# **Comments of the Chancellor of Justice on the response of the Government to the list of issues in relation to the initial report of Estonia**

Purpose and general obligations (arts. 1–4)

Although the Welfare Development Plan 2016-2023 has been approved in Estonia and several state development and action plans make references to CRPD, a holistic strategy and implementation plan are still lacking. In order to reach the goals, set in CRPD, it is necessary to compile an implementation plan with clear deadlines for all accountable institutions.

**Work Ability Reform**

Despite positive effects of the Work Ability Reform concerns remain.

Approximately ¼ of people who according to the official assessment have no work ability actually does work, some even full time, but they do not get any occupational rehabilitation services from the Unemployment Fund because of their work ability status. The law states: “*The occupational rehabilitation service is provided to a disabled person, unless the person has been established to have no work ability on the basis of the Work Ability Allowance Act.*” They are to apply for social rehabilitation services from the Social Insurance Board. Although both institutions offer rehabilitation services, occupational and social rehabilitation are substantially different and require different bureaucracy. It is not clear why those who are “established to have no work ability” but work, cannot enjoy the same services as those with limited work ability.

Also, the amount of administrative burden on people remains worrisome. Two parallel systems are currently used: workability and disability. The first one is managed by the Unemployment Fund and the other by the Social Insurance Board. Most people with disabilities are to interact with both, which creates confusion and loss of time and energy. Moreover, in order to establish a person’s work ability or disability, medical data from the e-Health system is needed. Unfortunately, it has been revealed that quality of the data is still rather poor. As a result, wrong assessments are made and necessary decisions get delayed. For a person, it means time spent on unnecessary proceedings. These concerns have been raised also by Chancellor’s Advisory Committee on CRPD.

**Involvement**

Although excellent rules have been set for the Government and the Parliament to involve people with disabilities, it still happens that persons with disabilities are not involved in the development of laws that concern them. One recent example was the fast-forward law-making in transport[[1]](#footnote-1). During the parliamentary proceedings, clauses of the Railways Act were added to a draft law of the Maritime Safety Act. The clauses meant to postpone the implementation of the rights of railways travelers with disabilities. “Nothing about us without us” policy is one of the basic principles of the CRPD: systems need to be in place to assure that no matter how specific or complicated or urgent the situation is, people with disabilities have to be involved in the development of the rules that influence them.

**Universal design**

Despite the established accessibility requirements, it is not enough to make public services and public space usable for all people in the near future, because the regulations only apply for new buildings or those renovated substantially. Considerable amount of the services is still provided in older buildings that are not covered with the requirements. Also, the Consumer Protection and Technical Regulatory Authority’s right to perform state supervision is limited only to the buildings built or renovated at the time the regulations were in force.

So, unfortunately, there are plenty of public services, also the ones financed from the state or municipality budget, that are not accessible for all. For example, there are offices of general practitioners that are situated in the buildings where everyone needs to climb stairs. It is not stated in Estonian laws that services need to be accessible for all.

Without accountability and explicit regulations, the services will not become accessible. In 2019, two elections were held in Estonia: elections of the Riigikogu and of the European Parliament. The [Chancellor of Justice addressed rural municipal and city council chairs and rural municipal and city government mayors](https://www.oiguskantsler.ee/sites/default/files/field_document2/Juurdep%C3%A4%C3%A4s%20avalikele%20hoonetele.pdf) with a request to designate as polling stations only those buildings which are accessible to all voters. Unfortunately, not all polling stations were made accessible for all. In order to ensure that persons with disabilities can independently access all polling stations, the Chancellor made a proposal to the parliament to lay down the requirement of accessibility of polling stations in election legislation. The parliament has not yet amended the law.

Some of the service providers have shown initiative and good intentions, but often there is not enough practical knowledge. Too many times we have seen cases where the outcome of renovations is not accessible for all just because the procurer did not have enough knowledge to overview the work done by the engineer, the builder or other professionals involved. There is a clear and urgent need for an agency or institution that would have the necessary know-how and responsibility to consult about accessibility.

A good example of how accessibility is a priority and how people with disabilities are involved in the project, is the project of the ‘state buildings’ (public service centers in county centers that will house different state institutions). Project has been run by the state real estate management company RKAS, who is making sure that all the needs of people (both clients and employees) with various disabilities are considered and taken into full account.

Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

**The Equal Treatment Act** in force does not cover discrimination based on disability in provision of services (including healthcare, social services, transport, etc.). There was a draft proposal in the Parliament, but unfortunately it fell out from the proceedings due to parliamentary elections in spring 2019. The new Government (in power since spring 2019) has not proposed a new draft law nor has the Parliament initiated amendments to Equal Treatment Act.

Therefore, it is complicated for a person with disabilities to protect his or her rights for example even in case he or she is unable to enter the doctor’s office.

Also, not all services provided by the state or municipalities are accessible for everyone. The Chancellor of Justice requested the information about accessibility of services (healthcare, education, social services) from the state. As a result, it revealed that the state does not collect the respective data and does not possess an overview of accessibility of services.

**The denial of reasonable accommodation** is not explicitly recognized as discrimination. Also, the concept of reasonable accommodation still needs to be promoted.

People with special needs for whom writing or coming for a personal appointment is inconvenient can submit a petition to the Chancellor’s Office without any hindrance. A petition may be submitted to the Chancellor by telephone, or as an audio or video file. The Chancellor’s Office has also received the first video file in Estonian sign language. Unfortunately, some local or government agencies still accept only written applications or require a person to go in person into a client service center.

In order to enable people with disabilities to participate in the life of society on an equal basis with others, the state and local authorities should set an example for others.

A creator of a public service, including the legislator, should contemplate who might be using the service or who is compelled to use the service. It should be ensured that the service functions flawlessly for all potential service users.

For example, when enforcement proceedings are initiated in respect of a person, as a rule, the bank blocks their access to online banking services (Internet bank). Thus, to carry out banking transactions, the debtor has to go to a bank office and also pay a service fee for transactions made there. For a person with special mobility needs, closing the Internet bank may mean a situation where they can no longer use their money as they cannot go to a bank office. Therefore, initiating enforcement proceedings in respect of a person with limited mobility may mean leaving the person without any money.

Women with disabilities (art. 6)

CRPD recognizes that women with disabilities are often at greater risk of poverty. According to statistics provided by the Ministry of Social Affairs, the poverty rates of the disabled compared to the overall average are almost twice as high (42,7% vs 21,9%).  Even more: at-risk-of-poverty rate is much higher for women with disability compared to the men with disabilities (47,6% vs 36,1%). The difference can partly be explained by wage gap which has been in Estonia one of the highest in Europe (18,7% lately).

Although the Estonian Government has recognized in the Welfare Development Plan that women and disabled are in greater risk, the plan itself is too declarative and does not provide any good measures to tackle the poverty of disabled women specifically. As the women raise often the children as single parents, the poverty affects also the younger generations.

Children with disabilities (art. 7)

In Estonia education is inclusive by law. To support children with special needs, measures have to be taken both in kindergartens and schools.

The law states: “*Child’s development and coping in a preschool institution shall be observed by teachers who shall adjust the learning and teaching according to the child’s special needs if necessary. Child’s development shall be evaluated and supported based on the principles provided for in the national curriculum of a preschool child care institution. If necessary, the support services of a speech therapist, special education teacher or another support service shall be ensured to a child. Possibilities for the application of support services shall be created by the manager of a preschool institution and the application thereof shall be organized by the director.*”

The law states: “*Teachers observe the development and coping of students at school and, where necessary, adjust studies according to the individual needs and abilities of students. Where necessary, at least the services of a special education teacher, a speech therapist, a psychologist and a social educator (hereinafter jointly referred to as support specialists) are ensured. The owner of the school creates and the head of school organizes opportunities for implementation of the services of support specialists.*”.

In practice, Estonian education system is not as inclusive as provided in laws. On several occasions, the Chancellor of Justice has been asked to assess the use of inclusive education in kindergartens and schools. Schools and kindergartens have the duty to ensure the safety and well-being of a child in need of support as well as of their peers and of the whole staff. Kindergartens and schools must create the necessary conditions for ascertaining the special educational needs of children and young people and on that basis offer them the necessary support. Too often kindergartens and schools do not have the personnel they are obliged to have so children do not get the support needed. The Chancellor has dealt with the lack of all mandatory specialists, most often speech therapists and special education teachers.

In addition to the before mentioned requirements of personnel the Social Welfare Act states, that children have a right to a support person. The law states: “*The objective of provision of the support person service to a child is to support, in co-operation with the person raising the child, the development of the child, including performance of care procedures in the case of a disabled child, if necessary. The support person shall assist the child in activities which promote development, guide and motivate the child to cope in everyday life and help to communicate with family members and outside the home.*”.

There is dispute between two systems: education and social about who is to provide person to assist a child if a child, for example, in kindergarten needs individual assistance. Recently the Chancellor was involved in a case where a child needed a person to assist him full time during the days in kindergarten. Municipality did not grant him the support needed, instead two agencies (education and social) were disputing over who should provide the necessary help. As a result of our interference they agreed to provide help to the child immediately and while a child’s needs are satisfied, continue the inter-agency discussions about how the system should be designed in the municipality.

Unfortunately, this is not a unique situation. There is a wide spread problem with the lack of support staff and long waiting lists for specialist appointments.

Several parents have contacted the Chancellor with a concern that a school has recommended choosing another school for their child on account of the child’s special needs even though it would be possible for the child to attend school based on their place of residence. Since schools have also involved officials in making the recommendation, parents feel pressured. An opportunity to attend another school may lawfully be offered to a child only if no suitable conditions for study exist at the school of the child’s place of residence.

In summary Estonian legislation provides inclusive education, but in reality, it does not always reflect the lived experiences of children.

In 2017, a study was conducted on the wellbeing of the families with children with disabilities[[2]](#footnote-2). The study pointed out:

* The ability to support children in education (kindergartens, schools) and to offer enough services of support specialists (for example a special education teacher, a speech therapist, a psychologist or a social educator).
* The low economical coping of families does not correspond to the higher needs and expenditures. Families are unable to cover the special needs of children. Insufficient allowances do not cover the special needs of the families.
* The amount and flexibility of social transport, support person service and childcare service do not respond to the needs of families.
* The lack of information about services, especially among Russian speaking communities.
* Overlapped and complicated evaluation systems of disabilities (in social system, in local municipalities, in educational system).

A new problem has appeared as the Social Insurance Board changed its practice in assessing disability. Parents of children with special need have shown that children now are not getting the help (the services) they need and had before. The Social Insurance Board claims that children should be helped with or without the official status of having a disability. Some local authorities have designed their systems so that only official status of disability grants the services needed.

It is a complex situation where children and their families are suffering since children do not get the help they need. Their parents have two options: either to go to court and fight or just organize the services themselves and pay for the services out of their own pocket.

It is true that local authorities (from their education or social budget) should provide most of the services based on the needs of a child regardless their official status. However, the local authorities do not always provide those services. The state has the supervisory power, but does not force local authorities to provide those services. Social services are to be supervised by the Social Insurance Board, the same agency who is denying the official status of disability for the children. Supervisory power in education lies within the Ministry of Education and Science. The state also limits its services mostly for those with official status of disability. For example, most of the social rehabilitation is only for those officially declared “disabled”.

It is understandable that the state needs to make changes to the systems, but change cannot happen at the expense of the children.

Awareness-raising (art. 8)

While raising awareness, a special focus should be on health care and social services professionals. They need to be trained about the human rights, dignity, autonomy and needs of persons with disabilities. Also, school and university curricula, regardless of the specialty, should cover the rights and needs of persons with disabilities.

Accessibility (art. 9)

As stated in our first communication to the Committee, accessibility remains a great concern. There are almost no provisions in place that require public services and space to be accessible for all.

In September 2019, the Government decided to create a task force for accessibility[[3]](#footnote-3). This task force is run by the Government Office. It deals with all aspects of accessibility in all areas of life. Its membership also covers many areas of life and includes people with disabilities. So, it is a pleasure to observe that the Government has set accessibility on its priority list. However, in reality, there has not been significant changes towards better accessibility during the year that has passed since our first communication to the Committee.

The [Chancellor made a proposal](https://www.oiguskantsler.ee/sites/default/files/field_document2/Juurdep%C3%A4%C3%A4s%20%C3%BChistranspordile.pdf) to the Parliament to amend the law so that at least public transport financed from public funds would be accessible to everyone. Unfortunately, the Parliament rejected the proposal. Nevertheless, there are some good examples of counties who procure only busses accessible for all (for example Pärnu and Tartu). But we also have sad examples, where new busses are inaccessible. For example, Saaremaa just procured a new carrier for their lines, according to the contract only some busses are accessible for all. Consequently, as long as the law does not require accessibility, municipalities and counties will continue creating inaccessible public services.

In addition, the [Chancellor made a proposal](https://www.oiguskantsler.ee/sites/default/files/field_document2/Juurdep%C3%A4%C3%A4s%20%C3%BChistranspordile.pdf) to the Parliament to amend the laws in a way that polling stations would be accessible for all. The Chancellor has also received complaints about inaccessibility of different IT-systems, for example digital signature and e-health (the electronic registration to doctor’s appointment system), and a complaint from a member of a municipal council who is unable to take part in council’s work as the rooms used by the council are not wheelchair accessible.

The Data Protection Inspectorate is to supervise the compliance with requirements for the maintenance of websites and mobile applications: to supervise the accessibility. Unfortunately, they do not have budget for fulfilling the tasks, so they may be unable to supervise the accessibility of webpages and mobile applications. As in Estonia e-services are everyday reality for all it is essential that equal access is guaranteed for all. State supervision is one important measure to guarantee the compliance.

**Living independently and being included in the community (art.19)**

The equal right of all persons with disabilities to live in the community independently, possessing equal opportunities to others and being included in the community, is not always ensured.

Public infrastructure and services are not accessible to all and provision and availability of social services differ by municipalities in quantity and quality. Social transportation, public housing (including adapting dwelling), personal assistance and home services (e.g. the services most needed by persons with disabilities) are services that are organized and provided by local authorities. Also worrisome are the waiting lists for the Special Care Services (provided by the state).

The Chancellor’s Advisory Committee on CRPD has informed the Chancellor that services provided for the people with disability are not as available as they should be, considering people’s needs. Also, the Chancellor was informed that the quality of services varies and provision of services to people with disabilities is not effectively monitored by competent authorities.

See also answers to art. 28.

Education (art. 24)

There are still universities, schools and kindergartens operating in older facilities that are not accessible for all. Thus, a person might face barriers hindering their access to a specific university, school or kindergarten just because it is impossible to enter or to move around in the facilities.

Please also see the comments for art. 7.

Health (art. 25)

There are still hospitals, general practitioners, dentists and other healthcare facilities operating in older buildings that are not accessible for all. Consequently, a person might not have access to healthcare services. There is no action plan with clear timelines, benchmarks and budget allocations in place that would map existing accessibility barriers and would provide measures necessary to guarantee access to health care.

Also, it is important to keep in mind, that access to e-health or electronic system of registration for doctor’s appointments are parts of an accessible healthcare system. Based on complaints, the Chancellor has drawn attention of the responsible agency to the errors occurred. As a result, the agency responsible for the development of those systems has promised to fix all these errors and include accessibility requirement to all future development agreements.

Work and employment (art. 27)

Please see comments on the Work Ability Reform (art. 1-4).

Adequate standard of living and social protection (art. 28)

Social transportation, public housing (also adapting dwelling), personal assistance, home services and other social services are need based services that are organized and provided by local authorities. Special care services are organized and provided by the state.

The Chancellor has dealt with local authority regulations and practices contravening the requirements for provision of compulsory social services. There is wide range of problems with those services: lack of specialists or service providers, long waiting lists, lack of money, unlawful restrictions etc. So, people in need do not always get what they should, based on law.

The Chancellor lodged an [application](https://www.oiguskantsler.ee/sites/default/files/field_document2/Taotlus%20tunnistada%20Narva%20linnas%20kohustuslikke%20sotsiaalteenuseid%20reguleerivad%20m%C3%A4%C3%A4rused%20kehtetuks%20p%C3%B5hiseadusvastases%20osas.pdf) with the Supreme Court to repeal several provisions in Narva City Council regulations on mandatory social services. The Supreme Court delivered its judgment on December 9th 2019. In the judgment the Court stated that local authorities are obliged to provide the compulsory services and the state is obliged supervise the implementation and the operation of the system. Therefore, the judgment along with the state supervision by the Social Insurance Board will hopefully have a significant impact of settling the service delivery on local level.

A complaint has also been filed to the Chancellor about the long waiting lists for state provided special care services.

Also see the answers to art. 19.

Participation in political and public life (art. 29)

In 2019, two elections were held in Estonia: elections for the Riigikogu and for the European Parliament. Elections were not accessible for all. See answers under arts. 1-4.

1. 47 SE <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/5f916495-8303-4961-b95b-ddbd87e21c2a/Meres%C3%B5iduohutuse%20seaduse%20ja%20raudteeseaduse%20muutmise%20seadus> https://www.riigikogu.ee/download/eb44abbe-0c40-40ed-a7d4-f95f589a9501 [↑](#footnote-ref-1)
2. Puudega lastega perede toimetuleku ja vajaduste uuring

   <https://centar.ee/wp-content/uploads/2018/05/Puuetega_lastega_perede_toimetuleku_uuringu_raport.pdf> [↑](#footnote-ref-2)
3. Webpage of Riigikantselei

   <https://www.riigikantselei.ee/en/news/task-force-will-start-searching-opportunities-make-society-more-accessible> [↑](#footnote-ref-3)