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LANGUAGE DISCRIMINATION IN ESTONIA

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I. Background information

According to the 2011 census, Estonian was a native language for 68.5 % of the population, Russian for 29.6 % and other languages for 1.9 %. Furthermore, for major ethnic groups, the language correlates with the declared ethnicity. According to the 2011 census, Estonian was the native language for 97.4 % of ethnic Estonians, and Russian was the first language for 98.7 % of ethnic Russians. Russian is also widely used by other minority groups (www.stat.ee).

According to the original version of the preamble of the [Estonian Constitution](#) (1992), the Estonian State “must guarantee the preservation of the Estonian nation and the Estonian culture through the ages”. “Estonian nation” is an ethnic term (distinct from the “people of Estonia”, this term could also be found in the preamble). In 2006, the Estonian Parliament submitted an amendment to the Constitution for adding to the said part of preamble the word “the [Estonian] language” (*keel*). § 6 of the Constitution, which defines the status of Estonian as a national/official (“state”) language, is part of Chapter I, which can only be changed in a referendum (§ 162 of the Constitution).

In 2019, the UN Committee on Economic, Social and Cultural Rights recommended Estonia “to address the systemic discrimination faced by the non-Estonian speaking population due to the language barrier in the enjoyment of the Covenant rights, particularly in the areas of employment, housing education, healthcare, access to services indispensable for ensuring an adequate standard of living and enjoying cultural rights”.

II. Russian as the language for official proceeding with matters

Constitution of the Republic of Estonia stipulates two basic opportunities for use of the language of minorities in an official context.

Firstly, the right to demand proceeding with matters in the second language in local self-governments, where Estonian is not the language of majority of population (§ 52). Speaking about proceeding with matters in the second language, Constitution refers to “procedure established by law”. Language Act of 2011 (§ 11) demanded, that local self-governments should request permit

from central government for introducing the second language into proceeding with matters. In reply to request of some towns (for instance Maardu and Narva) no such permit has ever been granted.

Secondly, under § 51 of Constitution, in local self-governments, where half of permanent residents belong to a national minority, everybody has the right to obtain from local authorities and locally situated state authorities the answers not only in Estonian, but also in the respective language of a minority (§ 10).

[Language Act](#) of 2011 did not only repeat in § 9 the norm of Constitution, but also provided a definition of “a permanent resident”, including both citizens of Estonia and foreigners, permanently residing in a concrete place of self-government, basing on permanent right of residence or residence permit of a long-term resident of the EC. Serving as the basis are data of Population Register. In § 5 (3) of the Act a representative of national minorities is defined as citizen of Estonia, having long, tight and stable connection with Estonia, whose native language differs from the Estonian language.

The current regulation has restrictive character and in view of the Estonian specificity, it renders impossible the use of respective Constitutional guarantee even in place where the ethnic non-Estonian population prevails. For instance according to data of Population Register, in Narva, the third largest town of Estonia the ethnic Russians constituted, at the beginning of 2018, 83 % of residents of the town, however citizens of Estonia of any origin constituted as little as 48 % of the total population (“Narva arvudes 2017”, www.narva.ee).

III. Linguistic requirements in labour market

Language Act of 2011 was adopted with the aim “to develop, preserve and protect the Estonian language and ensure the use of the Estonian language as the main language for communication in all spheres of public life” (§ 1). The law included the requirement of proportionality of language requirements in § 23. The relevant [government regulation](#) was adopted also in 2011.

The content of individual linguistic requirements is highly controversial. In 2012, the UN Committee on Economic, Social and Cultural Rights called on Estonia “to ensure that language requirements in relation to employment are based on reasonable and objective criteria, linked to the needs for the performance of each individual job, so as to avoid discrimination on the basis of language”. In 2014, the UN Committee on the Elimination of Racial Discrimination recommended Estonia to “ensure that language requirements in relation to employment are based on reasonable and objective criteria and are linked to the needs for the performance of each individual job” and “to continue to be mindful of indirect discrimination effects of public policies on vulnerable groups”. The European Commission against Racism and Intolerance (ECRI), a Council of Europe body, has repeatedly (in 2010 and 2015) recommended that the Estonian authorities further strengthen the Equal Treatment Act by prohibiting discrimination based on language and citizenship. Concerns regarding Estonian language policies in the area of employment have also been raised by Amnesty International ([Amnesty International](#), “Estonia. Linguistic Minorities in Estonia: Discrimination Must End”, AI Index: EUR 51/002/2006, 7 December 2006).

The implementation of the requirements of the Language Act is supervised by a special national body, the Language Inspectorate, which inter alia has the right to check the level of Estonian language proficiency and to make a proposal to revoke valid certificates, to refer an employee to retake the exam, to make a proposal to an employer to terminate a contract of employment with an employee, etc (§ 31). For instance, in 2017 the operatives of Inspectorate, running the checks made out 1,696 control acts, including 1,536 (90 %) on trespass of official linguistic requirements. The

majority of offences were committed against professional linguistic requirements (www.keeleinspektsioon.ee).

Data of 2011 national census corroborate the dependence of labour status on proficiency by ethnic non-Estonians in Estonian. However, the differences between those possessing Estonian as a native language and as a foreign language are essential. Among those possessing Estonian as the native language the unemployment rate constituted about 8 % (age groups 15+). Among those possessing Estonian as the foreign language, those indicators were on the level of 14 %, while among those not speaking Estonian it was almost 19 %. Even greater differences between level of unemployment of those possessing Estonian as the native language and as the foreign language were noted in the capital city (5 and 13 %). Similar trends were also observed among unemployed at the age 15-29. According to data of census, if a young person spoke Estonian as the foreign language, unemployment rate in his group was 20 %, if he or she spoke it as the native language, the unemployment rate in his or her group was about 14 %. Those absolutely devoid of the power of speaking Estonian had the unemployment rate 32 %. Differences between young ethnic non-Estonians, possessing and not possessing Estonian were lower in the Ida-Viru county, with dominant Russian-speaking population (respectively 29 and 37 %) (www.stat.ee).

According to the study “Interethnic Relations in Estonia” (2016), ethnic minorities were much more likely than ethnic Estonians to believe that during the past two years they had been discriminated at work or in their search for work: due to ethnicity (14.4 % versus 1.1 % for Estonians), due to their native language (16.0 % versus 1.3 %), because of age (13.6 % versus 4.0 %), and because of a health condition (7.0 % versus 2.8 %) (www.isras.ru).

The authors of the “Integration Monitoring 2017” commissioned by the Ministry of Culture came to the conclusion that the differences in the situation of ethnic minorities and Estonians in the labour market had not significantly decreased in the previous decade. “The knowledge of Estonian improves the situation of non-Estonians, but in this case the position of Estonians is better. Representatives of other ethnic origin have lower employment rates, higher unemployment rates and they estimate that they are less safe in the labour market. Among the employed there are fewer ethnic non-Estonians among those who have reached high positions... Analysis shows that people of other ethnic origin are more likely to experience unequal treatment, and they view their origin as an essential factor affecting their labour prospects” (p. 50) (www.kul.ee).

IV. School education

General education schools in Estonia use the Estonian, Russian, Finnish and English language. However, in 2018 they provided full-time education mainly in Estonian (120,623 students), in Estonian language immersion classes (7,394) or in Russian (22,368). Non-Estonian speakers in ordinary basic Estonian schools make up only 3% and non-Russian speakers in Russian basic Estonian schools accounted for 7% (2015) (www.hm.ee).

It needs be remembered that students of state and municipal Russian upper secondary schools (10-12 forms) are now considered as studying in Estonian, because at least 60 % of instruction has been transferred to the state language (the so-called reform of Russian upper secondary schools). In spring 2011, before the reform, Estonia had 47 municipal upper secondary schools with Russian as language of instruction.

[Basic School and Upper Secondary School Act](#) allows the Board of Trustees of the school (this advisory body comprising also student parents’ representatives) initiating questions on language of

instruction at the school. Under § 21 (3) of Act, “[i]n upper secondary schools the language of instruction is Estonian. In municipal upper secondary schools or single classes thereof of the language of instruction may be another language. The permission to pursue studies in another language or bilingual studies is granted by the Government of the Republic on the basis of an application of a rural municipality or city government. The board of trustees of the school makes such a proposal to the rural municipality or city government on the basis of the development plan of the school.”.

In 2011, the right provided in § 21 (3) of Act was used by boards of trustees of 15 schools in Tallinn and Narva. Question was decided in the positive vein on town level. All applications were dismissed by the central government in February 2012. The respective resolutions of Government of the Republic were challenged at court. Among main arguments of Tallinn in the complaint submitted to court was the claim that § 21 (3) of the Act runs counter to the second sentence § 37 (4) of the Constitution (“Language of instruction of an educational institution of national minorities is selected by the educational institution”).

That case was lost in courts of all instances. Supreme Court, in particular found that the question of language of instruction at upper secondary school is not a question of local life, assigned to consideration by local self-governments. Furthermore, Russians schools are not schools of national minorities, entitled to decide independently on question of language of instruction, as guaranteed by Constitution. As such, the norm on requesting permit for teaching in another language from the central government is constitutional and does not infringe international law. The court found that in the question of language of instruction the Government has full discretion, not restricted by law; the court refused to take the place of an administrative body i.e. central government at assessment of concrete circumstances. Concurring with complainants that there were a number of shortcomings in administrative procedure (concerning the right to be heard on a matter), the court did not find the violation serious enough (Judgment of Administrative Law Chamber of the Supreme Court of 28 April 2014 in case no. 3-3-1-52-13, www.riigiteataja.ee).

Pursuing the aim to preserve at least several Russian upper secondary schools, fully financed from public funds, the authorities of Tallinn and Narva started preparations to create private upper secondary schools, owned by local self-governments. Estonian [Private School Act](#) did not contain restrictions respecting holder (owner) of private schools, or any restrictions, concerning freedom of choice of language of instruction. However, in July 2012 Chancellor of Justice (acting as watchdog of constitutionality and ombudsman) made a proposal to Parliament to amend the Private School Act, with the aim at suppressing the freedom of choice of language of instruction in private schools, whose holders are local self-governments (www.oiguskantsler.ee).

Upon opinion of Chancellor, retaining of the current redaction of law might result in violation of constitutional right to receive education and right to receive education in Estonian (§ 37 (1), (4) of Constitution). Among other things Chancellor claimed that “students will not learn all words and their meanings, i.e. implied meanings, at a class in a foreign language. Those classes do not enable students to infer the implied meaning of phrases understandable to Estonians, the shades of meaning and their (historical) origin. Meaning of many words and expressions can be understood and prerequisites for conceiving the Estonian language and culture created only provided a person has intimate contact with language. If contact with the Estonian language is loose and proficiency in language and knowledge of culture therefore limited, the person will miss many things and that will have a deleterious effect on his affairs, and on coherence and functioning of the society of Estonia. On the strength of that the principle of democracy envisaged by § 1 of Constitution would go unfulfilled, under which the people should be effectively involved in exercising the state power. A condition of functioning of democracy is exercising power to understand in all aspects the ongoing in Estonia and to use in proceeding with matters a single system of signs” (p. 3).

Critics of that deliberation pointed out that Chancellor had confused the right to instruction in Estonian and mandatory obtaining of the upper secondary education in the Estonian language. It was also emphasised that Chancellor had been in a rush to voice his proposal until the Estonian court had time to assess constitutionality of the reform of Russian upper secondary schools. Anyway, in April 2013 the respective amendments to Private School Act were finally approved by Estonian Parliament.

In 2013 the Government passed a negative decision on four more received applications on Russian as language of instruction in upper secondary schools (part of them were repeat applications). However, in 2011 the Government allowed to put back transition to instruction in Estonian to two upper secondary schools for adults (in Tallinn and Narva). Furthermore, permit for bilingual instruction in Estonian and German was granted to Tallinn German Upper Secondary School, because its work is partially regulated with Estonian-German intergovernmental agreement.

In the 2011 yearbook of Security Police (special service) published in 2012, the section “Protection of Constitutional Order” devoted a lot of space, once again, to reform of the Russian upper secondary schools. For the first time the section of yearbook referred, in a negative context to politicians of local level of mainstream parties for the acts, spearheaded within framework of applicable law for preserving the upper secondary education in Russian. Their activity was invariably pegged to the Russian factor. All politicians mentioned come from the Centre Party (www.kapo.ee).

During the 2019 national election campaign, all mainstream political parties (with the exception of the Centre Party) advocated for (gradual) abolishment of Russian language school education.

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