

Influence of Ethnicity on the Labour Market Opportunities in Estonia

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The present research intends to propose conceptual framework for discussion of a position and challenges of ethnic minority groups on the Estonian labour market. The research will discuss the national policy on employment and ethnic relations vis-à-vis the European Community employment and anti-discrimination policy. The aim of the research is to examine how are the key priorities of the European Employment Strategy and European Anti-Discrimination Policy put in practise in the Estonian national context. The research brings an argument 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 and wages levels, occupational distribution of work it is necessary to adopt state measures targeting particularly this group. 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 of the population. Failure to adequately address the causes leading to an existing statistical differences among ethnic groups may lead to the aggravated economic and social problems, ineffective (and costly) policy instruments and put at the jeopardy achievement of the European Employment Strategy objectives by Estonia.

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I. Introduction

The evaluation of situation and opportunities of ethnic minorities in the labour market in Estonia requires understanding of the policy mix cutting across different fields including economic, employment, social and anti-discrimination policies both at the national and the European Union level. Prior to the Treaty of Amsterdam, the community 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.¹ In addition to that, the new Title VIII, has been added to the Treaty of the European Union.² 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 MS the post Amsterdam developments progressively increase the role of Community in the employment policy of the MSs. As a consequence the EU policy on employment becomes essential element of the national policy of the MS in the responsive field. Estonian national policy on employment though must be framed not only by the 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.³

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. The vital part 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). 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 puts emphasis on the inclusive society with the 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 economic and social life".⁴ 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..... In addition to the Community actions mentioned above a number of EU initiatives have been initiated to specifically address the issue of discrimination on the labour market. 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

¹ Article 2 of the Treaty Establishing the European Community, *Official Journal C 325 of 24 December 2002*, http://www.europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html

² Title VIII, Articles 125-130 of the Treaty Establishing the European Community, *Official Journal C 325 of 24 December 2002*, http://www.europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html

³ 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

⁴ 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

orientation. The primary focus of the campaign in the first year is on the workplace discrimination. The main target groups of the campaign are trade unions and employers.⁵ 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. (Elaborate more)

The "European understanding" on the significance of 1) adoption of active labour market measures targeted specifically towards ethnic minority groups and 2) combating of discrimination through active measures promoting diversity at workplace to the successful socio-economic development of the state is crucial to Estonia. As it will be argued below regardless of the available statistical evidence indicating the disadvantageous position of ethnic minorities on the labour market the national policy in the field of employment does not specifically address the needs of this group of population. Moreover so far Estonia has made only a very modest progress on the development and practical implementation of the anti-discrimination policy not to mention the programs towards 'cultural mainstreaming'. The academic and policy research on the economic discrimination of ethnic minorities on the labour market is very limited. The representatives of the disadvantageous groups who may be victims of labour market discrimination have no effective recourse in the Estonian legal system. In addition to that employers and employees as well as professional associations are not well aware on their rights and obligations regarding discrimination on the labour market. In this respect the national employment and anti-discrimination policy addressing the needs of ethnic minorities as part of a co-ordinated policy strategy aiming at social inclusion is urgently needed in the Estonian context.

The present research is organized according to the following structure. Following the Introduction (Section I), the Section II provides the more detailed discussion of the European Employment Strategy in particularly the Social Inclusion objective together with the Community policy to combat discrimination fuelled by Article 13 of the Treaty. The second part of the Section II then addresses the Estonian national policy in the field of employment as 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 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, Section V, with the set of specific policy recommendations in the field of employment and anti-discrimination policy.

⁵ "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)

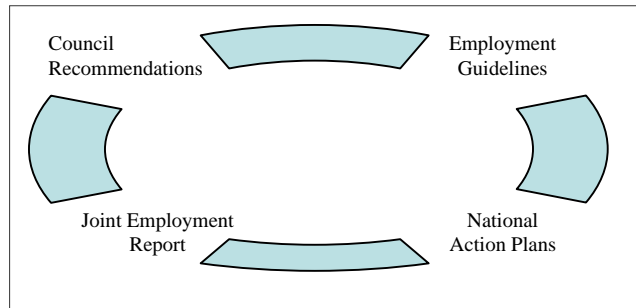
II. Reflection of the problems faced by national minorities in the Labour Market Policy of EU and Estonia

1. European Framework for discussion for 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 MS 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 are 1) full employment, 2) quality and productivity of work and 3) cohesive and inclusive labour market. The strength of the EES is that it established not only 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 build around several components: employment guidelines, national action plans, joint employment report and recommendations.



Member States each year

at the European Council define a joint European employment strategy, Employment Guidelines for the EU. The Employment Guidelines represent a set of objectives that are grouped under four "pillars" together with horizontal objectives⁶. On the basis of this Guidelines Member States draw up National Action Plans (NAPs) that describe how Guidelines are put into the practice at the national level. The NAP presents the progress achieved in the Member State 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, 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 Council. On the proposal of the Commission the Council issues country-specific Recommendations.

In 1999 a co-operation process on employment have been initiated by the Commission with candidate countries, including Estonia. The purpose was to prepare candidate countries for the common procedure followed by the member states. The first step in this co-operation process was preparation of the Joint Assessment Paper (JAP). The JAP was prepared by the Government of Estonia and the European Commission, Directorate General for Employment and Social Affairs. The document has been signed by the Minister of Social Affairs of Estonia and the Commissioner for Employment and Social Affairs in March 2001. The Joint Assessment Programme (JAP) set the fundamental challenges in the field of employment for the country to ensure the

⁶ Until 2003, On April 8th 2003 the Commission made new, formal proposal for Guidelines

implementation of EES and accession to the EU.⁷ 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 related to the 'expansion of active labour market programmes, while ensuring that these remain targeted on the most disadvantaged job-seekers'. The most disadvantaged groups as identified by the JAP are: (1) long-term unemployed, (2) young people, (3) persons who have dropped out from basic school, (4) disabled persons, (5) 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' used. This refers to the fact that the most disadvantaged group as identified by the JAP and those understood by 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. The questionable validity of this approach will be discussed in the following Sections

The next step after adopting the JAP in the co-operation between national authorities and the Commission was a joined monitoring of the progress in achieving priorities set up 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"* has been published. The *supporting document to the Communication* provides 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 future⁸. The Communication, addressed to all candidate countries, again stressed the need to ensure social cohesion and integration of ethnic minorities. The Commission underlined the fact that most of candidate countries have significant ethnic

⁷ http://europa.eu.int/comm/employment_social/intcoop/news/estonia.pdf

⁸ <http://europa.eu.int>

minority groups which are in a disadvantageous position in the labour market and are at high risk of social exclusion and poverty. The Commission stressed the need to intensify the efforts of the candidate countries in better tailoring the educational provision to minorities' needs and speeding up the integration.⁹ The supporting document to the Communication provided country specific information to support the Communication. In the part of the supporting document related to Estonia 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." In this respect Commission indicated that for the 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*. 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, 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 Estonians. 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.'. In addition to that Ms. Quintin urged Estonia 'to complete the full transportation of EU anti-discrimination legislation before next year's accession'.

European Union Anti-Discrimination Policy.

The European Employment Strategy is the important document addressing the issue of discrimination of 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 the Community actions in the field of protection of national minorities (as well as other disadvantaged groups) through measures combating discrimination is rather recent. To empower the existing Article 12 during the Lisbon Summit the new Article to the Treaty of the European Union - Article 13 have been added. Based on the new Article 13 two Community Directives targeted at the reduction of discrimination have been adopted. The Community Directive 2000/43 – **Race Equality Directive**- implements the principle of equal treatment between people irrespective of racial or ethnic origin in employment and training, education, social security, healthcare and access to goods and services.¹⁰ The Directive contains definitions of direct and indirect discrimination, harassment and victimisation. Moreover the Directive provides for a right to victims of discrimination to make a complaint through a judicial or administrative procedure, associated with appropriate penalties for those who discriminate. 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 will take force in July 2003 providing for a solid legal framework to combat all forms of discrimination in the MSs.¹¹

⁹ http://europa.eu.int/comm/employment_social/employment_analysis/communication/Comm_0037_en.pdf, p. 7

¹⁰ 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.

¹¹ 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

It is possible to distinguish three level of coordination of the employment policy in the process of preparation for the accession of Estonia to the European Union. At the first level, so-called Community level, community wide policy on employment agreed on among MS and the European Employment Strategy is adopted. At the second level, which is the realm of both the national authorities and the Community, the Joint Assessment paper was adopted. And the third level, the annual adoption of the Republic of Estonia Employment Action Plans. The annual evaluation mechanism established by the Community it intended to safeguard the actual implementation of objectives set up on the level one through levels two and three.

On the national level in Estonia the **employment policy** in co-ordinated by the Ministry of Social Affairs. Annually the Ministry prepares the Republic of Estonian Employment action plan which reflects the official policy on employment, reviews the main problems on the labour market and suggests 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 a fundamental basis for actions in the field of employment on the national level.

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

- 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 has been signed. The 2003 Estonian Monitoring Report was also adopted after the *Communication "Progress in the implementation of the Joint Assessment Papers on employment policies in candidate countries"* along with the supporting document have been adopted and high-level talks with the Director General on Employment and Social affairs took place. The timing of the adoption of the national document indicate that the objectives, guidelines and the suggestion expressed by the European Commission should have been noted by national authorities at the moment of drafting of documents mentioned above.

The Republic of ***Estonian Employment Action Plan 2003*** in numerous occasions refers to the EU employment strategy and EU employment guidelines as guiding principles. Specifically, on page 4 it is stated that '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'. As have been discussed above one of the objectives of the European Employment Strategy, i.e. level one, is an inclusive society with a non-discrimination policy been an integral part in achieving this goal. The inclusive society means participation of all in the labour relations, adoption of active measures targeting disadvantageous groups (specifically

including ethnic minorities)¹², taking proactive measures for the promotion of diversity at the workplace and combating discrimination. The level one clearly emphasise the importance of addressing the issues related to the disadvantageous position of ethnic minorities on the labour market. To this respect 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 disadvantageous job-seekers as identified in the Estonian JAP include the (1) long-term unemployed, (2) young people, (3) persons who have dropped out from basic school, (4) disabled persons, (5) older workforce, (6) non-Estonian speakers and (7) persons without any professional education or qualification are defined as disadvantaged in Estonia. Consequently, it may be concluded that level two, although in a restrictive manner, by only mentioning non-Estonian speakers, does refer to ethnic minorities as the disadvantageous jobseekers in need of special attention through national programs. The 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."¹³ The list of groups is broader than in the JAP, level two or EES level one. Moreover the list in the Employment Action Plan 2002 is not exhaustive leaving a possibility for inclusion for any 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."¹⁴ The Employment Action Plan 2003 follows the same policy line and determines risk groups only including the (1) young, the (2) long-term unemployed and (3) the disabled without addressing any other groups as identified in the JAP. The other four disadvantageous groups, 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 the level 1 are although in restrictive manner do exist on the level two planning however do not find practical realization on the national level. This apparent lack of transparency among the three levels is not apparent through the communications of Estonian authorities with 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* in the part related to the Employment Policy 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." It is not however explicitly provided in the report 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 may be misleading and not reflecting the actual policy in the field of employment on the national level.

The discussion above indicated that 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 consider ethnic

¹² Guideline in 2003 EES Guidelines, before guideline 9. Specifically mentioning of ethnic minorities, disabled and migrant workers

¹³ P 19, Employment Action Plan 2002

¹⁴ Page 4

minorities as a disadvantageous group on the labour market. Under Section 1.4. of the Action Plan 'Main Problems' there is no specific mentioning of the ethnic minorities or even more narrowly defined non-Estonian speakers. The only indirect reference that could be related to ethnic minorities in the Ida-Viru County is found under the problem addressing large regional disparities. The 80% of the population of Ida-Viru country, where unemployment rate - 19.2 % is the highest in the country, belongs to ethnic minorities. It should be noted that '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 among ethnic groups. 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* address the issue of national minorities on the labour market through programs aimed at the teaching of Estonian language to ethnic minorities. The Integration Programme only focusing 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 conscripts;
- Reimbursed of 50% for the language training costs under the EU Phare Estonian Language Training Programme "Interest" to 2,012 trainees;
- 600 unemployed people of Ida-Viru county received free Estonian language courses;
- 82 state officials participated in a labour exchange programmes. (info for other years)

The state Integration Programme does not indicate any other obstacle to the competitiveness of ethnic minorities on the labour market, except to the linguistic incompetence in Estonian language. The Integration programme does not provide for any other actions aiming 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, Integration Programme does not include programs combating discrimination at the workplace. The programme also doesn't provide for any programmes aiming at the promotion the equality of opportunities among ethnic groups for example as relates to the 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 outside the in-depth discussion the evidence and real situation as regards 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 analyse the Estonian labour market, social and migration policy in the light of accession to EU. 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 the active debate in the academic community exists in relation to the linguistic and political issues related to the national minorities only a handful research may be found addressing the possible economic discrimination of minorities at the workplace. The author is not aware of the policy analysis addressing the position of ethnic minorities on the Estonian labour market.

As have been argued above not only National Programmes on employment and integration but also research projects address the situation of national minorities in Estonia 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

The aim of the Section III is to analyse the statistical data relevant to the position of ethnic groups on the labour market. The attempt is made to evaluate whether ethnic minorities are disadvantaged and face ethnically specific problems on the Estonian labour market. The evaluation will be based on the available statistical data on the level of employment, unemployment, sector and occupational distribution of work and wages as well as on the published research projects and reports. The evaluation will conclude with the answer to the question - whether, in the framework of the objectives and guidelines of the European Employment and Anti-Discrimination Policy, the state actions specially targeted to ethnic minorities are necessary. The Section starts with the 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 the state policies including language and citizenship policy that may in addition to the national employment policy contribute to the difficulties of 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

The understanding of the ethnic and linguistic composition of the Estonian labour market as well as the regional distribution of minority groups in the country is necessary for the correct interpretation of the statistical data on the position of ethnic groups on the labour market. The percentages of the ethnic minorities among certain occupations and unemployed are only meaningful if the proportion of ethnic minorities among overall population is acknowledged. 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 which in terms of the EU market is only 0.X%. In the EU context Estonia is the country with 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% together with the second generation of migrants. This is five to six time more than the same indicators for Germany, France or Sweden and three times higher than the European average¹⁵. The national minority of Estonia is predominantly of Russian ethnicity with Russian being their mother tongue. By joining EU two Baltic countries, Estonia and Latvia will bring 1,054,421¹⁶ people with Russian ethnicity. Over 1 million of Russian speaking population is in fact cumulatively larger than Estonian speaking population 930,219 of the European Union. As a consequence, issues related to the position of this ethnic group has broad policy implications in Estonian as well as at the European Union level.

The reasons for a large proportion of ethnic minorities in Estonia are rooted in the history. As a result of the historical processes accompanying WWII Estonia became a part of the Union of the Soviet Socialist Republics (USSR) and the 'Soviet Period' for Estonia started. The economic policy of Estonia was changed according to the targets and goals of the new political regime. The heavy industry and all-Union productions became a heart of the economic policy of the Estonia Soviet Socialist Republic. In terms

¹⁵ Social Trends, Statistikaamet

¹⁶ Central Bureau of Statistic of Latvia,

http://www.csb.lv/ateksts.cfm?tem_kods=tsk&datums=%7Bts%20%272002%2D01%2D25%2013%3A00%3A00%27%7D

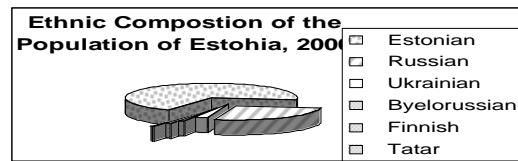
of human resources it meant an extensive immigration of people to Estonia in order to fulfil a shortage of existing labour force. During 1945-50 about 241,000 people immigrated to Estonia from Soviet States and then in the years of 1961-70 another 95,000 arrived¹⁷.

The data of the last population census conducted in 2000 indicates that even after the extensive emigration of ethnic Russians from Estonia that took place in the 1990s the substantial proportion of Estonian population still belong to ethnic minorities. It is not expected that ethnic Russians would emigrate from Estonia to the same extent like in the 1990s so it is relevant to state that the present ethnic majority/minority equilibrium will remain in years to come.

Population census adjusted to 2002 indicates that

Table (Population 2002)

		%
Total Population	1370052	
Estonian	930219	68
Russian	351178	26
Ukrainian	29012	2
Byelorussian	17241	1
Finnish	11837	1
Tatar	2582	0



As it has been pointed out above the mother tongue of the majority of population belonging to ethnic minority is not Estonian. According to the population census 2000 mother tongue of a 32% of the population is other than Estonian. Slavic languages such as Russian, Ukrainian and Belorussian being a mother tongue of the 29% of the population and the remaining 3% include Finnish, Latvian, etc. Contrary to the process that took place in other European countries where foreign speaking population gradually learned the local language an ethnic minority population in Estonia was not able to learn the local language during 'Soviet Period' as during the Soviet time this was neither a state priority nor a necessity. Ethnically diverse newcomers from other parts of the USSR upon settling in Estonia often had knowledge of Russian language, however very often lacked knowledge of Estonian language and culture. The lack of knowledge of the Estonian language was not an obstacle for pursuing educational and employment opportunities. The whole state system was built, de facto, on the use of two languages Russian and Estonian. 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 other language Estonian in the schools with the Russian language of instruction and Russian in the schools with Estonian language of instruction was thought. 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 at the same time Russian speakers were limited to only one language, i.e. Russian. Regardless of linguistic abilities and ethnicity all population of 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 restrictions, limitations and incomprehensible absurdities of the Soviet regime. The point of the above argument is not by any means to convince the reader that the Soviet system of state governance was just and perfect but to show that the inability to master the language was not a decisive

¹⁷ Immigration Law and Human Rights in the Baltic States, Comparative Study on Expulsion and Administrative Detention of Irregular Migrants, Dr. Joanna Apap, p23

line for success. The statistical data providing that 80% of non-native Estonian speakers and 30 % of non-native Russian speakers did not have the knowledge other language respectively proves the argument that it was possible to live in Estonia without the knowledge of Russian by non-native Russian speakers and without knowledge of Estonian by non-native Estonian speakers.

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

- 1) the knowledge of Russian was economically speaking more valuable than the knowledge of Estonian language,
- 2) the system of teaching of Estonian language was not advanced and comprehensive
- 3) inability to master the Estonian language was not an obstacle for educational and employment opportunities and social benefits -
- 4) Russian speaking population at large did not learn Estonian language to the advanced degree. At the same time the majority of Estonians had knowledge of Estonian and Russian languages.
- 4) this lead to the fact that the Estonian population in the beginning of 1990's was characterized by a large proportion of the ethnic minority population who's competence in the newly declared state language was very limited¹⁸.

The detailed attention to 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 stone of the local politics. After a dissolution of the Soviet Union, during which as described above both Estonian and Russian language have been used, the Estonian language became the only official language. The Language Law adopted in 1995 established the compulsory level of competence in the official language for certain type of professions in public and private sphere and established the Language Inspectorate to insure the implementation of the law. This rapid, 'over night' change in the linguistic policy accompanied by the massive inability of ethnic minorities to master Estonian language proved to be an exceptionally difficult matter in terms of economical and psychological adjustment of ethnic minority group.

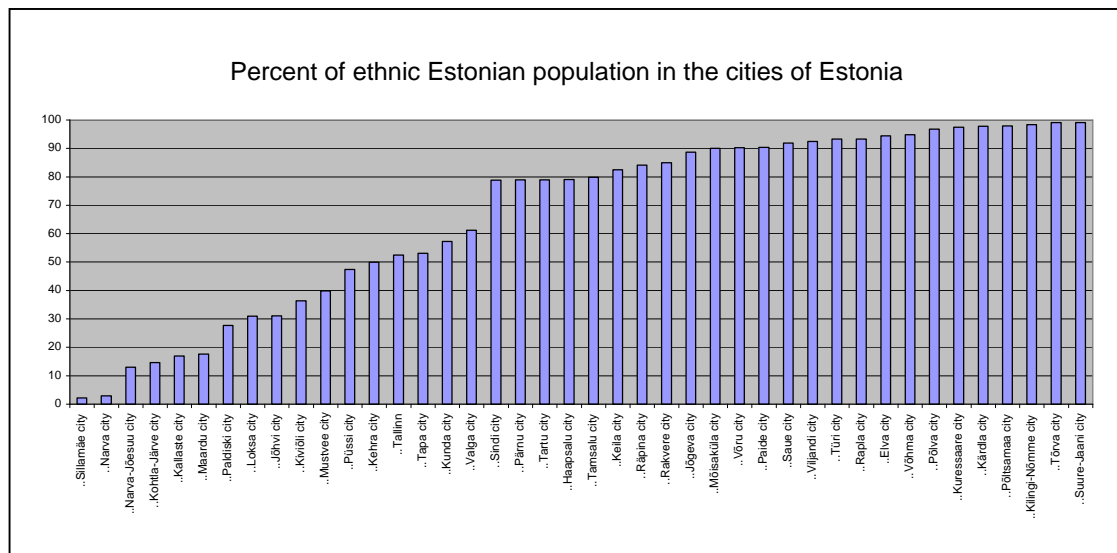
Naturally, the Estonian labour market mirrors the overall demographic composition of the state. According to the statistical data 67% of the employed are ethnic Estonians with the remaining 34% of people of other ethnicity. There are also relatively similar division of the labour market according to the mother tongue. Estonian language is native to 68% of employed. Among the remaining 32 % the Russian language is native for 29 % of all employed.¹⁹

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

	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% , in 22 cities more that 20% and in 17 cities more than 30% of the population. In 13 cities ethnic minorities constitute to more than 50% of 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.



2. Statistical Evidence²⁰

Free from discrimination, it may be expected that the proportion of ethnic minorities among unemployed, among occupational groups and sectors of economy would approximately correspond to the ethnic composition of the country. Moreover the wages for equal work will be similar irrespective of ethnic nationality. This would be especially the case if the educational attainment among the groups is relatively comparable. In itself the statistical differences among ethnic groups is not an unconditional factor of discrimination. There are a number of socio-economical and historical factors that may contribute to the differences. At the same time, the existence of substantial statistical differences may indicate the disadvantageous position of 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 the research publications. The statistical data related to the educational attainment, employment/unemployment rate, job level and earnings, economic and occupational distribution of work of ethnic groups on the labour market is collected by the Estonian Department of Statistics. The ethnically differentiated data is public and available for the analysis. The Department of Statistics since 1997 (?)

²⁰ 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 Pavelson.

annually conducts *The Labour Force Surveys*, which collects data on the economic activity of the population, employment and unemployment, inter alia, by ethnic nationality and language spoken. *The Population Census 2000*, collected 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 provide the statistical data and sociological surveys on the opinion and attitudes of people in Estonia with different ethnic and social background towards other people in the linguistic-communicative, political and socio-economic spheres. In addition to that four main research publication addressing the issue of national minorities on the labour market are the Kroncke/ Smith (...), Professor Majre Pavelson article "Non-Estonians on the labour market"²¹, 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

The education is one of the determination factors of success on the labour market. The level of education is a relevant characteristic in accessing the employment patterns of 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. In the Estonian context, the percent of ethnic minorities/majorities with no primary education, general secondary education, vocational secondary education and higher education among the economically active population of the respective ethnic group is comparable. There is a larger percentage of Estonians with primary education, basic education, professional secondary education after basic education, master's degree and doctor's/candidate of science degree in the ethnic Estonian group than respective percent of Russians in the ethnic Russian group. Among the ethnic Russian group there are more people with vocational basic education, vocational secondary education after secondary education and professional secondary education after secondary education than the respective percent of people within the ethnic Estonian group.

Table X

In respect of educational attainment it may be concluded that an average level of education among ethnic groups is comparable.

However, looking at the future it is questionable whether the average level of education among ethnic groups will remain relatively similar. As of 2003 it is possible to obtain the primary, basic, secondary, vocational and higher education in minority languages. The primary, basic and secondary education is provided by the state free of charge to all in either Estonian or Russian languages. The bi-lingual educational system in Estonia has a long lasting roots going back to the 'Soviet period'. The higher education in minority languages provided by the state is very limited. Only X programmes in X state universities are thought fully or partially in the minority language. At the state universities the ethnic minority students contribute to only 10% of the student body. The situation is 'remedied' by the number of private institutions providing for a possibility to acquire higher education in minority languages. However many of the private universities although have a state licence do not have state accreditation of the programmes. The

²¹ 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, 89-116.

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. The 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 acquire master or doctorate degrees. The situation with the education of ethnic minority groups in Estonia during last 5 years has been extensively discussed and the new educational reform has been suggested. 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 the 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 to be thought in the Estonian language then they will be equal in terms of opportunities with the Estonian youth. The competence in Estonian language of ethnic Estonians and minorities acquired through the educational system based on the Estonian language is the only possible guarantee of equality for further educational and labour market opportunities. This argument is strongly opposed by the representatives of national minorities arguing that the above-mentioned reform will in fact even further contribute to the existing statistical differences on the labour market. The monolingual system of education without adequate resources will effectively contribute to the decrease in education attainment of minority groups those even further limiting their opportunities on the labour market. The difficulties in terms of educational attainment of minority youth in Estonian language is well perceived in postgraduate education which is at large available predominantly on Estonian language. The inability to master Estonian language hinders opportunities of minority youth whose mother tongue other than Estonian to be admitted to the university and those acquire state higher education. Among university students minority youth contribute to 10% only.

Taking into consideration the substantial proportion of the Russian language pupils at the elementary and secondary schools it is necessary to conduct an in depth studies on the possible effects of the proposed educational reform on the ethnic minority group. It is also essential to evaluate whether available financial and human resources of the state will allow to effectively implement the proposed educational reform. The danger remains that the lack of the competent teachers able to provide instructions in Estonian language to native Russian speaking pupils will lead to the decrease in the quality of education received by ethnic minority children. Moreover the low competency in the Estonian language and inability to follow the educational program on the mother tongue by ethnic minorities may lead to the decrease of participation of minorities in the education and increase in dropouts. This all together may lead to the unnecessary ethnic tensions, hostility of ethnic minority groups toward majority and further problems at the labour market.

B. Unemployment

As have been concluded above the level of educational attainment is comparable among the ethnic groups. The same cannot be concluded as regarding the unemployment rate. The unemployment rate of ethnic minorities is 14,9 % as compared with 7,9 among the ethnic majorities. The largest unemployment rate is among minority females - 15,3% and the lowest among the majority females - 6,9%. The percent point differences in the unemployment rate among the ethnic groups is slowly but increasing reaching 7 percent point difference in the year 2002.

Table X, unemployment rate among males/females

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 level 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 (sic) ²² non-Estonians live in Ida-Virumaa region, which in general has the highest unemployment level.” As have been indicated above, in the section regarding regional distribution of minorities in the country, ethnic minorities live not only in the Ida-Virumaa County but also around all of Estonia. This is also relevant in relation to the number of unemployed in the country. The Harju County, to which Tallinn - capital of Estonia belongs, has 14,958 and the Ida-Viru County has 12,770 unemployed belonging to Russian ethnicity. In relative terms Harju county has even more unemployed belonging to ethnic minorities than Ida-Virumaa. Those the two times difference in the unemployment rate hardly could be explain only by the regional distribution of minorities.

Table X, 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

It is relevant to claim however that Ida-Virumaa region is facing a substantial hardship with the economical development in the post 'Soviet period' due to the sectoral restructuring of the Estonian economy. The economic transition from the control market economy to the open market mechanism in the 1990.-s caused the fall of the primary and secondary sectors and a rise of the tertiary sector bringing along the first wave of unemployment. The substantial differences in regional unemployment levels started to appear. The Ida-Virumaa county - traditionally an industrial region, and south-eastern part of Estonia - agricultural region, suffered the most from the changes. The unemployment level remains high in both of the regions. The second wave of unemployment was caused by factors related to the Russian economic crisis of 1998, the fast economic development of Estonia, renewal of technology and especially information technology, which in turn led to significant rise of labour efficiency. The both waves of layoffs leading to the high unemployment rates affected ethnic minorities. The first wave

²² not true the ethnic minorities live around all of the country

of unemployment reduced the level of employment of non-Estonians because of the fall of the secondary sector where they have been traditionally employed. 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.

The unemployment is a significant problem of the Estonian labour market, especially for ethnic minorities whose unemployment rate 14,9% is almost two times higher than among ethnic majority group.

C. Sectoral and Occupational distribution of work

As have been argued above in the sub-section A the educational attainment of the ethnic groups in Estonia is comparable. The same could not be claimed in respect of unemployment level which is on average two times higher among ethnic minority than among ethnic majority group. With respect to the occupational distribution of the Estonian population the differences also exist. Ethnic minorities are strongly underrepresented, less than 4%, among senior governmental officials, judiciary and legislators. There are less than 10% of ethnic minorities among 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. During the transition of the 1990s among the employees with higher position only 12% of ethnic minority managers 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 university education. The respective figure among Estonians was only 21%. Among university-educated ethnic minorities there is roughly an equal number of both those with the downgraded and those with the upgraded 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 the promotion is higher than for ethnic Estonians. For Estonians there are other factors beside education – age and better contacts with the local community networks- which are considered more important. The share of university-educated people, who have lost their jobs is 6% in both groups. Consequently, for university-educated ethnic minorities it is more difficult to enter the labour market than to keep their jobs.

Contrary to the common opinion widely spread outside of Estonia there is 'no evidence that would suggest that Estonians were forced to have lower paid jobs or work in a less preferable fields' during the 'Soviet period'. (Pavelson and Luik p 92) The statistical data indicates that at the end of 1980's Estonians concentrated in education, science, public management and services employed mainly as white-collar and top specialists. The agriculture and forestry were predominantly Estonians sectors as well. It should be stressed that at the time agriculture was a most gainful branch of economy (Pavelson p. 93). Estonian Non-Estonians were predominantly industrial and construction workers. (Pavelson p.93) mainly employed in chemical and building material industries. The ethnic composition of engineers and the health care specialists were roughly similar. The share of Estonians among top managers of production companies followed the total share of Estonians among the employed. (1989 population census, Hellimae, Pavelson 93). Kruusvall suggests that during Soviet period Estonians as a 'titular nation' had preserved a better position in several spheres of Estonian economic and cultural life. The existence of the differences in the occupational distribution of work in employment

during Soviet time did not put Estonians in an economically disadvantageous position²³ contrary it may be well argued that the existence of the relatively more valuable in terms of “open market” social capital gave this ethnic groups 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. Contrary, it may be well argued, providing that the long lasting occupational and economic polarization of the labour market exists, that there is a need to take positive actions that would allow for a greater representation of minorities in traditionally 'ethnic Estonian' fields.

In terms of occupation distribution of work ethnic minorities strongly underrepresented, less than 4% among senior governmental officials, judiciary and legislator. There are less than 10% of ethnic minorities, inter alia, among research and development, advertising, public relations 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.

D. Remuneration

Although ethnic minorities hardly differ from the majorities in terms of education there are strong differences in the level of unemployment and occupational representation. The study by Kroncke and Smith released in 1999 analysed the potential wage discrimination based on ethnicity on the Estonian labour market²⁴. 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 if in 1989 no evidence of discrimination against either ethnic group existed then already in 1994 the 'substantial evidence of discrimination against ethnic Russians' could be acknowledged. The study, inter alia, stressed the further need to address the issue of economic discrimination based on ethnicity at the same time acknowledging that there is little interest amongst Estonian policy-makers to address the issue. The data of the Labour Force surveys continuously point toward the existence of discrimination based on ethnicity in respect of wages. According to the Labour Force Survey in 2000 the average wage difference between ethnic groups in Estonia was 16%. Another more recent research conducted by the group of experts for the OECD - "Determinants of earnings in Estonia, Latvia and Lithuania" further 'investigated the factors that determine wages, using the conventional technique of estimated multivariate earnings functions'.²⁵ The study finds that apparently unjustified ethnic wage gap in Estonia in 2000 was already about 18% which is in comparison with a 1994 study suggests about 4 percentage points increase. The results of the OECD study again suggest that only a limited part of the observed wage gap can be explained by included factors such as education, economic sector and nine main occupation groups. The concentration of ethnic minorities in the low-wage sectors and economically

²³ The position of 'titular nations' and they position on the labor market in other Socialist republics may be drastically different

On the contrary to the wide spread belief that segregated labor market in Estonia during Soviet period necessarily disadvantaged Estonians

²⁴ The wage effects of ethnicity in Estonia, Economics of Transition, Mar99, Vol. 7 Issue 1, p179, Kroncke, Charles; Smith, Kenneth

²⁵ OECD, Determinants of Earnings, p.1

depressed regions have negative impact on the wages but can only partially explain wage differences. The negative factors on the wages of minorities are contravened by the fact that substantial proportion of minority group representative have an advantage of working in the capital city where wages tend to be significantly higher. The Report suggests that among 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 4.2% only. The negative wage effects of occupational segregation is 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 employees compared with 30% of the Estonian 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. 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." 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 wage gap estimated for Black vs. White citizens in the United States.²⁶

In spite of the detailed evidence of ethnic wage discrimination on the labour market the Estonian national policy on employment or integration does 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 towards the existence of substantial differences in the unemployment level, occupational representation and level of wages among ethnic groups with educational attainment being relatively similar.

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) The ethnicity has a strong correlation with the mother tongue. The mother tongues of majority of ethnic minorities is 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 among ethnic groups is comparable. 27,4% of Estonians and 27,9% of Russian ethnic minority have general secondary education. The 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 significantly higher among ethnic minorities. Average unemployment rate among ethnic minorities is 14.9% as compared to 7.9% for ethnic Estonians.
- 6) The unemployment differences 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%.

²⁶ OECD, Determinants of Earnings, p.12

7) In terms of occupation distribution of work ethnic minorities strongly underrepresented, less than 4% among senior governmental officials, judiciary and legislator. There are less than 10% of ethnic minorities, inter alia, among research and development, advertising, public relations 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.

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

9) Ethnic minorities contribute to more that 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 belong to ethnic Estonians.

10) The study conducted for the OECD in 2003 on the determinants of earnings in Estonia, Latvia and Lithuania has found that among three Baltic countries ethnic wage discrimination is strongest in Estonia. The unjustified ethnic wage gap in Estonia was 18%. For example, estimated wage gap for Blacks vs. White citizens in the United States is 7%.¹

11) The unjustified wage gap in Estonia has increased about 4 percentage points since 1994.¹

The substantial differences in the statistical data among ethnic groups point to the disadvantageous position of minorities and possible evidence of discrimination in the Estonian labour market.²⁷ As have been discussed in the Section II the European Employment Strategy puts an increasing attention to the promotion of social inclusion. Starting from 1999 the Employment Guidelines introduced a separate guideline concerning the integration of disadvantaged groups in the labour market. The specific attention for the disadvantaged and more particularly for 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 the 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 most often the groups that fall under this definition. Statistical data available in Estonia clearly indicates that ethnic minorities experience significantly higher hardship on the labour market than ethnic majority group. The growing percent difference in the unemployment level, wages and occupation distribution of work cannot be justified as factors contributing to the social inclusion. The second part of the Section III will evaluate whether ethnic minorities experience particular difficulties in gaining access to and remaining in the Estonian labour market.

²⁷ The question of discrimination will be further discussed in the Section IV of the research.

3. Difficulties that ethnic minorities face at the Labour Market

The national policy on Employment evaluated in the Section II pointed to the low interest among the authorities towards the issue addressing the position of ethnic minorities on the labour market. At the same time the statistical outcomes described in the first part of the Section III indicate that substantial differences among ethnic groups exist on the labour market with ethnic minorities being at the disadvantageous position. The second part of the Section III will address in more detail particular difficulties that may contribute to the disadvantageous position and influence labour market opportunities of ethnic minorities. Although realizing that there are a number of issues that maybe the factors contributing to the disadvantageous position of ethnic minorities the present work will address only two issues language and citizenship policies. The choice on the issues to be addressed is supported by the recent sociological survey that provides that young Estonians believe that citizenship and language skills are the most important factors for good jobs in Estonia.²⁸ As a consequence both language and citizenship policies are material factors that need to be addressed in the context of the discussion on the opportunities of 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 possibilities of ethnic minorities on the labour market.* The emphasis is on the practical requirements and the implementation of the language and citizenship policies as related to the labour market.²⁹

A. Language Policy

The analysis of the *language policy* in the context of the Estonian labour market is necessary because of two reasons. First, substantial number of non-native speakers of the Estonian language on the labour market and second, strong normative regulations on the proficiency and use of Estonian language established by law. The Estonian labour market in terms of language broadly divided into two major groups: native Estonian speakers and non-native Estonian speakers. According to the statistical data of the Statistical Office of Estonia among Estonian language is native to 68% of all employed. It means that every third employed person is a non-native Estonian speaker. Among non-native Estonian speakers on average the competence in Estonian language remains to be rather modest.³⁰ According to the EMOR Survey released in the beginning of the 2003 there are approximately 251,000 non-native Estonian speakers in the age between 15 to 59 who have been employed or will have a job in the next two years; “However, virtually non of them possessed the required knowledge of Estonian...”³¹ Nevertheless, there are strong normative regulations established by law on proficiency and use of the Estonian language both for public and private sphere employees. The official language policy is based on the Article 6 of the Constitution. The provision stipulates that ‘the state language of Estonia shall be the Estonian Language’.³² The subsequently adopted *Language Act* regulates the requirements for proficiency in the

²⁸ BBC Monitoring International Reports, **March** 28, 2003, ESTONIAN ETHNIC INTEGRATION IS NOT WORKING

²⁹ 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.

³⁰ 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.

³¹ As summarized in Aleksei Gunter, Russian Minority Slow in Learning Estonian, The Baltic Times, January 9, 2003.

³² Constitution of the Republic of Estonia, Article 6

Estonian language and use of the Estonian and foreign languages.³³ The Act stipulates that the official language of Estonia is Estonian³⁴ and any language other than Estonian is a foreign language³⁵. 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 a right to use Estonian language in access to public administration and the right to receive answers from state agencies in Estonian language. In addition to that the Act establishes the liability for violation of requirements for 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 the proficiency in Estonian;
- b) State certification system; confirming the level of Estonian language proficiency;
- c) The obligation of the employer to ensure that employee has a necessary level of the proficiency in the Estonian language for the position held;
- d) The dismissal of employee for the inability to master Estonian language on the level prescribed by law;
- e) The authority and competence of the Language Inspectorate.

A

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 specialists³⁶ as well as to persons who have acquired basic, secondary, vocational secondary or higher education in Estonian language. For that reason, the requirements for the proficiency in the Estonian language apply to the larger degree to ethnic minorities who as a rule obtain education in Russian language.

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

- companies,
- non-profit associations and foundations, by employees thereof and
- by sole proprietors.³⁷

The proficiency in Estonian Language is required in three levels: basic level, intermediate level and advanced level.³⁸ 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 X)

Level of proficiency	Occupation ³⁹
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³³ Article 2¹ Language Law (RT¹ I 1995, 23, 334 ... RT I 2002, 90, 521)

³⁴ Article 1 Language Law

³⁵ Article 2 (1)

³⁶ Language Law Article 4 (6)

³⁷ Article

³⁸ The levels of the Estonian language proficiency have been changed a number of times ..

³⁹ Mandatory Levels of Proficiency in Estonian for Employees of Companies, Non-Profit Associations and Foundations and for Sole Proprietors, Regulation of the Government of the Republic No. 164 of 16 May 2001

(RT¹ I 2001, 48, 269),

<p>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 use⁴⁰;</p>	<p>1) drivers of public transport vehicles (except masters of ships and aircraft pilots) and locomotive and train drivers;</p> <p>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 2¹ (2) of the Language Act, must be done in Estonian;</p> <p>3) personal care workers</p>
<p>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;⁴¹</p>	<p>1) service and sales staff who provide compulsory insurance services provided for by law and who advise clients in this field;</p> <p>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;</p> <p>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;</p> <p>4) health associate professionals whose duties include communication with patients and communication of information;</p> <p>5) rescue workers;</p> <p>6) harbour pilots;</p> <p>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.</p>
<p>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 texts which are different in style and function.⁴²</p>	<p>Language proficiency at the advanced level is required from the following employees:</p> <p>1) teachers of the Estonian language and of subjects taught in Estonian;</p> <p>2) doctors, pharmacists and psychologists;</p> <p>3) masters of ships and aircraft pilots (except harbour pilots);</p> <p>4) employees who organise air, sea or railway traffic and communicate corresponding information.</p>

The Act provided for a strong legal protection of the Estonian language. A number of categories of employees in public and private sector⁴³ who have acquired education in language other than Estonian are required to take an Estonian language proficiency examination. Due the present arrangement of educational system which provides for a possibility of a largest ethnic minority group to acquire education in Russian language the language proficiency examination is mostly applicable to this group of population. In practical terms this means that a representative of ethnic minority who have graduated from educational institution with the language of instruction other than Estonian and who wish to undertake an employment in public sphere or private sphere in the meaning of the Language Act will need to conduct language proficiency examination. The graduate of the Estonian language educational institution in the same situation is free from a requirement to pass proficiency examination in any language. The Act does not provide any obligations or rights in respect of language of national minorities for any kind of

⁴⁰ Language Law

⁴¹ Language Law

⁴² Language Law

⁴³ the detailed description of occupations requiring the mandatory level of Estonian language is discussed later in the text

employees including in emergency and healthcare services even in regions where minorities constitute a substantial proportion of the population.

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

B

To confirm the existing level of the proficiency in the Estonian language it is necessary to take the exam administered by the State examination and qualification centre. The 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 evaluation of the proficiency in the language⁴⁴ another relevant discussion is whether obtaining a language certificate in accordance with the procedure established by law⁴⁵ then would be an effective guarantee that this employee satisfies the conditions established in law. In other words, whether individuals who is holding a position which under the law requires an intermediate level of proficiency in the Estonian language with obtaining the language certificate to this particular category will automatically fulfil the legal requirement? The jurisprudence of the Estonian courts suggest that the possession of the language certificate itself would not 'protect' employee from inspections by the Language Inspectorate, which may find that the actual language knowledge of the employee is below the level of certificate which she/he holds. In this case, the inspection may issue a warrant to the employer. The employer in its turn will have a right to dismiss the employee for not fulfilling the requirements established by law. As a result, on one hand the employee need to go through the examination procedure established by the law and obtain the certificate of the level necessary for the position held or to be held. On the other hand, the certificate in itself is not a 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 the language proficiency and not the particular certificate. This argument however remains unsatisfactory since the underlying purpose of issuing and obtaining the language proficiency certificate⁴⁶ is to approve the level of proficiency of the individual. It is unclear then why employee at all has to acquire certificate for proficiency if the actual knowledge of the language, which will be continuously accessed by the Language Inspectorate, is what matters the most. In this respect it is worth noting the recent jurisprudence of the Estonian Supreme Court. The case that have reached the Supreme Court has addressed the following question. Whether employee in the public sphere who have effectively fulfilled her work related duties without any dissatisfaction by the employer may be dismissed by the employer because a position that employee holds requires a higher level of proficiency in language that the one she has? The courts of the first and second instance answered positively. The Courts have found that if the employee does not have a higher level of proficiency as required by the Language Act she can be lawfully dismissed. In this respects Courts did not take into the consideration that in fact the intermediate level of knowledge that the dismissed employee had was sufficient for the fulfilment of the 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. However it continued stating that this hover should not preclude the court

⁴⁴ which will not be addressed here

⁴⁵

⁴⁶ in front of the panel of experts of the State examinational and qualification committee

from evaluation of 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 Appeal court for the review. The Supreme Court have instructed the lower courts that if in the new consideration of the case it will become apparent that the employee is able to fulfil her work related duties, the appeal court, must consider whether the requirement of the law stipulating the all higher officials no matter in what official position and for what duties performed must have a higher level of proficiency in the Estonian language is proportional and in accordance with the paragraph 5 part 2 of the Language act. The Court stressed that according to the Act the public officials must have proficiency in and use the Estonian language on the 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 breached the fundamental aim of protection of Estonian language protected 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 the use of Estonian language is established as a constitutional aim and the state authorities must ensure the achievement of this aim. With this, taking the steps supporting the use of Estonian language are constitutionally justified”. The Constitutional Review Chamber by this statement made any argument about the possible disproportional of the Estonian language requirement in relation to the “constitutional aim” very difficult. In accessing the balance in the proportionality test the Language Inspectorate have 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.”⁴⁷

C

Another important issue influencing the labour market as related to the language is the obligation of employers to ensure that employees knowledge of the Estonian language is in conformity with the law requirements. Employers have an obligation to ensure that employee knowledge of the Estonian language is in conformity with the law.⁴⁸ Failure by an employer to apply the requirements for language proficiency in respect of an employee and violation of the requirements for language proficiency by a public servant or employee is punishable by a fine of up to 200 fine units.⁴⁹ Therefore, the law impose an obligation to employers to ensure that they employees have a level of proficiencies in the Estonian language as prescribed by the Language Act. If actual proficiency in the Estonian language of the employee does not correspond to the level of the certificate he/she holds or the position held, the employer has a right to demand from an employee the improvement of the level of proficiency in the Estonian language, even if the employee already possess the language certificate to the necessary level of proficiency.⁵⁰

D

The insufficient Estonian language proficiency or lack of the language certificate by the employee may be the grounds for the termination of the employment contract by the employer⁵¹. An employer has a right to terminate an employment contract entered into

⁴⁷ 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>

⁴⁸ Article X, Language Act

⁴⁹ § 26⁴. Violation of requirements for language proficiency

⁵⁰ Ilmar Tomusk, language requirements, Information Bulletin of the Interest program 2002, 06.11.2002

⁵¹ Employment Contracts Act, Art 86.4 and Art. 101.1 (2)

for an unspecified or specified term prior to expiry of the term of the contract on the basis of the unsuitability of employee for his or her office or work to be performed due to the professional skills. The professional skills, inter alia, include: insufficient language or communication skill, 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 on 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. Consequently a question is who has a right to evaluate the 'actual' level of proficiency of the employee. As have been stated above the availability of the language certificate is not a guarantee of the actual level of proficiency of the language. In the case concerning this issue the court 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 objectively evaluated against the work related duties, rights and obligations of the particular employee as described in the employment contract or the work description.⁵² 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 a ground braking. The court in fact tries to balance the right of the employee to dismiss the employer because of the insufficient language skills. The court emphasizes the need to objectively evaluate the language skills against the background of the actual work performed by the employee and as have been agreed in the employment contract. It is worth noticing, that the present case as well as the case referred above are the recent jurisprudence. It is of the great significance that 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 the similar situation should have knowledge about their rights and obligations.

E

The supervision of the language policy is administered by the Language Inspectorate. The Language Inspectorate 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.⁵³ The Language Inspectorate exercise 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 Inspectorate as a result of the supervisory controls of the employees of public and private spheres has made 1165 administrative acts. Among 1165 administrative acts the 923 have been related to the non-observance of the Language Act. During the same period 43 misdemeanours procedures have been started. The statistical data also provides that the execution of the earlier made warning issues by the Language Inspectorate was not possible in 128 cases due to the fact that the person to whom the warning have been addressed left the work place, the organisation has been liquidated or other reasons. It is difficult to infer from this number how many employees have been dismissed from the position held because of the Inspectorate warning.

⁵² Tsiviilasi nr. II-2-177/02 Kohtla Jarve Soojus vs. Antonina Jakobson

⁵³ The Brief History of the Language Inspectorate, <http://www.keeleinsp.ee/index.php3?lng=1>

Although the case law suggest that a warning by the Inspectorate is not compulsory to the employer and rather serve a recommendation it may be well predicted that to sustain from the possible further inspections by the Inspectorate employer will be tempted to dismiss the employee based on the evaluation of the Language Inspectorate. It should be noted that the Language Inspectorate is the competed state body which has an authority to evaluate the actual level of proficiency in the Estonian language.

Thus, as it has been discussed above the elaborated system of regulation and supervision of the level of proficiency and use of Estonian language in the public and private sphere have 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 earlier as in 1992 that " The applicants for the proficiency category for the purposes of employment shall cover all necessary expenses on language training themselves".⁵⁴ Hence, at one hand the state established the strong linguistic requirements for the employees and on another had imposed full obligation to obtain necessary linguistic competence on the person concern with explicit regulation under the law providing that the state shall not support this initiative in financial terms. The employees whose knowledge of state language is insufficient suppose to 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 shows although it is relevant to state that the overall proficiency in Estonian language among ethnic minorities has increased 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 towards adoption of the more balanced and proportional approached in addressing the linguistic issue on the labour market. As have been discussed the Language Inspectorate has a wide supervisory authority as relating to the proficiency and use of Estonian language. The employer has a legally protected right to dismiss the employee due the insufficient proficiency in Estonian language as established by law. Consequently, it is of outmost importance for the state to take every step to ensure that the authority and the right given to the employer exercised in the balanced and non-discriminatory manner.

B. Citizenship Policy

Another issue, providing a particular difficulty to Ethnic minorities on the labour market, as have been identified in the beginning of the second part of the Section III is the citizenship policy. The *citizenship policy* as relates to the labour market is relevant due to the facts that, first, the Estonian citizenship is necessary for certain type of employment and second, the unavailability of the Estonian citizenship may limit the possibilities for business travel. According to the 2003 statistical data of the Citizenship and Migration Board 14% of population are stateless and 7% are citizens of other countries. Among ethnic minorities as have been indicated by the 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 the lack of the Estonian language knowledge are the issue that predominantly concern and impact national minorities.

⁵⁴ 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. The regulation among other things specifically provided that

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

Table 1
Legal Categories of Workers in Estonia

	Legal status Ref 6, p3	Number	Estonians (%)	Non-Estonians (%)
1	Estonian citizens living and working in Estonia	1,095,743		
2	Foreign nationals who have full rights to residency and work in Estonia based on Permanent residence permit			
3	Foreign nationals who have a temporary residence permits and a work permit for a fixed period of time			
4	Official aliens who have permanent residence and work permits			
5	Official aliens who have temporary residence and work permits			
6	Undocumented or 'illegal' workers			
7	Citizens of EU member states working in Estonia			

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 \(list\)](#)
 - b) they can not vote and be elected for Parliamentary elections, those they are 'not interesting' for the politicians (rent-seeking) and a scapegoats in the political game. (always to blame for the political/economic/ social difficulties)
 - c) they can not be elected to the local self governments
 - d) upon accession to the EU they will be restricted in their freedom to find work in other EU member state (freedom of movement to EU nationals only)
- [\(include from the EU book\)](#) Citizens of the EU countries have a right to move freely within and between member states in search of employment.

The category 3 – workers of foreign citizenship with a 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.

A permit may be held for a number of months for a restricted activity or (geographic area)???. A worker in this group may fall into the category of illegal workers provided that he have lost the employer ///// (grounds for the revocation of the residency and work permits)

The category 4 and 5 -workers without nationality but with an alien passport- are peculiarity of the Estonian labour market non present in the EU states.⁵⁵ After independence of 1991 the substantial group of aliens or so-called stateless persons

⁵⁵ the same situation with official aliens are present in Latvia other EU accessing country

'appeared' in Estonia. Due to the controversial from point of view of human rights standards processes that took place in Estonia a substantial number of de facto permanent residence of Estonia could not acquire citizenship of the country. Working belonging to this group in general enjoy the same rights and subject to the same restrictions as workers of the category 2 and 3. Additional restriction impairing the employment possibility of this group is a comparative difficulty (compared to Estonian and Foreign citizens) as regarding the possibility to travel. The holders of the aliens passport must acquire visas to virtually any country of the world (exceptions Latvia and Lithuania???) . Moreover only ... countries recognize aliens passport as a valid travel document.

The 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 a group of people who in fact have been born in Estonia or lived there during substantial number of years. (see Arjupin article on possible causes)

The category 7 – citizens of EU- enjoy preferential treatment in Estonia as compared to the national of other foreign countries. EU citizens excluded from quota of allowed new immigrants to the country.

Returning back to the definition of the disadvantaged group of the population in the meaning of the European Employment Strategy providing that *the disadvantaged groups are the groups that experience particular difficulties in acquiring skills and gaining access to, and remaining in the labour market.* The evidence of the Section III indicated the substantial differences among the ethnic groups on the level of unemployment, wages and occupational distribution of work accompanied by the particular difficulties of ethnic minorities in acquiring proficiency in the Estonian language and citizenship and as a consequence ethnic minorities experience difficulties in gaining access and remaining in the labour market. In the light of the discussion provided in the Section III and the definition of the disadvantageous groups as suggested by the European Employment Strategy it is unclear based on which objective criteria, ethnic minorities have been excluded 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

1. The national policy to combat discrimination

The discussion in the Section III indicated that the position in which ethnic minorities find themselves on the labour market in Estonia 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. An involvement of the disadvantaged groups in the active labour market measures is only one aspect of the European Employment Strategy. Another element of the EES is the development of the strong anti-discrimination policies in the Member states. To this end the European Council has adopted two directives: Race Equality Directive and Equality Directive as well as a number of Union wide action programmes. 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'.⁵⁶ It can also jeopardise one of the aim of the European employment strategy which is to foster '*a labour market favourable to social integration*'.⁵⁷

Notwithstanding the increasing attention and to the issue of combating discrimination on the European Union level the primary responsibility in adoption the anti-discrimination policy lies within the Member States. Thus Member States should take practical steps in fighting discrimination through measures at national and local level, through cooperation with civil society organisations and individuals. It is well documented in the 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 notion of discrimination as an enforceable legal principle is only in the process of development and did not yet found its place in the Estonian legal system. Anti-discrimination policy was not a topic of discussion during the first decade of independence in Estonia. Up to 2003 there is no legal definition of the discrimination neither in legislation nor in the court decisions. In fact, legal ambiguity and unimportance of the discriminatory behaviour in employment in the policy making may be one of the reasons of the inequalities suggested by the available statistical data.

The general principle of equality and prohibition of discrimination may be found in the Constitution of Estonia. 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 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 does not limit itself to the specific area of activity those includes, *inter alia*, the prohibition of discrimination in employment. Moreover the above mentioned constitutional provision does not limited

⁵⁶ 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).

⁵⁷ http://www.stop-discrimination.info/fileadmin/pdfs/Discrimination_EN.pdf, p.5, Annual report on equality and non-discrimination 2003, the European Commission Directorate-General for Employment and Social Affairs,

in its scope as regarding individuals⁵⁸ and occupations. The prohibition of discrimination therefore applies to all workers, both nationals and non-nationals of Estonia. Following the same logic 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 not sufficient to protect individuals from discrimination. The Constitution does not provide for a comprehensive implementation scheme of the rights elaborated within. An individual cannot derive his or her rights directly from the constitution and call upon them in a court of law or any other administrative procedure. In order to receive remedy for discriminatory practice prohibited by the Constitution an individual must be able to point to a provision of criminal, civil, or administrative law establishing the procedure and rely on a court of law or an administrative unit. As of spring of 2003 there is a very limited number of legal provisions that may be referred as prohibiting discrimination in employment based on the national origin. **Article X section X Law on Employment Contracts and Article X of the Wages Act**. The rules of evidence and burden of proof for possible cases challenging discrimination based on the provisions of Employment Contracts and Wages Act are according to 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 violation to establish his/her case.

The question of the constitutionality by individual maybe also ought to the ombudsman⁵⁹.

It means that in the present context victims of discrimination have no effective possibilities to bring case challenging discrimination. This may be one of the reasons why so far discrimination neither based on ethnicity or gender have been challenged in the courts of Estonia.

Discrimination is strongly related to the human behaviour. In general people's preferences are not absolute and people tend to make different choices based on the accompanying circumstances. As the economic perspective suggests the cost or benefit of making a particular choice to the great extent determines the individuals behaviour⁶⁰. In simple terms it means that if the cost of the discriminatory behaviour is low or non-existent, then individual will be inclined to discriminate. This cost/benefit analysis of the discriminatory behaviour is particularly interesting the context of the transitional economies like Estonia. Due to the historical circumstances the majority was strongly inclined to express their discriminatory preferences against minority members. The conventional wisdom suggests that possible discriminatory behaviour of majority must be countervailed by the system of the anti-discrimination law. Since anti-discrimination policy would impose the additional cost to the discriminators those discouraging discriminatory practices and provide a venue or minorities who may be subject to discrimination to receive a remedy.

The labour market marginalisation has significant economic cost and serious consequences for the social integration of the Estonian society. A denial of equal

⁵⁸ 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.

⁵⁹ On the institute of the Ombudsman please see

⁶⁰ Discrimination, Affirmative Action, and Equal Opportunity, The Fraser Institute, Walter Block and Michael A. Walker, Introduction, p. 9

opportunities to ethnic Russian minority in various fields produces a group of people unable to attach themselves to the mainstream society. Rejection on the labour market results in restriction of possibilities of finding suitable housing and availability of resources to learn Estonian language. This in turn results in relocation in neighbourhoods where children encounter fewer chances to follow good education and learn Estonian language and the adults loose the employment due to the inability to master Estonian language. Poor education of children and inability to speak Estonian makes for fewer chances in the labour market. 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 unjust system (illegal and undocumented citizens). Moreover rejected group find itself suffering from a multitude of social problems poverty, crime, substance abuse, suicide rate, prostitution that make it hard to escape from this vicious circle. In addition the overrepresentation of the ethnic minorities among the groups of social risk penetrate the general belief of majority about the minority members as socially undesirable and reinforce the discriminatory behaviour over and over again.

V. From the problems to the solutions: policy evaluation and recommendations

1. Employment Policy

The discussion at the national level should not any further continuously focus just on the issue whether the language and citizenship laws are legitimate and justified state policies but rather what could be and should be done to ensure that those policies do not contribute to the increasing differences among ethnic groups. Those if language law establish mandatory requirements in Estonian language there are must be guaranteed availability of the Estonian language training to everybody including low income population. The language training as a language policy aim must be adopted in structural and consistent manner. The effectiveness of the methodologies for teaching of the languages as well as the accessibility of the existing language training programmes must be evaluated and if necessary improved. This applies equality to the linguistic requirements of the citizenship law.

2. Anti-Discrimination Policy

VI. Conclusions

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