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“Statelessness: A Minority Issue”

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STATEMENT OF THE LEGAL INFORMATION CENTRE FOR HUMAN RIGHTS (ESTONIA)

"Statelessness in Estonia: Minority Issue»

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- I. In 1991, when Estonia regained its independence, the country's new political leadership decided to embark upon the restoration of the pre-WWII Estonian Republic (1918-1940). This determined the nature of Estonian citizenship policy. Thus, on 6 November 1991, the legislature¹ decided that citizenship would be extended only to the citizens of the pre-war Estonia and their descendants. During the autumn/winter of 1991-92, some Estonian politicians including a number of representatives from the Congress of Estonia², argued that all those who entered Estonia after 16 June 1940, did so illegally and therefore had no automatic right to citizenship. The final resolution followed in 1992 with the re-enactment of the 1938 Citizenship Act, which excluded the Soviet-era settlers by granting automatic citizenship almost exclusively to those who were citizens in 1940 (before the Soviet takeover) and their descendants. This caused mass statelessness among the almost 40% of the population who were not ethnic Estonian.

The main features of the 1992 citizenship regulation were the *ius sanguinis* principle and the avoidance of dual citizenship (exceptions were later made for citizens by birth). Every person who possessed or whose parents possessed Estonian citizenship before 16 June 1940

¹ The so-called Supreme Soviet which has the function of a Parliament.

² Radical nationalists' movement in Estonia before regaining independence that played important role in the forming of political climate.

had a legal claim to Estonian citizenship. No other permanent residents could enjoy this right, and hence they became stateless. The scale of the problem can be illustrated through a comparison of voting polls in two referenda: just before and just after independence. In the independence referendum in March 1991, 1,144,309 people had the right to vote.³ In the constitutional referendum in the summer of 1992, the reported number of people with such a right was 689,319, just over 60% of the 1991 figure.⁴ Consequently, approximately 454,000 adults in Estonia had been disenfranchised. In autumn of 1991, experts of the Parliamentary Assembly of the Council of Europe expressed in their Report a serious concern with the deprivation of the right to citizenship in Estonia and predicted that it could affect the character of the democratic system in the country⁵.

Thus, a substantial part of Estonia's population (mostly ethnic Russians and other Russian-speaking minorities) became stateless. In Estonian political discourse they are characterised differently from the international legal jargon as '*individuals with undetermined citizenship*' (*määratlemata kodakondsusega isikud*). This term is widely used in Estonian official documents although it has never been legally defined. Estonian authorities avoid using the term 'stateless' and the Law also does not contain a definition of 'stateless person'. Estonian law uses the term 'alien' rather than 'foreign national' to categorise a person who is not an Estonian citizen (Article 3 (1) of Aliens Act of 1993). The category of 'aliens' also applies to the aforementioned stateless persons. The Estonian identification document issued to a stateless person is also called an 'Alien's passport'.

II. Naturalisation in Estonia began in 1992 and peaked in the 1990s.

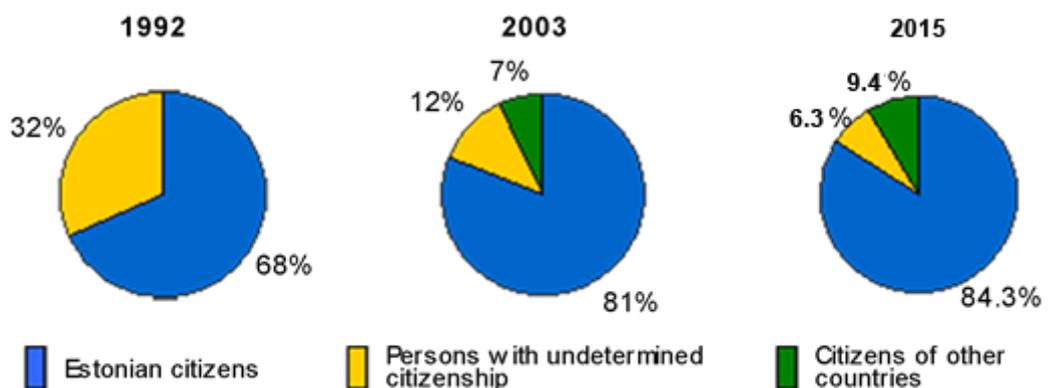


Figure 1 (Source: Ministry of the Interior, Population Register)

In general, Estonian policy on citizenship has remained conservative after the adoption of the new Citizenship Act of 1995. The mainstream political parties have regularly declared prior to national elections that, regardless of the election results, the Citizenship Act and the

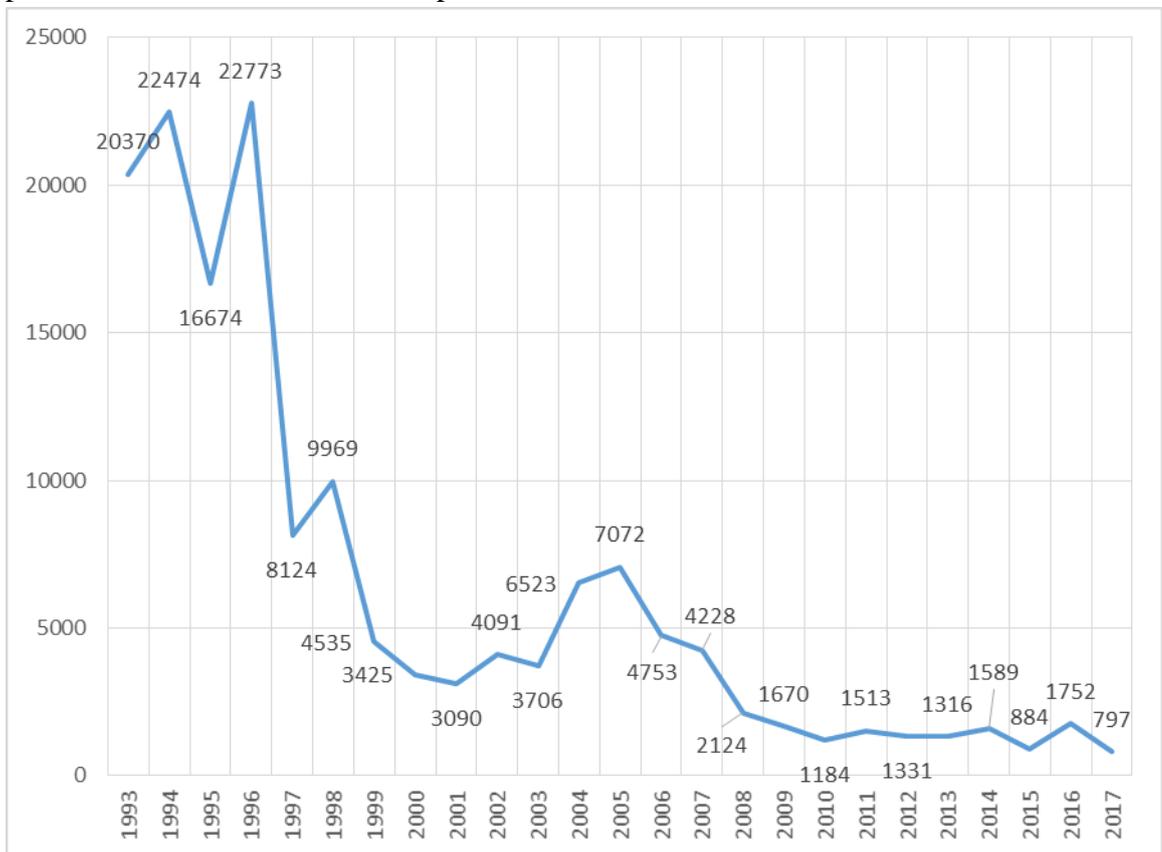
³ *Riigi Teataja*, no. 8, March 1991, 189.

⁴ *Rahva Hääl*, 26 September 1992, 2.

⁵ Pekkanen, Raimo & Danelius, Hans. Report on Human Rights in the Republic of Estonia. Doc. AS/Ad hoc-Bur-EE (43) 2. 1991, items 35-39.

corresponding policies will not be changed.⁶ The partial liberalisation of naturalisation requirements for some groups (such as the disabled, older people, and stateless children) was normally a result of pressure from the international community, like efforts by the OSCE High Commissioner and CoE, whose recommendations were openly or covertly supported by the European Commission. It is worthwhile to note that in the EU Accession Partnership of 1999 for Estonia the issue of ‘integration’ of non-citizens was already explicitly raised among short and mid-term priorities. Estonia interpreted the accession to the EU as an indication of international approval of its citizenship policies and indeed, since then, the EU and other international actors virtually stopped issuing recommendations on how Estonia should develop its citizenship policy.

Regardless of official integration policy, since the year 2000, the number of those naturalised was relatively low. Interest to citizenship of Estonia slightly soared again in the period after accession to the European Union in 2004, but its effect was brief⁷:



As of January 2018, a total of 196,182 “aliens” had a valid residence permit or right of residence in Estonia. Among these persons, there were 90,989 citizens of the Russian Federation and 80,132 people with “undetermined citizenship”. An overwhelming majority in both groups had the status of long-term residents of the EU.

⁶ Nevertheless, some mainstream parties have included vague promises regarding liberalisation of the naturalisation procedure in the pre-election materials as a reaction to national and international critic

⁷ Information that was provided on official website <http://estonia.eu> and was related to 1992-2015; related to 2016 - 2017 - <https://news.err.ee/651158/nearly-800-people-granted-estonian-citizenship-in-2017> .

There have recently been some positive changes in legislation. After many years of heated debates, on 21 January 2015, the *Riigikogu* adopted new amendments to the Citizenship Act, two of which relate to **the children's right to a nationality**. Firstly, a stateless child born in Estonia to stateless parents (with "undetermined citizenship") who have lived in Estonia for at least 5 years before the child's birth will automatically acquire citizenship by naturalisation. This rule was also applied retroactively to cover children who were under the age of 15 as of January 2016. Secondly, persons aged under 18, who have another citizenship in addition to the Estonian one, cannot be deprived of Estonian citizenship until the age of majority (restrictions regarding dual citizenship are applicable only to citizens by naturalisation). In 2016, 965 stateless children became Estonian citizens according to new simplified rules and 276 in 2017.⁸

III. The lack of nationality has the significant impact for the enjoyment of certain rights and services in Estonia. This is presented in detail in a report by Vadim Poleshchuk, published in 2004.⁹ The following summary provides a snapshot of the way in which statelessness affects people's lives: Surprisingly in most areas current situation is very similar to that of 2004.

Non-discrimination, civil and political rights

- Generally, non-citizens enjoy protection against discrimination. However, in certain areas differential treatment of citizens and non-citizens is permitted.
- Non-citizens and citizens are equal before law. However, non-citizens (as well as minorities) are overrepresented in the prison population.
- Generally, non-citizens' private and family life and home are protected. However, the authorities hold specific powers to check on the enforcement of immigration rules at non-citizens' home, work and in public places.
- Non-citizens' right to family reunification is observed to a lesser degree as compared with citizens.
- Only Estonian citizens can vote in national elections or stand for a seat in the national parliament. Non-citizens have the right to vote in local elections. Non-citizens cannot be members of political parties.¹⁰

Economic, social and cultural rights

- The educational level of non-citizens is close to the level of Estonian citizens.
- Non-citizens cannot work in public office and in some other positions. For all positions in the public domain and for many positions in private domain the law requires a certificate of Estonian language proficiency (if the person did not graduate from Estonian-language education institution).

⁸ Data provided by the Police and Border Guard Board on request.

⁹ V. Poleshchuk, Non-citizens in Estonia. Report to the 64 session of the UN CERD Committee. LICHR, 2004 (<http://www.lichr.ee/home/wp-content/uploads/2014/05/non-citizens.pdf>).

¹⁰ *Ibid.*, p. 34-35.

- Unemployment rates among non-citizens is 1.5-2 times higher comparing with Estonian citizens. This reflects the social-economic inequality between ethnic minorities and majority in the country.
- Estonian citizens and non-citizens have equal access to most social benefits and services. Certain exceptions are valid for aliens with temporary residence permits, but this does not affect the stateless population.
- Non-citizens can peacefully enjoy their property rights. However, a few restrictions are employed for their transactions with immovable property.¹¹

In the practice of the LICHR there are a number of cases illustrating additional limitations of rights for stateless persons regarding their employment opportunities and freedom of movement in the EU.

Thus, problems arise in the field of the freedom of enterprise. Stateless private businessman faces restrictions in his rights to run business, because his company, opened in Estonia, may freely relocate around European countries while its owner cannot. On the other side, the owners of companies in certain EU countries have problems with the registration of stateless employees, or workmen, as taxpayers. Taking into account such hardships, companies prefer to deal with citizens of the EU, and the situation creates an unequal treatment for the non-citizens who are permanent (or long-term) residents of the EU in the field of occupation. Differences in rights can be observed in other spheres of life, such as provision of services.

Highly illustrative is the fact that citizens of Estonia can enjoy visa-free regimes with 139 States outside the Schengen area, while Estonian non-citizens only with 15 countries.

On 24 April 2018, Committee on petitions of the European Parliament considered a petition on the rights of stateless long-term residents of Latvia and Estonia, presented at 2016 by three MEPs, Yana Toom (Estonia), Andrejs Mamikins and Tatjana Zdanoka (Latvia). With the majority of one single vote the Committee rejected the petition. Immediately after that the MEPs Yana Toom (Estonia) as well as a writer Kaur Kender (Estonia) presented a new petition that was registered by the Committee on 16 May 2018, to be considered until the end of this year.

IV. Estonia is a state party to the following relevant international conventions: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

Estonia is *not* a party to the 1961 Convention on the Reduction of Statelessness or the European Convention on Nationality; nor has it acceded to the 1954 Convention relating to

¹¹ Ibid., p.46

the Status of Stateless Persons. Thus, to date, Estonian governments have not signed or ratified any of the conventions regarding the reduction of statelessness or the rights and status of stateless persons. The reason offered by Estonian authorities is that, in their assessment, there are no stateless persons in Estonia, just a number of “individuals with undefined citizenship”; therefore, the State has no need to join these conventions. This is the case in spite of the pledge made by the delegation of the European Union in 2012 on behalf of all EU Member States which included the explicit statement that “the EU Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness”.¹² There has been no public discussion on the matter in Estonian media, except in Russian language papers and experts’ opinions. The problem has been a topic for discussion behind closed doors.

IV. Recommendations

1. Estonian government have to sign and ratify the UN conventions regarding the reduction of statelessness or the rights and status of stateless persons: the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness; also, the 1997 European Convention on Nationality.
2. The UN structures and Committees have to consider the differences in legal status of stateless people in various State parties, particularly in Europe.
3. The UN Commissioners and Committees need to support the petition on the the rights of stateless long-term residents of Latvia and Estonia presented to the European Parliament.

¹² See: <http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>