency category for the purposes of employment shall cover all necessary expenses for language training themselves".<sup>89</sup>

Hence, while the state established the strong linguistic requirements for employees, it also imposed full obligation to obtain necessary linguistic competence on the person concerned with explicit regulation under the law providing that the state shall not support this initiative in financial terms. The employees whose knowledge of the state language is insufficient must find resources to cover language training themselves. International donors have contributed substantial financial resources to assist in learning language by national minorities.

However, as statistics show, although the overall proficiency in Estonian language among ethnic minorities has increased, it is still difficult to claim that the proficiency level of ethnic minorities in Estonian became on average sufficient to be in full compliance with the linguistic regulations.

It is a positive sign that there are a number of cases at the levels of Appeal Courts and the Supreme Court of Estonia which indicate adoption of a more balanced and proportional approach in addressing the linguistic issue on the labour market. The Language Inspectorate has wide supervisory authority related to assessing the proficiency and use of the Estonian language. The employer has a legally protected right to dismiss the employee due to insufficient proficiency in the Estonian language as established by law. Consequently, it is of the utmost importance that the state take every step to ensure that the authority and the right given to the employer is exercised in a fair and non-discriminatory manner.

## **B. Citizenship Policy**

Another issue posing particular difficulty to ethnic minorities on the labour market is the citizenship policy. Estonian citizenship is necessary for certain types of employment and without Estonian citizenship, an individual's possibilities for business travel may be limited. According to the 2003 statistical data of the Citizenship and Migration Board, 14% of population is stateless and 7% is comprised of citizens of other countries. Among ethnic minorities, according to the

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<sup>89</sup> The first attempt to regulate the linguistic requirements for the employees was the Regulation of the Government of the Republic No. 212 of 22 July 1992.

official 2000 Population Census, 40% are Estonian citizens, 38% are stateless and 21% have Russian citizenship. This means that the lack of Estonian citizenship together with insufficient competence in the Estonian language limit ethnic minorities' employment opportunities.

The working population of Estonia can be divided into 6 main categories in terms of legal status:

The category 1 – Estonian citizens – grants workers belonging to this group full social, political and economic rights. However graduates of the schools with the non-Estonian language of instruction belonging to this group, i.e. Estonian citizens who have graduated from the Russian language schools may be subject to the additional linguistic certification necessary for certain categories of jobs.

The category 2 – Foreign nationals with a permanent residency and work permits are generally entitled to the same social, political and economic rights as Estonian citizens except with the following restrictions as regarding the employment

- a) they are excluded from certain categories of jobs within Estonia;
- b) they can not vote nor be elected to Parliament, so in addition, they are not 'interesting' for the politicians (rent-seeking) and easily become scapegoats in the political game (always to blame for the political/economic/ social difficulties);
- c) they can not be elected to local government office;

Category 3 – workers of foreign citizenship with temporary residency and work permits are similar in position to the category 2 workers, but with fewer social rights and a weaker position on the labour market.

Categories 4 and 5 -- workers without nationality but with an alien passport are a peculiarity of the Estonian labour market non present in the EU states.<sup>90</sup> After independence in 1991, a substantial group of aliens or so-called stateless persons 'appeared' in Estonia. Due to the controversial human rights aspects of the processes by which these determinations were made in Estonia, a substantial number of de facto permanent residents of Estonia could not acquire Estonian citizenship.

Employed persons belonging to this group have the same rights and are subject to the same restrictions as workers in categories 2 and 3. Holders of an alien passport must acquire visas to virtually every country of the world. Moreover only limited number of countries recognize aliens passport as a valid travel document, for example Latvia, Lithuania, Russia. This means that anyone with an alien passport would have difficulty holding a job that requires travel abroad.

Category 6 – illegal immigrants -- is also very specific to the Estonian context. Estonia has not only illegal immigrants as commonly understood, i.e., people who illegally came from another country to Estonia without residence or employment rights, but also a group of people who in fact were born in Estonia or lived there for many years.

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<sup>90</sup> The same situation with official aliens are present in Latvia other new EU country.

Category 7 – citizens of EU -- enjoy preferential treatment in Estonia as compared to nationals of other foreign countries. EU citizens are excluded from the quotas restricting the number of new immigrants to the country.

The citizenship issue is very controversial in Estonia. On one hand state has a legal right to determine who belong to its citizens and how the citizenship is acquired. On the other hand the existence of the substantial proportion of the population which does not have a citizenship of Estonia creates a social tension which is particularly evident on the labour market.

Employees without Estonian citizenship and without Estonian language proficiency are considerably less fortunate on the Estonian labour market compared to the average.

It is very debatable issue of why if lack of citizenship provides to be an obstacle to labour market opportunities ethnic minorities acquire Estonian citizenship rather slowly. There is a multitude of possible explanations ranging from unwillingness of the ethnic minorities to learn Estonian language to the overly difficult requirements to acquire citizenship.

Regardless of the possible reasons that hinder the acquisition of the citizenship by ethnic minorities it is evident that more attention shall be paid by national authorities to the existence of a substantial group of permanent residents without citizenship. Expedient solutions are necessary to ensure that group of people without Estonian citizenship does not create a marginalized part of the society with most acute social problems.

The European Employment Strategy defines “disadvantaged groups” as “*groups that experience particular difficulties in acquiring skills and gaining access to, and remaining in the labour market.*” The evidence presented in Section III indicates substantial differences among the ethnic groups with respect to unemployment, wages and occupational distribution, along with particular difficulties in acquiring proficiency in the Estonian language and citizenship.

As a consequence, ethnic minorities experience difficulties in gaining access to and remaining in the labour market. Given this evidence, it is unclear which objective criteria have been used to exclude ethnic minorities from the group of the most disadvantaged on the labour market as defined by the National Employment Action Plan of the Republic of Estonia. The answer to the question posed in the beginning of this Section --whether, in the framework of the objectives and guidelines of the European Employment and anti-Discrimination policy, the state actions specially targeted to ethnic minority group is necessary in Estonia -- is evident. The national employment policy addressing the problems of ethnic minorities on the labour market as part of a co-ordinated policy strategy aiming at social inclusion is urgently needed in the Estonian context.



## IV. The Question of Discrimination on the Labour Market

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### 1. European Union anti-discrimination policy

Section III offered a detailed description of the position in which ethnic minorities find themselves on the labour market in Estonia and this is within the scope of the meaning of the disadvantaged group as understood by the European Employment Strategy.

Thus, urgent state action in the field of employment is needed. Active labour market measures to support disadvantaged groups in entering and remaining gainfully employed is only one aspect of the European Employment Strategy. Another element of the EES is the development of strong anti-discrimination policies in the Member States. To this end the European Council has adopted two directives: the Race Equality Directive and the Equality Directive.

A number of Union wide action programmes have also been launched. The EU anti-discrimination policy realized through the above-mentioned directives and action programmes is essential for the EU in order to 'develop an area of freedom, security and justice'. According to the directives, discrimination can 'undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity'<sup>91</sup>. It can also jeopardise one of the aims of the European employment strategy: to foster '*a labour market favourable to social integration*'.<sup>92</sup>

Notwithstanding the increasing attention on the issue of combating discrimination in the European Union, the primary responsibility to adopt anti-discrimination policy lies within the Member States. Thus Member States should take practical steps in fighting discrimination through measures at the national and local levels, through cooperation with civil society organisations and individuals. It is well documented in a number of European countries that ethnic minorities are subject to the formal - legal -- exclusion resulting from direct discrimination or informal exclusion resulting from indirect discrimination.

The development of the European Community law suggests that originally the principle of non-discrimination in employment based on nationality was outmost connected to the basic community freedoms.<sup>93</sup> The provisions in this field essentially related to ensuring the free movement of workers<sup>94</sup> and the freedom of establishment<sup>95</sup> in the context of the common market. The Single European Act added to social policy provisions but it was not until the new Article 13

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<sup>91</sup> Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (27/11/00) and Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (29/06/00).

<sup>92</sup> Annual report on equality and non-discrimination 2003, the European Commission Directorate-General for Employment and Social Affairs, p. 5, available at [http://www.stop-discrimination.info/fileadmin/pdfs/Discrimination\\_EN.pdf](http://www.stop-discrimination.info/fileadmin/pdfs/Discrimination_EN.pdf) (last accessed on 04.01.2004)

<sup>93</sup> Article 12 of the EC Treaty (formerly Article 7 of the EEC Treaty) prohibits 'any discrimination on the grounds of nationality' within the scope of application of the Treaty, subject to any special provisions set out in the Treaty.

<sup>94</sup> Articles 39 to 42 of the EC Treaty, old. Articles 48 to 51.

<sup>95</sup> Articles 43 to 48 of the EC Treaty.

of the EC Treaty<sup>96</sup>, introduced by the Treaty of Amsterdam, when explicit provision related to the adoption of provisions on non-discrimination have been adopted.<sup>97</sup>

Article 13 provided European Union with a legal basis to combat all forms of discrimination, *inter alia*, on grounds of racial or ethnic origin.<sup>98</sup> The adoption of the Directives based on Article 13 signified the new Community approach to the issue of discrimination in employment. The Race Directive went beyond 'traditional' prohibition of discrimination in employment based on nationality and addressed the discrimination based on the more narrowly defined notions of ethnicity and race.

The primary aim of the Directive is not to promote the free movement freedoms but rather to contribute to the attainment of a high level of employment and social protection in member states. Consequently, the protection from discrimination covered by the Directive extends not only individuals with legal community status (i.e. worker, self-employed, student, retired) but also to such groups as ethnic minorities residing in the member states.

Therefore there are two so-called 'stages' of levels of the realization of the principle of non-discrimination in employment as relates to the nationality and ethnicity or race. First, as have been pointed above relates to the principle of *non-discrimination based on nationality* attached to the basic community freedoms.<sup>99</sup> The second generation of non-discrimination principles in employment are based on Article 13, covers *discrimination on the grounds of ethnic and racial origin* and aiming to complement national employment policies on discrimination.

The rationale for the increasing attention to the employment discrimination is clear - in order to achieve the economic goals set up by the Lisbon Summit of "world's most competitive and dynamic knowledge-based economy" it is vital to co-ordinate the employment policy at the European level and involve all (including minorities and other disadvantaged groups) in achieving this target. This required Community to go beyond the already existing protection from discrimination based on nationality and to adopt Race Directive.

## **2. The Scope of the Race Directive and National anti-Discrimination legislation**

The Race Directive addresses discrimination based on *racial or ethnic origin*.<sup>100</sup> The Directive aims to implement the principle of equal treatment between persons irrespective of racial or ethnic origin, thus, goes beyond the traditional or common prohibition of discrimination based on nationality. The explicit protection from discrimination based on ethnic and racial origin is of

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<sup>96</sup> The Article 13 of the EC Treaty authorizes the Council, acting unanimously, to take appropriate action to combat any discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation.

<sup>97</sup> Moreover Amsterdam Treaty has added the promotion of employment to the objectives of the Community and new Title VII on employment. The new objective consists in reaching a "high level of employment" without undermining competitiveness.

<sup>98</sup> This allowed the Commission to propose two directives to ensure equal treatment, one irrespective of racial or ethnic origin (Race Directive) and the other in employment and occupation.

<sup>99</sup> The protection from discrimination based on nationality is well established in the ECJ case law. See for example, Case 186/87 Cowan v Tresor Public (recipient of services); 293/83 Gravier v City of Liege (vocational training);

<sup>100</sup> Directive 2000/43/EC adopted by the Council on 26 June 2000.

particular significance in some new Member States where first, the notions of citizenship, ethnicity and nationality are fused and secondly, large ethnic minority groups exist.

In the inter-Community relations the practical consideration may arise for example if person of Russian ethnicity but of Latvian nationality (citizenship) would seek employment in Estonia. Estonian labor market, due to historical circumstances, is ethnically polarized where ethnic Russians find themselves in disadvantageous position.<sup>101</sup> Thus, the person from Latvia may be subject to discrimination not on the grounds of his/her Latvian nationality but on the grounds of his/her ethnicity. Consequently Race Directive has a potential to contribute to the increased protection of both Community freedoms in inter-Community relations and in purely domestic situations where ethnic minorities find themselves in the disadvantageous position.

According to the provisions of the Directive equal treatment must be guaranteed in terms of access to employment or self-employment, training, education, working conditions, involvement in a professional organization, social protection and social security, social advantages, and access to and the supply of goods and services.<sup>102</sup> The only possible exception is where race or ethnic origin constitutes a *fundamental professional requirement*. However the exception must have legitimate objective and be proportional to the aims to be achieved.

On the national level in Estonia the general principle of equality and the prohibition of discrimination may be found in the Constitution. Without defining the meaning of discrimination, Article 12 (1) of the Constitution provides that all persons are equal before the law and that “no one should be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status or on other grounds”. The broad prohibition of the discrimination provided by the Constitution is not limited to any specific area of activity. It includes, *inter alia*, the prohibition of discrimination in employment. Moreover, the above-mentioned constitutional provision is not limited in scope regarding individuals<sup>103</sup> or occupations. The prohibition of discrimination, therefore, applies to all workers, both nationals and non-nationals of Estonia. Following the same logic, non-discrimination applies without limitation to workers in public and private sector.

The constitutional guarantee against discrimination is an important element of the national legal system, however, it is not sufficient to protect individuals from discrimination. The Constitution does not provide for a comprehensive implementation scheme of the rights it elaborates. Estonian administrative, civil and criminal law provides very limited number of provisions that may be relayed on by individuals in cases of discrimination in employment based on nationality, ethnicity or race.<sup>104</sup> The Wages Act and Employment Service Act provide the limited substantive

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<sup>101</sup> See for example M. Pavelson & M. Luuk, Non-Estonian on the Labour Market in the The Challenge of the Russian Minority, ed. M. Lauristin and M. Heidmets, Tartu University Press 2002

<sup>102</sup> *Supra*, footnote (Race Directive), Article 3.

<sup>103</sup> Article 9 of the Constitution, The rights, liberties, and duties of everyone and all persons, as listed in the Constitution, shall be equal for Estonian citizens as well as for citizens of foreign states and stateless persons who are present in Estonia.

<sup>104</sup> It is probably one of the reasons why there is almost no cases on discrimination in employment in national courts.

protection from unequal treatment in national law.<sup>105</sup> The Codes of criminal and civil procedure provide for procedural guarantees of principle of equal treatment before the courts.<sup>106</sup>

Following the extensive pressure from the European Union three days before accession on 27 April 2004 Parliament has adopted amendments to the Employment Contracts Act. The amended Article 10 provided for prohibition of unequal treatment based on nationality, colour, race, native language, social origin. The prohibition of unequal treatment in Article 10 shall apply to the employment contract itself, conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions.<sup>107</sup>

However Article 10<sup>1</sup> (4) explicitly provides that ‘it is not contrary to (prohibition of unequal treatment) to require *language skills* necessary for the work and pay compensation for proficiency in languages’. Neither Article 10 nor other provisions of the same Act impose any limitations to the exception to require language skills, such as proportionality or legitimate objective tests. In the context of the existing language policy in Estonia the exception to the general rule of non-discrimination provided in Article 10<sup>1</sup> (4) based on language may be interpreted by national authorities very broadly as justifying any form of discrimination based on language.<sup>108</sup>

Interestingly, ECA has a provision on International agreements that provides “If an Act, administrative legislation, collective agreement, employment contract or unilateral decision of an employer is contrary to an international agreement binding on Estonia which expressly and unambiguously prescribes application of the agreement notwithstanding the passage of national law or administrative legislation, the international agreement applies ”.<sup>109</sup> Potentially this provision can serve as a basis for national courts to set aside the contradictory national law and apply Community law provisions.

The Wages Act regulates the equal payment and the Employment Service Act relates to the prohibition of providing preferences upon the provision of employment services. There is no legislative provisions related to the prohibition of discrimination in relation to vocational guidance, employment and working conditions, dismissals, membership of and involvement in an organization of workers or employers, social protection, including social security and healthcare, social advantages and education as well as on access to an supply of goods and services which are available to the public, including housing. Consequently, the national law only to the very

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<sup>105</sup> Article 10 of the Employment Contracts Act (was substantially amended by RT I 2004, 37, 256 entered 1. 05. 2004); Article 5 of the Wages Act, Article 6 of the Employment Service Act.

<sup>106</sup> Article 13 of the Code of Criminal Procedure “Administration of justice on basis of equality of persons before law and courts” and Article 6 of the Code of Civil Procedure “Administration of justice on basis of equality”.

<sup>107</sup> For example, similar to the Race Directive Article 3 (a))

<sup>108</sup> The Language Act regulates the requirements for proficiency in the Estonian language and establishes Estonian as the language of public administration at national and local levels, the language of correspondence, the language of reporting, the language of information and the language of registration plates. Moreover the existing language policy in Estonia a) established mandatory requirements for proficiency in Estonia for an extended number of profession b) the employees of those profession are required to have a state language certificate confirming his/her knowledge of the Estonian language; c) it is an obligation (for fulfillment of which penalty may be imposed) of the employer to ensure that every employee has the necessary level of proficiency in the Estonian language for the position held; d) an employee may be dismissed from the work for the inability to master the Estonian language at the level prescribed by law; e) the existence of Language Inspectorate which has a competence to control (i.e. may check the knowledge of the employees knowledge of Estonia)

<sup>109</sup> Article 25, Employment Contracts Act.

limited extend provides for equal treatment in employment relations. Moreover on national level the protection of individuals from discrimination in employment is further complicated by the absence of legal definition of discrimination on the national level, absence of principles of reverse ‘burden of proof’ and victimization and lack of national body specifically designated for the promotion of equal treatment.

### **3. Concept of discrimination, Burden of Proof and the national Bodies for the Promotion of Equal Treatment**

The Race Directive provides for definitions of both the direct and indirect discrimination.<sup>110</sup> On the national level in Estonia there is *no legal definition of the discrimination* either in legislation or in court decisions!<sup>111</sup> Non-discrimination as an enforceable legal principle has not yet found its place in the Estonian legal system.

The rules of evidence and burden of proof for cases charging discrimination based on the provisions of Employment Contracts and Wages Act are those of the general civil court proceedings. The *actori incumbit probatio* principle applies as the general legal principle, meaning that each party must prove the facts on which her/his claims are based, making it very difficult for a victim of discrimination to establish his/her case. The Race Directive provides for the principle of ‘reverse discrimination’ where the respondent has to prove that there has been no breach of the principle of equal treatment.

There is no specialized body for the promotion of equal treatment in Estonia. The Legal Chancellor according to the law has a mandate to deal with discrimination on the grounds of amongst other of race, ethnic origin, and language or other grounds of discrimination provided for in the law.<sup>112</sup> However as official statistics of the Legal Chancellor provides in 2002 and in the first half of the 2003 there was no complaints by individuals in relation to discrimination in employment.<sup>113</sup> The office of Legal Chancellor (independent state official) in Estonia is combined with the office of Ombudsman.

In the present context, victims of discrimination have no effective means to bring a case charging employment discrimination. This may be one of the reasons why no cases of discrimination based on ethnicity or gender have been brought before the courts of Estonia.

Discrimination is a form of human behaviour. In general people’s preferences are not absolute and people tend to make different choices based on the accompanying circumstances. Discrimination, however, is based on prejudice in which the individual circumstances are ignored and categorical evaluations are made of people based on attributes such as nationality rather than individual qualification. As the economic perspective suggests, the costs and benefits of a particular choice often influences individual behaviour<sup>114</sup>.

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<sup>110</sup> Article 2 (2), Race Directive.

<sup>111</sup> The first attempt to give definition to the concept of discrimination may be found in the Draft Law on Equality which was submitted to the Parliament in October 2002 but withdrawn following March 2003 Parliamentary elections.

<sup>112</sup> Article 19 (2) Act on Legal Chancellor

<sup>113</sup> Official web page of the Legal Chancellor of Estonia ; statistics available at [http://www.oiguskantsler.ee/files/failid/7D9Koiend\\_2002\\_aasta.doc](http://www.oiguskantsler.ee/files/failid/7D9Koiend_2002_aasta.doc) (last accessed on 14.12.2003).

<sup>114</sup> Discrimination, Affirmative Action, and Equal Opportunity, The Fraser Institute, Walter Block and Michael A. Walker, Introduction, p. 9

If there are no costs associated with engaging in discriminatory behaviour, then individual will be inclined to discriminate if it benefits them as individuals (e.g., they derive some kind of emotional or psychological satisfaction) or the group with which they strongly identify. This cost/benefit analysis of the discriminatory behaviour is particularly interesting in the context of the transitional economies like Estonia's. The conventional wisdom suggests that the discriminatory behaviour of majority must be countermanded by the system of the anti-discrimination laws.

The labour market marginalisation of a substantial proportion of the Estonian population has significant economic costs and serious consequences for the social integration of the Estonian society. Denying equal employment opportunities to the ethnic Russian minority in various fields produces a group of people unable to participate in mainstream society.

Without a job, finding suitable housing and of the financial resources to learn the Estonian language is nearly impossible. This in turn results in relocation in neighbourhoods where children encounter fewer chances to receive a good education and learn the Estonian language. Rejected individuals respond by lowering their efforts for social advancement (slow rates of naturalization and participation in the integration programs) or by turning away from an unjust system (illegal and undocumented citizens).

Moreover, the rejected group finds itself suffering from a multitude of social problems including poverty, crime, substance abuse, suicide, and prostitution -- a vicious circle from which it is difficult to escape. In addition, the overrepresentation of the ethnic minorities among social risk groups perpetuates the general belief of majority about the minority members as socially undesirable and reinforces the discriminatory behaviour.

As have been argued above, unfortunately the discrimination is not yet a matter of public policy concern in Estonia. The substantial statistical data and a number of economic studies suggesting that discrimination might be a relevant factor contributing to the disadvantageous position of ethnic minorities on the labour market is ignored by national policy makers. Regrettably, an anti-discrimination law implementing the Race Equality Directive is not yet adopted in Estonia. On the policy level there is a clear lack of understanding that discrimination might be a substantial obstacle to the attainment of a high level of employment and social protection, raising of standard of living and quality of life as well as economic and social cohesion in the society.

## V. Conclusions and Practical Recommendations

The evaluation of the national policies in the area of employment and integration of ethnic minorities reveals that until recently the issue of disadvantageous position of ethnic minorities on Estonian labour market has never being seriously acknowledged on the policy level as issue of the state concern.

The national employment actions plans continuously fail to address the disadvantageous position of ethnic minorities on Estonian labour market. The national employment policy documents present the problem of ethnic minorities on the labour market as being contingent on two factors: regional disparities and lack of language learning. All other factors including possible inefficiencies of the existing legislation and implementing agencies as well as discriminatory attitudes of employers are left outside the policy considerations.

Moreover, even though the employment policy documents acknowledged the existence of regional disparities in unemployment level as well as lack of Estonian language proficiency it nevertheless not contributed to the search for viable solutions by national authorities to those issues. The national approach towards facilitation of the Estonian language learning among ethnic minorities is of questionable effectiveness. The national measures on language learning by ethnic minorities were often drafted and implemented without adequate consultations with representatives of the target group. The inadequate reflection of the needs and difficulties of ethnic minorities led to the adoption of the narrow policy options which reinforced the same policy mistakes and contributed to only a minimal progress towards improvement of the linguistic competence among ethnic minorities.

Based on the narrow definition of the problem of ethnic minorities on the Estonian labour market as depended mostly on lack of linguistic abilities with the substantial financial foreign assistance a number of attempts was made to increase the knowledge of the Estonian language among ethnic minorities. Although the programmes had some positive impact it would be overoptimistic to claim the substantial change in the situation with the Estonian language knowledge among ethnic minorities or the improvement of the position of national minorities on the labour market.

The problem of ethnic minorities on the labour market is nevertheless very urgent. Although the national statistical office reports the overall increase in the unemployment level in the country the percent point difference in unemployment among ethnic Estonians and ethnic non-Estonians growing. Ethnic minorities are strongly underrepresented among governmental officials, judiciary, legislators and top professionals. The gap in remuneration level among ethnic Estonians and non-ethnic Estonians is also growing reaching 18% in 2002.

The accession to the European Union and integration of the Estonian employment policy planning into the EU employment policy framework provides for a new impetus for addressing the position of ethnic minorities on Estonian labour market. The open method of coordination on which the European Employment Strategy is based, *inter alia*, contributes to the ongoing evaluation and flexible adjustments of the national employment policies. The continuous evaluation of the national employment policies on the EU level will make it increasingly difficult for national authorities to ignore the problem of ethnic minorities.

To facilitate further measures to remedy the disadvantageous position of ethnic minorities on the labour market following policy recommendations for national authorities are suggested.

1. The issue of disadvantageous position of ethnic minorities shall be considered during the development of the next National Action Plan by Estonia in more detail. To this end, it is necessary to facilitate a workable exchange of information between the national authorities and non governmental organizations representing ethnic minorities as well as representatives of the employers and employees that are able to represent ethnic minority group.
2. In developing national documents in relation to the ethnic minority group more linguistic sensitivity is necessary. The exclusionary terms such as 'non-Estonians' should be strongly avoided to identify the ethnic minority group which lives in Estonia but whose nationality is other than Estonian.
3. Increasing attention need to be paid to a variety of possible causes of the disadvantageous position of ethnic minorities to ensure that policy options adopted by authorities therefore reflect real needs of the disadvantageous group. To this end it is necessary to commission various independent research studies that would collect information on the basis of which the policy choices might be construed. It is of the particular importance that studies commissioned by the state or regional authorities to identify the obstacles that ethnic minorities face on the labour market are conducted by professionals representing various ethnic groups. The results of the studies shall be carefully evaluated by national authorities responsible for the development of national employment policies
4. There are a number of positive steps adopted by the national authorities in relation to the availability of information related to the employment possibilities and assistance in Russian language. In this respect the opening by the Ministry of Social Affairs in 2003 of the web page in Russian language is very welcome. At the same time there is a strong need to publish more information materials for ethnic minorities in their native language related to the possible avenues to receive state assistance in employment related matters. Moreover a particular care shall be taken to ensure that information in Russian language is correctly compiled and does not contain evident and numerous linguistic mistakes.
5. The positive impact on the overall difficult situation on the labour market might bring the regular communications from the responsible agencies on the steps taken by authorities to remedy the situation. To this extent it will be of benefit to establish a workable link with mass media institutions both working in Estonian and Russian language to ensure that population is well informed on the steps taken by national authorities in relation to the disadvantageous groups.
7. Estonia as a new member state of the EU shall adopt and implement *acquis communautaire* including in employment policy in full. So far there is a very limited progress in adoption of national legislation implementing EU Race Directive. National provisions protecting individual from discrimination in employment are very limited and imprecise. Moreover the limited number of explicit legislative provisions promoting equal treatment is complicated by the lack of definition of discrimination, absence of specialized body on the promotion of equal treatment as well as lack of 'reversed burden of proof' guarantee.
8. The discussion at the national level should shift its focus from the issue of whether the language and citizenship laws are legitimate and justified state policies and rather address the



issue of what can and should be done to ensure that these policies do not contribute to the increasing differences among ethnic groups.

9. It is necessary to discuss on the highest policy level the reasons leading to the disadvantageous position of ethnic minorities on the labour market and possible solutions taking into consideration a wide spectrum of possible options. The dialog with ethnic minorities in drafting viable policy option is currently underestimated though in practice crucial for success.
10. The existence of the possible discrimination in *law in practice* shall be carefully analysed by policy makers. It is alarming that until now Estonia has failed to adopt anti-discrimination law protecting possible victims of discrimination based on ethnicity in full as required by Race Directive. The failure to adopt the anti-discrimination law as well as establish special anti-discrimination body is not only detrimental to national development but also contrary to the EU requirements, in particular, the requirements of Race directive. Thus, the anti-discrimination law must be adopted in full including the provision that would ensure the effective remedy to victims of discrimination. To this respect the establishing of the body that would meets the requirements of the Race Directive is urgent.
11. The adoption of the anti-discrimination law shall be supplemented by national educational and monitoring programs that would provide information to both employers and employees as regarding their rights and obligation in employment relations. Model codes of recruitment and employment policies for employers shall be developed.

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