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Pupils' needs are a reality schools must address

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KEY MESSAGES

- The state must ensure that every child receives the best education suited to their abilities and talents.
- Inclusive comprehensive schools must be able to support pupils with different abilities.
- A child with support needs can fulfil compulsory school attendance only through effective cooperation between the education and social welfare sectors.
- Problems must be identified as early as possible and addressed immediately, including through creative solutions where standard approaches do not work.
- Schools need autonomy in organising school life and teaching, but uniform legal requirements and rules are also necessary to protect learners.

INTRODUCTION

Under the Estonian Constitution, children must attend school and study, parents must support their children in fulfilling compulsory school attendance, and the state and local governments must maintain a sufficient number of tuition-free schools. Responsibility for ensuring that a child develops into a responsible citizen and a good person rests with the home, the school and society as a whole. This article outlines what laws and regulations prescribe for all schools alike and how much discretion children, parents and schools have in educational matters. It also considers what happens when a child encounters

difficulties at school or fails to fulfil compulsory school attendance.

THE STATE MUST ENSURE THAT EVERY CHILD RECEIVES A GOOD EDUCATION

The Estonian Constitution (Section 37(1)) and international law¹ require every child to attend school for the period prescribed by law. School education should support the fullest development of the child's personality and



abilities, the formation of identity and a sense of belonging, and respect for human rights and nature.² Estonian legislation thus provides that both basic schools and upper secondary schools have an educational and formative function.³

A low level of education and the resulting constraints on self-realisation are among the main causes of young people's exclusion and risk of poverty.⁴ Basic education alone is no longer sufficient for successful participation in the labour market or private life.

The Estonian Education Strategy 2021–2035 sets the objective that, by 2035, 90% of 20–24-year-olds will have attained at least upper secondary education.⁵ In line with this objective, the Riigikogu decided that, from 1 September 2025, compulsory education would no longer be limited to basic school. According to Section 101(1) of the Education Act, compulsory education involves the obligation to participate in basic, secondary or vocational education and training and to acquire the knowledge, skills and competences necessary for one's development. Under subsection (2), compulsory education applies to any child residing in Estonia, including children who are foreign nationals or of undetermined citizenship, who have reached the age of seven before 1 October of the current year. Children remain subject to compulsory education until the age of 18. The requirement is deemed fulfilled before the age of 18 if the child has completed upper secondary or vocational education.

There is no reason to doubt that extending compulsory education is the right direction and essential in contemporary society. However, the question of how to ensure that children actually attend school – or, more precisely, arrive there in the first place – must be addressed. Extending compulsory education does not in itself guarantee educational attainment if existing bottlenecks and obstacles related to school attendance and retention are not resolved.

The Ministry of Education and Research's 2023 report indicates that although the overall dropout rate in the third stage of basic school remained unchanged compared with the previous year (0.3%), dropout among girls increased.⁶ The analysis notes that as the number of pupils

is currently growing, the number who do not complete basic school in full-time study has also increased.⁷ The Chancellor of Justice has likewise encountered cases in which pupils have been absent from school for hundreds of hours, difficulties with attendance have persisted for a long time and schools acknowledge that there is no solution to the problem.

The law assigns several responsibilities to the child's legal representative to ensure fulfilment of compulsory education. These include creating the conditions at home that enable the child to study and the prerequisites for participation in education (Education Act, Section 102(1)1), monitoring the child's progress and informing the school in the event of problems (Education Act, Section 102(1)1). A pupil who has been absent from school without valid reason must be supported by the school in an appropriate manner, and solutions must be sought, such as identifying the need for additional support or an individual curriculum (Basic Schools and Upper Secondary Schools Act, Section 36(3) and (4)).

Appropriate solutions must be sought within the school, but this must be done in cooperation with others responsible for the child's well-being. If the school is unable to ensure that the child fulfils compulsory school attendance, the local authority of the pupil's place of residence must be involved in resolving the problem. Municipalities organise both child protection and social welfare services for their residents. Thus, the school, in cooperation with the municipality (which is generally also the owner of the school), must identify the reasons for the child's absence and find suitable measures. The Child Protection Act (Section 8(1)) also provides for cooperation in safeguarding the rights and well-being of the child.

Understandably, responsibility does not rest entirely with the teacher, including the class teacher. Nor is the teacher required to act as case coordinator where problems with fulfilling compulsory school attendance are long-term. By law, the head of the school must appoint a coordinator for the education of pupils with special educational needs, whose task is to organise the internal teamwork necessary to support learning and development and to coordinate participation

in inter-agency cooperation outside the school (Basic Schools and Upper Secondary Schools Act, Section 46(2)). The head or owner of the school must also designate a person responsible for organising the exchange of information related to compulsory education with the municipal government (Basic Schools and Upper Secondary Schools Act, Section 36(6)). The school may additionally appoint one or more staff members to support pupils and to monitor and organise their learning activities. Schools may also provide a support person, such as an assistant teacher or social worker, to a pupil who is at risk of not attending school. If the pupil has not arrived at school, the support person's task is to call the pupil or go to their home and liaise further with the child protection worker. Assistance must be based on appropriateness and effectiveness and on the child's actual need for support.⁸ Of course, the school is not required to organise child protection or social welfare services in place of the municipality, but it must ensure that problems are identified and that efforts are made to find solutions. Child protection workers have noted that cases involving children in need of assistance reach them too late, when the difficulties faced by the child and family are already severe.⁹ In their view, healthcare and education professionals in particular should report children in need of assistance more actively.¹⁰

THE ESTONIAN SCHOOL SYSTEM IS BASED ON THE PRINCIPLE OF AN INCLUSIVE COMPREHENSIVE SCHOOL

Each country establishes its education system based on its constitution and its social and cultural traditions. In Estonia, responsibility for the school network is shared between the state and municipalities. The state and local authorities are required to maintain a sufficient number of educational institutions, and tuition fees must not be charged in public general education schools. Private schools may also be established in accordance with the law.

The closure of small rural schools, the separation of upper secondary education from basic schools, the establishment of state upper secondary

schools and the state's role in supporting private schools continue to generate social tensions. The question of whether the gradual abolition of a segregated school system and the transition to Estonian-language instruction are consistent with children's rights has been resolved by the Supreme Court.¹¹ The court found that neither the constitution nor international law binding on Estonia grants an individual the right to require the state to provide basic education in a language other than Estonian.

Parents often ask how to understand the constitutional provision that gives them a decisive say in choosing their child's education. The answer may not always be readily accepted: a parent cannot demand the establishment of a school that they consider most suitable for their child, permission for the child to study exclusively at home or in English, or the right to opt out of certain compulsory subjects. Under the constitution and international law, parents have the right to make choices within the existing school system.¹²

For many years, the impact of pupils' socio-economic background on learning outcomes in Estonia was lower than the OECD average.¹³ Unfortunately, this advantage is diminishing or has already been lost.¹⁴ Compared with the previous PISA survey in 2018, the proportion of socio-economically disadvantaged pupils performing below the baseline level increased by 8.5 percentage points. It has also been found that educational stratification has persisted for considerably longer.¹⁵ The situation is reversed when it comes to top performers. Only 6% of pupils from less affluent families are able to cope with the most complex tasks, whereas nearly a quarter of pupils from more affluent families are top performers.

Demand for so-called elite schools has not declined.¹⁶ Educational researchers and child psychologists confirm that entrance tests for first grade generally do not identify children with higher cognitive ability, but instead reflect the extent of home support and pre-school preparation. It is difficult to find a legal justification for basic schools that select pupils through testing: neither the Basic Schools and Upper Secondary Schools Act nor the national curriculum for basic schools



provides for specialised curricula at this level; schools may shape their profile and fields of study within the national curriculum, but this does not create a basis for selective admission. There is therefore no basis for treating certain schools differently on the grounds of the choices they have made.

Every basic school in Estonia must be good enough to provide each child with the best education suited to their abilities. Children should therefore have equal educational opportunities regardless of their place of residence, mother tongue or home background. The aim of the comprehensive basic school is to create opportunities for every pupil in every school, considering their different abilities, interests and backgrounds. Pupils with higher ability must be given sufficiently complex and challenging additional tasks, while those experiencing difficulties must receive support and adjustments.

If a pupil shows signs of giftedness, the school must provide an individual curriculum and, where necessary, additional instruction by subject teachers or other specialists through educational programmes or institutions (Basic Schools and Upper Secondary Schools Act, Section 37(4)). Unfortunately, the system established by the legislator does not function particularly effectively.¹⁷ Over the years, the greatest difficulties have concerned the organisation of education in accordance with children's needs: support services have been inadequately arranged and special classes, including smaller classes, have not been established.¹⁸

The Chancellor of Justice's casework has shown that the creation of a learning environment that meets pupils' needs is hindered, among other factors, by excessively large classes. The larger the class, the more difficult it is for a single teacher to take account of pupils' different needs and adapt instruction.¹⁹ It is also more difficult to monitor pupils and identify problems.

The maximum class size in basic school is 24 pupils (Basic Schools and Upper Secondary Schools Act, Section 26(1)). By law, the owner of the school may, in exceptional circumstances, at the proposal of the head of the school and with the approval of the board of trustees, increase the number of

pupils beyond this limit for one academic year in a specific class, provided that all health protection and safety requirements are met (Basic Schools and Upper Secondary Schools Act, Section 26(3)). Unfortunately, in several schools the exception has become the rule, and class sizes consistently exceed the statutory limit.²⁰

Several cases examined by the Chancellor of Justice have shown that adapting instruction – for example, by forming a smaller class for pupils with special educational needs – is not possible because all school premises are already in use. When assigning a school on the basis of a child's place of residence, the local authority, as the owner of the school, must consider the school's actual capacity and needs, including the possibility of forming smaller classes if necessary. The aim of inclusive education is commendable, but shortages of teachers and other specialists, combined with limited space, tend to undermine the rights of all pupils.

Excessively large classes and the overuse of school premises to the limits of capacity also damage the image of the comprehensive school and increase educational stratification. A child may be enrolled in a private school with smaller classes, but given the tuition fees generally charged by private schools,²¹ this option is accessible primarily to higher-income families. Private schools have the right to select pupils, and in practice there have been cases where, if problems arise – for example, if a child develops special educational needs – the school terminates the contract or declines to renew the annual contract. There have also been unusual cases in which parents have chosen a Christian private school for their child, only to find that the religious instruction included in the school curriculum does not align with their worldview. The Chancellor of Justice has had to respond to the question of whether parents have the right to demand that their child be exempted from studying that subject.

PUPILS' AND TEACHERS' RIGHTS AT SCHOOL: WHERE DOES FREEDOM END AND OBLIGATION BEGIN?

Numerous rights and obligations of pupils and teachers are laid down in laws and regulations. The

way these are implemented largely determines a pupil's academic progress and willingness to attend school.

Laws and regulations are, and must be, abstract to some extent. National legislation cannot regulate in detail everything that takes place in schools. Schools and teachers inevitably retain discretion in deciding how to organise specific matters. Nevertheless, decisions that are significant for the realisation of the fundamental right to education must be taken by the Riigikogu, and the scope for delegating such decisions is limited (Constitution, Section 3(1)).²² Basic schools and upper secondary schools do not have constitutionally guaranteed autonomy in the same way as universities do (Constitution, Section 38(2)). The Chancellor of Justice casework shows that schools, owners of schools and parents often have markedly different understandings of how to implement the general guidelines set out in legislation.

There are numerous examples of rights and obligations on which pupils and parents have struggled to obtain clarity. We highlight those that have remained unresolved for years.

CHALLENGES IN SCHOOL LIFE: HOMEWORK, RESITS AND SMART DEVICES

One of the most long-standing and complex issues concerns study load.²³ More specifically, the problem lies in the large volume of homework and the clustering of tests within a short period, usually a single week. It is primarily pupils who turn to the Chancellor of Justice with concerns about the organisation of tests.²⁴

The Basic Schools and Upper Secondary Schools Act (Section 25(4)) provides that, in planning and implementing instruction, schools must ensure that a pupil's study load is age-appropriate and manageable, allowing time for rest and leisure activities. Schools must therefore ensure that teachers take this rule into account when planning instruction. Achieving a lawful study load is possible only if teachers cooperate closely with one another when planning teaching. As pupils of different ages have varying abilities and skills, it may reasonably be asked whether more detailed

rules on study load could be established.

Although this is a complex task, study load and assessment cannot be left entirely to individual schools without national regulation. In an ideal situation, this might be feasible, but petitions submitted to the Chancellor of Justice and meetings with pupils show that, where no clearer limits are set beyond the general requirement that study must be manageable, overload is likely to arise. Achieving a reasonable study load may also require a reduction in the volume of instruction, a matter that has been discussed for years. Society has reached a common understanding of the optimal working time necessary to safeguard employees' well-being, and limits on overtime have been established. This principle is accepted in relation to teachers, who should not have to perform work-related tasks in their free time. Nevertheless, for years the situation has persisted in which, at least in some schools or school stages, pupils are expected to complete homework at the expense of their rest time, including at weekends, and this is regarded as entirely normal.

A pupil's study load and overall performance at school are also affected by the organisation of resits. This may appear to be a minor aspect of school life, but from the perspective of pupils and parents it is not. Section 21(7) of the national curriculum for basic schools provides that if a written or practical assignment, oral response or presentation, or practical activity or its outcome has been graded 'poor' or 'weak', or no grade has been awarded, the pupil must be given the opportunity to retake the assessment or complete an additional assignment. The procedure for resits and follow-up tasks is laid down in the school curriculum. Over the years, problems have arisen where schools restrict pupils' right to retake assessments by adopting rules that limit this right – for example, by specifying that certain tasks cannot be retaken, or by providing for different grading arrangements for resits, such as by making it impossible to obtain the highest grade for a resit, regardless of performance. In addition, the time allowed for resits is often rather short. In such cases, more time may be needed: if a pupil has been absent for an extended period due to illness or another reason, or even without valid reason, it may not be realistic to expect them to

Excerpts from pupils' submissions to the Chancellor of Justice concerning tests:

'I saw an article about a biology teacher who breached the regulation on the organisation of studies by adding a test to a week in which pupils already had three tests scheduled. Our class also considered contacting you because we are very often given more than three tests a week as well: sometimes four, sometimes five, etc. This is very difficult and burdensome for all of us, and I believe our class is not the only one in this situation.'

'According to an extract from eKool, we have five tests next week (the extract is attached). Tests are also scheduled on Mondays and Fridays (the biology test has been incorrectly entered for Tuesday), even though these subjects are not taught only on Mondays or Fridays. What should I do if, when speaking to the teacher, the child is told that it is not the teacher's fault that the syllabus is so extensive? Refusing to take the test, however, leads to the teacher's displeasure, and I then have to take the test later outside lesson time (that is, next week after lessons, during a resit lesson). We are also told that the pupil is simply being difficult and insisting on their rights if they dare to refuse to take the test.'

'I am contacting you because I am concerned that there are too many tests in one week at school. Specifically, we have four tests in one week, two of them on the same day, and one is on a Monday, even though that subject is not taught only once a week.'

master the intervening material and complete all outstanding tasks within, for example, ten days. As the state has established the right to resit assessments but has set only minimal conditions for exercising that right, it may be asked whether more detailed and clearer rules should be established at national level to protect pupils' rights.

An important document for pupils' and teachers' rights and obligations is the school's internal rules. These are established by the head of the school and are binding on pupils and school staff (Basic Schools and Upper Secondary Schools Act, Section 68(1) and (2)). The internal rules must include provisions on notification of assessment (Section 29(4)), notification of absence from studies (Section 35(3)) and the use of surveillance equipment (Section 44(6)), as well as other matters provided by law. Schools have also laid down rules on dress, behaviour and other matters. Legislation does not provide guidance on the scope or substance of issues regulated at schools' discretion.

The internal rules may establish procedures for the use of items and substances that are not prohibited by law in schools but whose use the

school nevertheless wishes to restrict (Section 44(1)3). If a pupil uses such items or substances in breach of the internal rules, the school may temporarily confiscate them (Section 58(3)6)). The law does not specify what such items or substances may be. Each school decides which items or substances are subject to restrictions and under what conditions they are permitted.

In practice, the use of smart devices in school has become a particular concern. The Chancellor of Justice has explained that the right granted to schools to temporarily confiscate a smart device or other item is consistent with the constitution.²⁵ A school cannot permit a pupil to disrupt a lesson by using a smart device in a way that prevents both the pupil and others from learning. Furthermore, the use of smart devices at school has been associated with reduced concentration and academic performance, health problems and cyberbullying.

If the use of smartphones in school concerns not only classroom discipline but also children's health, development and broader patterns of use, the question arises as to how differences in rules between schools can be justified. Under the constitution, freedom and the

responsibility that accompanies it are the rule, and restrictions are exceptions that require justification. Each restriction must pursue a constitutionally legitimate aim and be the most suitable and least restrictive means available, and compliance must be enforceable. Pupils from different schools interact with one another, and substantive exclusion from peer communication may adversely affect a child's rights. For these reasons, discussion of the need for uniform rules is justified, while still leaving teachers free to use smart devices in teaching. Learning to use artificial intelligence wisely, critically and ethically is possible only through the use of smart devices and computers.

The question of uniform rules has also arisen in other areas. For example, the regulation of religious symbols and related dress in schools should be addressed in a timely manner. At present, each school may regulate dress through its internal rules if it so wishes. Such regulation is generally based on aesthetic considerations, the fostering of a sense of community, the preservation of tradition and similar factors. However, clothing may also express worldview and religious beliefs. The state must ensure that instruction in public schools is impartial and neutral²⁶ and does not promote any particular religion, while each state also has the right, in designing school curricula and resolving organisational matters related to schools, to take account of its cultural and historical traditions.²⁷

The internal rules may also establish measures to protect the mental and physical safety and health of pupils and teachers (Basic Schools and Upper Secondary Schools Act, Section 44). Relevant measures, such as directing pupils to distance learning, may restrict fundamental rights, including the right to education. It is therefore appropriate to consider to what extent such measures should be established by law or whether schools and owners of schools should at least be provided with more specific frameworks for introducing them.

Although attendance at upper secondary school is voluntary, it is questionable whether a pupil may be expelled for breaching the internal rules. The school's primary obligation is to support the pupil – the rules on providing support laid

down in the Basic Schools and Upper Secondary Schools Act also apply at upper secondary level. As expulsion constitutes a significant restriction of the fundamental right to education, a pupil must not be expelled too readily or for every breach of the internal rules. By comparison, under the Universities Act (Section 17(5), (6) and (7)), a higher education institution may exclude a pupil from studies if the pupil has seriously breached the conditions and procedures of study, endangered other pupils or other persons through their conduct, or committed a serious offence against academic integrity.

SUMMARY

Although many pupils in Estonia continue to leave school successfully and feel satisfied with their education, too many still encounter difficulties or drop out altogether. Schools are sometimes expected to meet demands that exceed what they can realistically achieve, and the unfair categorisation of schools as 'good' or 'bad' adds to the pressure, often in practice dividing schools that can select pupils from those that cannot. Tensions are further heightened by the recurring tendency to assign ever new obligations to schools, including quasi-policing functions, and by inconsistent supervision of compliance with standards. However clear and fair the rules may be, they are of little use if they are not implemented in practice – for example, if there are not enough people able and willing to work with children. Too often, young people with serious concerns reach the support they need too late, when they have already been absent from school for a long time, relationships have deteriorated significantly, and their self-esteem or health has suffered. The need for support must be identified much earlier. Similarly, giftedness and other specific characteristics must be recognised as early as possible, and care must be taken to ensure that every child living in Estonia develops into the best version of themselves. Schools and teachers inevitably play an important role in this regard. Every child has the right to receive the best education suited to their abilities, regardless of their home language, health, parents' income or level of education.

REFLECTION

Ivo Visak

Systemic shortcomings. Does a young person studying in Kärkla have the same educational and extracurricular opportunities as a young person in Tallinn? As a school leader working in Saaremaa, I would very much like this to be the case, yet in reality access to diverse extracurricular activities and learning opportunities for gifted pupils – such as participation in university-based educational programmes at upper secondary level – is limited. This is understandable given geographical particularities, but the state, municipalities and the education system as a whole must create compensatory solutions – for example, by providing transport and accommodation support.

An even broader problem is the shortage of support services: there are not enough school psychologists, special education teachers or social pedagogues. Waiting lists for assistance, particularly in cases involving mental health disorders, are long. Support that is needed immediately is often available only after three months, which may endanger a pupil's mental and physical health. What is required is not only healthcare reform but also reform in education policy: all children must be guaranteed access to professional support, regardless of their family's financial means or place of residence.

It bears repeating that it is essential to invest in support specialists – special education teachers, educational psychologists and social workers – in order to provide assistance both to gifted pupils and to those experiencing difficulties.

The past teaches, the past lingers. Why do certain school practices persist even though it has been pointed out for decades that they are not healthy for teachers or pupils? For example, the accumulation of homework in the context of the AI leap is absurd: will teachers soon be assessing homework produced by pupils' artificial intelligence with the help of their own artificial intelligence? It would be more sensible to find ways to manage new technologies and harness them to support learning, under teachers' guidance.

We must accept that times have changed. A new generation is different and requires a different approach. Schools cannot assume that all pupils arrive with prior knowledge of certain learning styles, communication practices or behavioural norms. Although the primary task of the school is teaching, schools must still provide values education. Children who do not acquire the skills needed for life at home must gain them at school, with the support of caring and attentive teachers.



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