



**Comments by the Legal Information Centre for Human Rights
to the National report submitted in accordance with paragraph 15 (a)
of the annex to Human Rights Council resolution 5/1 – ESTONIA
(A/HRC/WG.6/10/EST/1)**

January 2011

These comments are to highlight the situation of ethnic minorities in Estonia. They are drafted by the Legal Information Centre for Human Rights (Estonian human rights NGO). More information on: <http://www.lichr.ee>

As of 1 January 2010 total population of Estonia was 1,340,127. Ethnic non-Estonians make up 31.2% (417,729) of all population. The biggest group of them were ethnic Russians (25.6%), Ukrainians (2.1%) and Byelorussians (1.2%). According to 2000 census most of ethnic minorities (both Russians and non-Russian ethnic groups) are native speakers of Russian (30% of all population). In the capital city of Tallinn ethnic Russians and other minorities make up about 45% of the population (and more than 80% in Ida-Viru county).¹

¹ See <http://pub.stat.ee>

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National minorities, integration, citizenship, refugees

Cultural autonomy. Status of a national minority

Facts:

- Estonia adopted the National Minorities Cultural Autonomy Act in 1993. The first autonomy bodies were created by Swedes and Finns in early 2000s. In 2009 the Ministry of Culture formed an expert group to discuss possible amendments to this act.²
- The National Minorities Cultural Autonomy Act and the instrument of ratification of the Framework Convention for the Protection of National Minority (FCNM) both include an identical definition of a “national minority” (only Estonian nationals can be recognised as such). However, non-citizens may take part in the activities of a cultural autonomy (but without the right to participate in decision-making).
- A recent attempt to found a Russian cultural autonomy failed due to the critical position of the Ministry of Culture regarding capacities of an applicant organisation.³
- Estonia does not have any other acts specifically dedicated to national minority members.

Comments:

- International and national experts have repeatedly criticised the National Minorities Cultural Autonomy Act as a clumsy and inefficient tool to address the pending problems of the minority population. Most of experts advocated for the adoption a new comprehensive act to enlist and guarantee basic minority rights.

² Directive of the Ministry of Culture of 28 June 2010 no. 28L

³ Directive of the Ministry of Culture of 26 February 2009 no. 69

- Some 1/3 of Estonian population are ethnic non-Estonians and 1/6 of the population are long-termed residents of Estonia without Estonian citizenship (see below). That means that about half of minority population falls outside the scope of the definition of “a national minority” (as provided for in the National Minorities Cultural Autonomy Act and in the instrument of ratification of the FCNM).
- The situation regarding non-registration of a Russian cultural autonomy was to put to prove the low practical applicability of a law in case of a minority group which makes up 1/4 of the total population of the country.

Recommendations:

- To abolish citizenship criterion from the official definition of “a national minority” (also in the instrument of ratification of the Framework Convention for the Protection of National Minority)
- To adopt a new comprehensive act to enlist and guarantee basic minority rights
- To address adequately in legal terms an outstanding position of a Russian minority as a second to Estonians ethnic group who speaks a second to Estonian language of social communication.

The problem of mass statelessness. Access to citizenship

Facts:

- According to the Population Register, as of 2 January 2010 aliens make up about 16% of all population, including 7.4% of persons with undetermined citizenship (i.e. stateless former Soviet citizens) and 8.5% of foreign citizens (mostly citizens of the Russian Federation). The number of residents of undetermined citizenship was 101,041. However, naturalisation in 2007 was as few as 4,228, 2008 – 2,124, 2009 – 1,670,⁴ 2010 – 1,184.⁵ The Government claims that some surveys confirm that “the reasons for not applying for citizenship are mostly practical in nature and the increased difficulties for travelling to Russia after obtaining Estonian citizenship is one major reason” (national report, section 111).
- The Citizenship Act foresees simplified naturalisation procedure for minors under 15 (in case of naturalisation of a parent or if both parents are stateless), disabled (they can be permitted not to pass all or some parts of tests), persons born before 1 January 1930 (no written part of the language test; however, a written test on Constitution and Citizenship Act shall be passed). The minimal requirements to Estonian language test are equal to B1 (both oral and written proficiency is checked at special exams).
- Estonian government has recently conducted several small scale information campaigns for aliens willing to naturalise.

⁴ See <http://www.vm.ee/?q=en/node/5694>

⁵ Data provided on request by the Police and Border Guard Board (24 January 2011)

Comments:

- Most of aliens are those settled in Estonia during the Soviet era and not recognised as Estonian citizens when Estonia regained independence and the USSR collapsed (or their children). In legal terms in 1991 they become immigrants without changing a place of residence.
- B1 level language requirements are very demanding for older generations. As for special procedures, simplified language test is available for those who are now aged 81 or older.
- Children born to stateless parents are entitled to a simplified naturalisation procedure but not to be recognised as Estonian citizens (compare: Article 7 (1) UN Convention of the Rights of the Child).
- Children aged 15-17 shall pass all naturalisation tests.
- According to Integration Monitoring studies, in 2005 74% of stateless people would like to receive Estonian citizenship, in 2008 – 51%.⁶ Experts believe that this is a result of tensions between minorities and the Estonian State after the April 2007 events (removal by order of the Government of the Republic of the WWII monument from the centre of Tallinn which resulted in large-scale protests on behalf of Russian-speaking minorities).
- According to Integration Monitoring study of 2008, Russian-speaking minority members believe that for ethnic minorities the main reasons for not participating in naturalisation procedures are poor Estonian language proficiency (92%) and demanding naturalisation tests (88%). Only then “practical reasons for not applying” followed.⁷
- Information campaigns for aliens willing to naturalise were not successful considering very low numbers of those naturalised.

⁶ See http://www.meis.ee/raamatukogu?book_id=196, p. 129

⁷ Ibid, p. 131; (results for the answers: “yes, definitely” + “this also”)

- In recent years the Parliament did not support several initiatives of the opposition Centre Party to simplify naturalisation for some categories of aliens.⁸

Recommendations:

- To ratify the Convention on the Reduction of Statelessness (1961) and the European Convention on Nationality (1997)
- To waive naturalisation tests for older generation and for minors aged 15-17
- To simplify naturalisation tests for those settled in Estonia during Soviet era and their children
- For stateless minors born to stateless parents in Estonia to substitute simplified naturalisation procedure with a procedure of recognition as an Estonian national
- To enhance informing alien population about naturalisation procedures and of bonuses to be naturalised

Democracy, freedom of speech, freedom of association

Democratic participation

Facts:

- Every seventh resident of Estonia is not a citizen of the country (half of all ethnic minority members - see above). The overwhelming majority of non-citizens are ethnic Russians and other Russian-speaking minorities settled in the country after WWII during

⁸ Bills no. 126 and 306 (XI Riigikogu) to introduce in Estonia the *ius soli* principle; Bill no. 113 (XI Riigikogu) to simplify the naturalisation requirements for older people and for some other groups.

the Soviet era (or their children). The Estonian state treats them as immigrants: They were not recognised as citizens of Estonia in 1991 when the country regained independence.

- According to valid legislation non-citizens (including stateless) cannot be members of political parties. They cannot work as public servants. However, exceptions were made for EU citizens. Non-citizens cannot take part in national (parliament's) election. However, third country nationals can vote at local self-government's council election. EU citizens can also be elected to these councils. Only Estonian and other EU citizens enjoy the right of both passive and active suffrage at European Parliament election.⁹
- People of minority origin are modestly represented in a political leadership of the country. Thus, after 1992 only once a person of minority origin was a member of the Government of the Republic (as a minister without portfolio).¹⁰ There are very few people of minority origin in the boards of five political parties represented in the Parliament. In recent years ethnic minorities make up no more than 7-8% of all MPs.¹¹

Comment:

- In Estonia people of minority origin (mostly long-termed or multigenerational residents) do not take an adequate part in democratic processes. Among main reasons are: lack of Estonian citizenship, poor Estonian language proficiency and/or exclusive approach of the political leadership.

⁹ Political Parties Act (Article 5 (1)), Public Service Act (Article 14), national report (sections 38, 46)

¹⁰ Mr Eldar Efendijev, see <http://www.valitsus.ee>

¹¹ See <http://www.riigikogu.ee>

Recommendation:

- In addition to measures aimed at promoting naturalisation (see above) and mastering the Estonian language, it is important to speed up integration of minority members in political and social life.
- To provide third country nationals (non-EU citizens) with the right of passive suffrage at local self-government's council election and of active suffrage at European Parliament election.
- To provide third country nationals (non-EU citizens) with the right to work as low-ranked public servants.

Discrimination, racism, xenophobia

Fight against discrimination. Employment

Facts:

- Estonia adopted the Gender Equality Act in 2004 and the Equal Treatment Act (to combat *inter alia* ethnic and religious discrimination) in late 2008. Up until now there is almost no discrimination related case law.¹² In 2003-2009 no crimes were registered on the grounds of Article 152 (violation of equality) of the Penal Code.¹³
- The Chancellor of Justice resolves discrimination disputes and implements the principles of equality and equal treatment; however, he is able to report about very few activities in

¹² See <http://www.nc.ee>, <http://www.kohus.ee/kohtulahendid/index.aspx>

¹³ See <http://www.just.ee/orb.aw/class=file/action=preview/id=49210/Kuritegevuse+andmed+2003-2009.xls>

the area.¹⁴ The main equality body – the Gender Equality and Equal Treatment Commissioner – has only two staff members (including Commissioner herself).¹⁵

- In the third quarter of 2010 unemployment rate in Estonia was 15.5%. Among males it was 16.1% (ethnic majority: 12.4%; ethnic minorities: 23.3%), among females 14.9% (ethnic majority: 11.4%; ethnic minorities: 20.8%).¹⁶
- According to sociological studies there is a rise of the “unexplained gap” in the salaries of ethnic Estonian and non-Estonian males. In the early 1990s there were practically no unexplainable differences, later ethnic Estonians started to earn 10-15% more than Russians (and significantly more in Tallinn). The ethnic wage gap is equal for young and established workers.¹⁷
- The first comprehensive study of the problem of unequal treatment commissioned by the Ministry of Social Affairs was carried in 2007. 60% of surveyed ethnic Russians regarded unequal treatment as a topical problem (43% of ethnic Estonians). Minority members cited ethnic origin, the native language, lack of fluency in Estonian, and citizenship as discrimination grounds more often than Estonians.¹⁸ According to the same study the ethnic non-Estonians who were fluent in Estonian and who had had the experience of being discriminated against claimed to be disadvantaged more often than those who were not fluent when they were getting employed (41% vs. 24%), getting paid (40% vs. 14%), and being promoted (15% vs. 4%). For ethnic Estonians the relevant figures were 17, 28 and 11%.¹⁹
- For minorities proficiency in Estonian language still do not mean equal opportunities on the labour market. According to the analysis of Estonian Labour Force Studies in the

¹⁴ See <http://www.oiguskantsler.ee/?menuID=55>

¹⁵ See <http://www.svv.ee/index.php?id=550>

¹⁶ See <http://pub.stat.ee>.

¹⁷ See e.g. <http://www.mtk.ut.ee/orb.aw/class=file/action=preview/id=240702/febawb53.pdf>

¹⁸ See

http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/kogumik/Isiku_20tunnuste_20v_C3_B5i_20s_C3_B5tsiaalse_20positsiooni_20t_C3_B5ttu_20aset_20leidev_20ebav_C3_B5rdne_20kohtlemine_20Uuringuraport_1_.pdf, p. 19, 21

¹⁹ Ibid, p. 95

period 2001-2007, provided all other skills and characteristics being equal, for ethnic non-Estonians, even with a good knowledge of the Estonian language and Estonian citizenship, it would be 1.4 times more difficult (1.4 times less likely) to get a position of a manager/leading specialist as compared with ethnic Estonians.²⁰

Comments:

- In spite of lack of court cases and very limited number of complaints filed with equality bodies, quite many Estonian residents alleged to come across discrimination. The existing equality bodies and national judiciary are seemingly not efficient in the area of fight against discrimination.
- The main equality body – the Gender Equality and Equal Treatment Commissioner – is manifestly weak in terms of resources available.
- In addition to standard explanations of minority's high unemployment rate (poor language competence, lack of social capital and the sharp decline of labour force demand in those branches of economy where minority were traditionally overrepresented) the sociological studies show the growing importance of the ethnic dimension in the labour market which could also mean (latent) ethnic/linguistic discrimination.

Recommendations:

- To ratify Protocol 12 (2000) to the European Convention on Human Rights
- To enhance capacity of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner to deal with cases of ethnic and linguistic discrimination

²⁰ See <http://www.lichr.ee/main/assets/seminarestlow.pdf> , p. 24

- To organise large-scale public awareness campaigns to make the Equal Treatment Act known to the general public
- To ensure training of judges and public prosecutors to deal with discrimination cases
- To monitor on a regular basis situation in various areas of social life as regards discrimination, especially on the labour market.

Racism, xenophobia

Facts:

- In 2003-2009 only one crime was registered on the grounds of Article 151 (incitement of hatred) of the Penal Code.²¹ “Proving of a causal link between hate speech and the resulting damaging consequences is impossible in most cases and therefore such acts have been punished either as offences against person or property” (national report, section 65).
- The Security Police Board (special service) regularly mentions leaders and some civic and political organisations of Russian-speakers and Muslims in their annual reviews. They are normally mentioned because of their “suspicious contacts” with the Russian Federation and Muslim countries and organisations.²²
- There are disagreements between ethnic majority members (and the Estonian State) and ethnic minorities (especially Russians) regarding interpretation of recent history, especially in the context of the WWII.

²¹ See <http://www.just.ee/orb.aw/class=file/action=preview/id=49210/Kuritegevuse+andmed+2003-2009.xls>

²² See <http://www.kapo.ee/eng/annual-reviews>

Comments:

- Estonian criminal law is not efficient as a tool to fight racism, xenophobia and related intolerance. Hate speech may practically not result in criminal or any other procedures.
- The activities of the Security Police put under question mark government's intention to promote mutual understanding between majority and minority population and to tolerate cross-border cooperation of minority groups.
- Addressing some vulnerable topics in recent history of the country may undermine minorities' trust in Estonian State and society (e.g. official positioning of Estonian soldiers of Nazi Germany Army as fighters for Estonian independence).

Recommendations:

- To transpose the EU Framework Decision on combating racism and xenophobia (2008)
- To amend the Penal Code to make it an efficient tool to fight incitement of hatred, including hate speech
- To monitor the activities of the Security Police as regards minority communities' leaders and organisations
- To reconcile majority' and minority' historical views to promote shared core values in the society.

Persons with disabilities and elderly persons

Access to services, access to justice

Facts:

- Estonian and Russian-speakers are more or less proportionally represented among elderly people and disabled.²³
- According to Estonian legislation all information for consumers (including medicaments and in the context of providing medical services) shall be provided in Estonian. Translation into minority language is permitted but not obligatory. The law does not address issues related to the use of minority languages in hospitals, pharmacies, or in the context of supply of dangerous goods.
- The valid law provides lower-income strata members with the right to apply for state legal aid. An application shall be submitted to court only in Estonian. Residents and citizens of the EU can also submit documents in English.²⁴
- From 1 October 2009 the Register of Communicable Diseases started to collect data on HIV-positives. In 1 October 2009 - 7 June 2010 115 persons were registered as HIV-positive. Among them 90% were ethnic Russians, 8% - ethnic Estonians and 2% - others.²⁵
- According to official data, in 2008 a total of 67 cases of death associated with drug use were registered in the Death Register of the National Institute for Health Development. The majority of those who died in 2008 lived in Tallinn and nearby in Harju county (46), and Ida-Viru county (16). Most of the deceased were (ethnic) Russians (52).²⁶

²³ See <http://pub.stat.ee>

²⁴ State Legal Aid Act (Article 12 (5))

²⁵ Data provided on request by the Ministry of Social Affairs (7 June 2010)

²⁶ See http://www.emcdda.europa.eu/attachements.cfm/att_112021_EN_NR_2009_ET.pdf , p. 33

Comments:

- Russian-speaking persons with disabilities and elderly persons (as well as minors) may face serious language constraints while they often do not speak Estonian. In general in hospitals, pharmacies and in some shops oral Russian is used only if staff members both speak the language and are agreed to use it. Conflicts over use of languages in medicine are regularly reported by local Russian-language media.²⁷ Russian-speakers make up some 1/3 of all population of the country.
- Persons with disabilities and elderly persons are traditionally overrepresented among the poor. Estonian courts shall be addressed in Estonian (some exceptions were made for prisoners). Needy non-Estonian speakers have serious problems in access to courts and state legal aid while they should apply in written in Estonian.
- The problem of HIV/AIDS and drug addiction has a noticeable ethnic dimension in Estonia.

Recommendations:

- To introduce more flexible language policies to meet the basic interests of large groups of the population who cannot learn Estonian due to age and disability constraints
- To consider ethnic dimension of HIV/AIDS and drug addiction problem in Estonia while planning measures in the field.

²⁷ See e.g. <http://www.dzd.ee/?id=250362>

Education

Publicly funded education in Russian

Facts:

- The school system is heavily influenced by low birth rates in Estonia.
- At the moment pre-school and general school education is provided in both Estonian and Russian. Publicly funded higher education is provided almost exclusively in Estonian.
- According to Statistics Estonia in 1991 students of Russian schools made up 37% of all school students, while in 2009 they were as few as 19%.²⁸ According to Ministry of Education and Research in 1993/94 academic year 17% of all higher education students studied in Russian (both publicly funded and private colleges and universities); starting from 2002/03 their percentage is fixed at about 10%.²⁹
- As a result of a reform all publicly funded Russian-language upper secondary schools will turn to be Estonian-language educational facilities (because at least 60% of all education work shall be organised in Estonian there).³⁰ The transition period started in 2007 and shall be completed in 2011. Exceptions are possible but never been applied in practice.
- Neither Estonian Constitution nor Estonian laws and by-laws provide guarantees for preservation of publicly funded Russian-language education.

²⁸ See <http://pub.stat.ee>

²⁹ See <http://www.vm.ee/?q=en/node/5692>

³⁰ Article 21 (1) of the Basic School and Upper Secondary School Act stipulates that the language of instruction is the language in which at least 60% of the teaching on the obligatory curriculum is given.

Comments:

- In addition to bad demography, the diminishing number of school students studying in Russian is influenced by various factors, especially very limited opportunities to get higher education in Russian and official policies to promote monolingualism in almost all spheres of public life.
- Russian schools are often closed or merged by local authorities in the interests of *optimisation*. There are almost no legal opportunities for parents and students to contest in courts even the closure of a single Russian school in a particular settlement.
- Transition of Russian upper secondary schools to Estonian was started in 2007 despite protests of minority members. For instance, in 2007 this transition was completely or partially supported by 31% of surveyed Russian-speakers. More support was observed in 2008 (data by the Estonian Open Society Institute).³¹
- According to the 2009 study of the Tartu University from ½ to 2/3 of surveyed students of Russian schools which are undergoing reform reported specific linguistic problems participating in new classes in Estonian (poor understanding of the content, frustration etc).³²
- The reform is criticised by pro-minority experts as poorly prepared and lacking strategic vision. There is a risk that for Russian-language students better proficiency in Estonian will be accompanied with downgrading knowledge of subjects. Some experts also raise concerns in terms of preservation of minority ethnic identity.
- In early 1990s the educational level of ethnic Estonians and Russian-speakers was more or less the same. According to the study conducted by the Institute of International and Social Studies of the Tallinn University, there has emerged a noticeable educational gap

³¹ I. Proos, I. Pettai. Russian-speaking Youths: the Position and Expectations of a New Generation. Brief Summary of Materials of Sociological Study, Tallinn: Eesti Avatud Ühiskonna Instituut, 2008, p.28

³² See www.hm.ee/index.php?popup=download&id=10415, p. 70.

between second generation “immigrant” ethnic Russians and young Estonians as compared to their parents’ generation (i.e. first generation Russian “immigrants” and older generation ethnic Estonians). The study was conducted in the capital city of Tallinn, as well as in Jõhvi and Kohtla-Järve where Russian-speakers dominated.³³

Recommendations:

- To ratify UNESCO Convention against Discrimination in Education (1960)
- To revisit the concept of minority school reform in order to ensure more gradual and/or differentiated transition to Estonian language studies for volunteers and to provide opportunities to study in Russian for the others without prejudice to the learning of Estonian
- To restore publicly funded higher education in Russian in order to address the educational gap between various generations of ethnic Russians.

FOR MORE INFORMATION PLEASE VISIT THE DETAILED REPORT PUBLISHED ON:

<http://www.lichr.ee/main/assets/L-3-eng.pdf>

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³³ Vetik, R. and Helemae, J. (eds) The Russian Second Generation in Tallinn and Kohtla-Järve: The TIES Study in Estonia, Amsterdam University Press, 2010, p. 72