

EUROPEAN VOLUNTEER CENTRE
The Voice for Volunteering in Europe



CENTRE EUROPEEN DU VOLONTARIAT
Le Porte-Parole du Volontariat en Europe

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AVSO Association of
Voluntary Service
Organisations

COUNTRY REPORT ON THE LEGAL STATUS OF VOLUNTEERS IN ESTONIA

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GENERAL DEFINITIONS OF VOLUNTEERISM

VOLUNTEERISM: refers to all forms of voluntary activity, whether formal or informal, full-time or part-time, at home or abroad. It is undertaken of a person's own free will, choice and motivation, and is without concern for financial gain. It benefits the individual volunteer, communities and society as a whole. It is also a vehicle for individuals and associations to address human, social or environmental needs and concerns. Formal voluntary activities add value, but do not replace, professional, paid employees.

VOLUNTEERING: can occur informally (for example neighbourly "helping-out"), or within the structures of a non-profit organisation. It is often (but not always) of a part-time nature. It may occur over one day or many years in a range of different fields. It is good practice to ensure that formal volunteers are covered by appropriate accident, health-care and third party liability insurance, that they receive appropriate training and management, as well as the reimbursement of all out-of-pocket expenses.

FULL-TIME VOLUNTARY SERVICE: refers to specific, full-time project-based voluntary activities that are carried out on a continuous basis for a limited period of time. Voluntary-service activities may occur at home and abroad. It is good practice to ensure voluntary service volunteers are afforded appropriate social protection, such as accident, health-care and third party liability insurance. Volunteers should also receive appropriate training and management, reimbursement of out-of-pocket expenses as well as appropriate accommodation and subsistence allowances as agreed between the volunteer and the non-profit organisation.

Background to the Project

This is one of a series of 'country-reports' produced by the Association of Voluntary Service Organisations (AVSO) and the European Volunteer Centre (CEV). They aim to provide comprehensive and practical information on volunteers and the law in a number of current and future European Union Member States.

Each country report explores, in a standardised format, some of the key questions that face volunteers and volunteer-involving organisations in relation to their legal positions.

Important: the information contained in each country report is subject to resources and quality of information available. It is also subject to frequent change.

If you wish to comment on any of the country reports, or contribute to their annual updates, CEV and AVSO would be delighted to hear from you.

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1. Concept of Voluntary Work in Estonia

The concept of volunteerism in Estonia so far has only been developed by organizations that carry out voluntary actions. Within these organizations a volunteer is considered to be an individual who provides services to or for the benefit of another person by free choice and without compensation. This definition is considered the basis for carrying out voluntary work and to consider somebody as a volunteer. Yet, one must keep in mind that there are some reservations about this definition. Providing services means that a person who donates money or other items is not considered to be a volunteer. The receiver of the services might be either an individual or a legal person or even a community as a whole. Acting under a free will as a feature of voluntary work helps to distinguish it from work that is formally also for the benefit of another person and that is made without remuneration, but what is forced by legislation (for example, the work done by persons held in prison is not considered voluntary work under this concept).

2. Volunteerism and the Law

At the moment in Estonia there is neither general regulations nor a special law regulating volunteerism or a legal status of volunteers. The only legislative act that uses the term “volunteer”, is the decree of the Ministry of Justice that regulates issues connected to voluntary assistants of the criminal officers whose task is to help the imprisoned criminals to re-socialize. But there is a problem about this legal act – this legal definition is given only as regards volunteering within this one specific field and it cannot be applied in other fields. Secondly, the legal act does not have correct delegation as the basis. And thirdly, it does not solve all the practical problems that have arisen as regards volunteering (reimbursement of expenses, economic support) and it is still in contradiction with labour and taxation laws.

Yet, Estonian legal environment as a whole does not approve a situation when a whole field is regulated partly and only by a decree. So there is a social necessity to have a special law to regulate volunteerism as a whole as regards all the fields where voluntary work can be used.

3. Reimbursement of Expenses

There are no legal provisions concerning reimbursement of expenses to volunteers in relation to the activities performed by them. Estonian legal framework makes it possible for organizations to cover expenses of the volunteer including travel costs and training only in case those costs are clearly related to the main activities of the organization (it means that the costs must be made in the name of the organizations). In case these costs are considered as costs not related to the activities of the organization, these costs are subject to taxation as fringe benefits. So in general the volunteer is responsible for covering all his/her expenses (food,

lodging or transport). If the organization wishes to cover the volunteer's costs, it has to be done through a labour contract or some civil contract.

In practice sometimes there are written agreements concluded between the organization and the volunteer, but in some cases there is no written contract at all and in this case it is often difficult to prove what kind of relationship there was between the individual and the organization. In Estonian legislation and court practice there is a presumption that if a person works for someone it is considered a labour relationship unless the opposite is proved. However as soon as there is a contract and some kind of payment made by an organization to a private person, the organization is liable to pay taxes to the state.

As already mentioned, Estonian tax legislation does not foresee any provisions related to volunteers either. Every situation is solved on a case-by-case basis. Any payment (either monetary or non-monetary) is considered to be an object of taxation by Estonian tax laws.

4. Welfare Protection of Volunteers

a) Volunteer Insurances

There is no legal provision concerning volunteer insurance. The protection of volunteers against risks of accident, illness and third party liability related to their volunteer activity fully depends on the organization. If the organization does not offer insurance, the volunteer should provide it for his or her personal and others security.

b) Entitlement of volunteers to Public Health and Social Protection

Regarding health assistance, unemployment benefits and family allowances volunteers are not included in the existing legal provisions as a separate group. The named assistance, allowances and benefits depend upon whether a volunteer is subject to those allowances under some other category (e.g. as a citizen of Estonia, as a student, etc). For promoting voluntary work the future legislation should consider volunteers a special group to provide the mentioned benefits.

5. Foreign Volunteers in Estonia

There are no specific provisions regarding volunteers in the immigration legislation, so general legislation is applied. Foreigners Act regulates the entry of foreigners into Estonia, their stay, residence and employment in Estonia and the bases for legal liability of foreigners. At the same time The Citizen of European Union Act regulates the bases for stay in Estonia of citizens of the European Union and their family members.

Volunteers coming from abroad therefore have to follow the general Estonian legislation on migration. Volunteers from EU countries do not need visa to enter Estonia. However the residence permit is required for the stay over 3 months (for the

citizens of UK over 6 months). So volunteers must present in person the application to the Estonian migration authorities within the first month since their arrival to the country to apply for residence permit. For volunteers coming in the frame of EVS program the legal ground for granting residence permit is the agreement between EU and Estonia about participation in the YOUTH program, where EVS is one part of it. The same rule will apply in case of official agreement between Estonia and any other EU state on youth exchanges, where voluntary service can be presented as a form of it.

For volunteers coming without European program a residence permit may be issued, on the condition that a person's legal income ensures his or her subsistence, to any person who is entitled to get the permit under the provisions of the Foreigners Act and whose legal income corresponds to the amounts established by the Government of the Republic. Upon application for a residence permit volunteer has to certify the amount of his/ her legal income during the six months preceding the submission of the application. An applicant's legal income during the six months preceding the submission of the application must amount to total of twelve months average gross wages in the Republic of Estonia. At the moment the gross wages in Estonia is equal to 500 Euro a month.

A residence permit may be issued for up to two years if the issue of the residence permit is justified and does not damage the interests of the Estonian state. The residence permit may be extended by two years.

If a residence permit has been issued on the condition that the legal income ensures volunteer's subsistence. Volunteer is not permitted to work (in official sense) in Estonia and a work permit will not be issued to volunteer.

The number of foreigners immigrating to Estonia is limited. The annual immigration quota is the quota for foreigners immigrating to Estonia which shall not exceed 0.05 per cent of the permanent population of Estonia annually. The immigration quota does not apply to volunteers if they are a citizen of the European Union, Norway, Iceland, Switzerland, the United States of America or Japan.

If the immigration quota does apply to volunteer, but the arrival in Estonia is in the national interest for developing the economy, education, science or culture the Minister of Internal Affairs may, on the justified proposal of the Minister of Economic Affairs, the Minister of Finance, the Minister of Culture or the Minister of Education exclude volunteer from the immigration quota.

For detailed information on residence permit rules and application procedures visit <http://www.mig.ee/eng/residence/>

Estonian citizens going abroad as volunteers do not need visa for the period less than 3 months when they go to any EU country (6 months in UK). But they do need a residence permit for the longer stay. There is no general rules for residence permit application, each country follows its own national regulation about migration.

6. Governmental Action for Promotion For Promotion – Past and Future

At the moment there are no political and/or government actions planned as regards volunteerism. But various organizations have shown their initiative to solve the above-mentioned problem of uncertainty and in April 2003 in Tartu there took place

“The first Forum of Volunteers” where lots of problems were discussed by the participating organizations and volunteers.

Working out a concept and the draft of the law on volunteering definitely needs political actions in the future both for promoting voluntary work and for working out the correct legal basis.

A certain number of meetings between volunteers, NGOs and officials from the Ministries have been organised to discuss the coordination and regulation of volunteer work. The latest roundtable of volunteer work legislation in February 2005 was organised by Tartu Volunteer Centre together with the Ministry of Interior, which has a small unit dealing with civil society issues. The Ministry of Interior is also funding a legal report on the needs and possibilities of volunteer work regulation, due to be ready in June 2005.

7. Final Remarks, Overview and Recommendation

At the moment volunteerism does not have correct legal ground in Estonia and therefore volunteers must work in legal uncertainty. Because of this uncertainty it is also difficult to promote and develop voluntary actions. Right now, Estonian volunteers are not protected by law and though society definitely needs their services, it is too easy to contradict some law.

Estonian society definitely needs a special law to regulate all the aspects of voluntary work. The law must give a certain legal definition to volunteering and volunteer and it also must remove contradictions that there are now when other laws are applicable as regards volunteering.

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