



**OFFICE OF THE COMMISSIONER  
FOR HUMAN RIGHTS**

**BUREAU DU COMMISSAIRE  
AUX DROITS DE L'HOMME**



**COUNCIL OF EUROPE    CONSEIL DE L'EUROPE**

Strasbourg, 12 February 2004

CommDH(2004)5  
Original version

**REPORT BY  
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**ON HIS VISIT TO ESTONIA**

**27<sup>th</sup> – 30<sup>th</sup> OCTOBER 2003**

**for the attention of the Committee of Ministers  
and the Parliamentary Assembly**

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## INTRODUCTION

In accordance with Article 3 (e) of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I was pleased to accept the invitation extended by Ms Kristiina Ojulang, Minister for Foreign Affairs of the Republic of Estonia, to pay an official visit to Estonia on 28 to 30 October 2003. I would like to thank the Minister for her invitation and for the resources she placed at my disposal throughout the visit, as well as Mr Alar Streimann, the Permanent Representative of Estonia to the Council of Europe, other staff members of the Permanent Representation and Ms Tiina Krevald of the Ministry for Foreign Affairs for their valuable cooperation and assistance in arranging this visit. I am also grateful for the support of Ms Mall Saul, Acting Director of the Council of Europe Information Office in Tallinn, who provided valuable assistance in organising the visit, in particular the meeting with non-governmental organisations. I visited Tallinn and north-eastern parts of Estonia, and was accompanied by Ms. Satu Suikkari and Mr. Alexandre Guessele, members of the Commissioner's Office.

During the visit, I had meetings with Mr Juhan Parts, Prime Minister, Ms Kristiina Ojulang, Minister for Foreign Affairs, Mr Paul-Erik Rummo, Minister for Population and Ethnic Affairs, Mr Ken-Marti Vaher, Minister of Justice, Mr Margus Leivo, Minister of Internal Affairs, Mr Marko Pomerants, Minister of Social Affairs, Mr Toivo Maimets, Minister of Education and Research, Mr Urmas Paet, Minister of Culture, Mr Marko Mihkelson, Head of the Estonian delegation to the Parliamentary Assembly of the Council of Europe and other members of the delegation, and Mr Allar Jõks, Legal Chancellor and Ombudsman of the Republic of Estonia. I also met with representatives of the Estonian Association of Judges and the Estonian Bar Association, the Director of Tallinn Läänemere Gymnasium and the manager of the Estonian Language Immersion Centre at the Integration Foundation and several non-governmental organisations. I visited the Maardu Prison, the Rakvere Arrest House, the Valkla Care Home for persons with disabilities and the Psychiatry Clinic of Tallinn. During my visit to Narva, I had meetings with Mr Tarmo Tammiste, the Mayor of Narva, Mr Igor Aljoshin, Adviser for the Legal Chancellor, Mr Mihhail Stalnuhhin, Chairman of the Narva City Council and other members of the City Council. I visited the Narva College of Tartu University and the Narva Vocational Training Centre. I also met with Stephanos, Metropolitan of the Estonian Orthodox Church and Cornelius, Metropolitan of the Estonian Orthodox Church of the Patriarchate of Moscow, and Jan Kiivit, Archbishop of the Estonian Evangelic Lutheran Church.

## GENERAL REMARKS

1. Estonia has achieved remarkable success in the field of human rights protection during the ten years following the country's accession to the Council of Europe in May 1993. Substantive efforts have been undertaken to bring the national legislation into harmony with international human rights obligations, and to foster their effective implementation. The eagerness of the Estonian society to restore democratic values following the re-establishment of its independence, and the openness of the authorities to acknowledge and discuss areas of concern have significantly contributed to the rapid transformation of the political and social systems. I welcome the establishment of the mandate of a national Ombudsman in 1999, and the status that this institution has achieved as an important actor in legislative and policy developments, and as an avenue for individuals to make petitions regarding the work of State or State officials.

2. Estonia ratified the European Convention for Human Rights, and its Protocols 1 through 11 in 1996, and Protocol 13 in 2003. Estonia has signed, but not yet ratified Protocol 12 or the European Convention for Human Rights. Estonia also ratified the European Convention against Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities in 1996 and the revised European Social Charter in 2000. Estonia has neither signed nor ratified the European Charter for Minority or Regional Languages, the European Convention on Nationality, and the Additional Protocol to the European Social Charter relating to the collective complaints procedure, whereas the accession process to the latter has recently been initiated.

3. To summarise some of the remaining concerns that will be discussed in more detail in this report, I would highlight the following. Some of these matters are common to many Council of Europe member states, others are more specifically related to the social and political challenges of the transition period following the dissolution of the former Soviet Union. The authorities have gone a long way to ensuring the rights of the Russian-speaking minority<sup>1</sup>, but concerns remain particularly in the areas of citizenship, education and the realisation of economic and social rights by persons belonging to this minority. Increased attention should also be afforded to the protection of other minorities in Estonia. It is important to speed up the ongoing reform of the prison system and detention facilities, and to remedy the shortcomings in the legislation relating to the deprivation of liberty. A number of concerns remain in the field of economic and social rights, and the situation of certain vulnerable groups, such as children, the elderly and persons with disabilities. It is also imperative to maintain the efforts to prevent the spread of HIV/AIDS, the level of which is extremely high in Estonia. Further impetus should be given to efforts to fight against trafficking in human beings. Some of the above problems, particularly those in the field of economic and social rights, are frequently aggravated by insufficient budgetary allocations to the social sector, which, whilst partly a reflection of economic constraints, may call for a certain reconsideration of priorities.

## I THE PROTECTION OF MINORITIES

### Background

4. Estonia is a multi-cultural and multi-ethnic<sup>2</sup> society hosting a large number of minorities. Numerically, the Russian minority forms the largest minority in Estonia, comprising more than 350.000 persons, or more than one quarter of the population of Estonia. In addition, many persons belonging to other minorities, declared Russian as their mother-tongue in the latest population census. The Russian minority is among the minorities with ancient roots in Estonia, with Russian settlements on the modern territory of Estonia dating to the 16<sup>th</sup> century. The majority of today's Russian-speaking population are, however, those who settled in Estonia during the Soviet-era. The forced deportations of ethnic Estonians to other parts of the former Soviet Union, further altered the demographics of Estonia during that 50 year period. The restoration of Estonia's independence in 1991 was accompanied by a desire to rejuvenate the Estonian culture and the

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<sup>1</sup> In this report, the term "Russian-speaking minority" refers to those persons who use Russian as their mother tongue. In the 2000 census, altogether 406.755 persons declared Russian as their mother tongue.

<sup>2</sup> In the 2000 census, altogether 144 different ethnic nationalities were declared. Numerically, the largest groups are those who declared themselves as Russians (351.178), Ukrainians (29.012), Byelorussians (17.241), Finnish (11.837), Tatars (2.582), Latvians (2.330), Polish (2.193), Jewish (2145), Lithuanian (2116), German (1870), Armenian (1444), Azerbaijani (880).

national identity, which was commonly equated with Estonian ethnicity. The strong emphasis placed on the preservation of the Estonian language and identity led to the adoption of strict legislation relating to languages and the acquisition of citizenship, as well as to increasing tensions between the different parts of the population. A sense of injustice grew among the Russian-speaking minority, who felt unjustly penalised for historical events beyond their control. Throughout the period following the independence, these questions have been a subject of wide debate within the Estonian Government and the Parliament, with international human rights bodies, in particular the OSCE High Commissioner on National Minorities and the Advisory Committee on the Framework Convention for the Protection of National Minorities, being actively seized in the matter.

5. Against this background, I was impressed by the now-prevailing spirit of dialogue and cooperation on both sides that has paved the way for a serious effort by the authorities to secure the rights of persons belonging to minorities. I was informed that during the past five years there has been an important shift in mentalities, based on the recognition of Estonia as a multi-cultural society and on the acknowledgement that the contribution of all members of society is essential for the development of Estonia both socially and economically. During my discussions with the various ministers, it became clear that there is a strong political will to solve the remaining obstacles to reaching the goals of equality and social inclusion. Representatives of the Russian-speaking minority confirmed that the developments are generally going in the right direction, and that the remaining problems are discussed in the Parliament in a spirit of openness and cooperation.

6. Increased efforts have been undertaken in recent years to further stimulate the integration of the minorities. A state programme “Integration in Estonian Society 2000-2007” was adopted in the year 2000, according to which “(...) integration in Estonian society means on the one hand *the harmonisation of society* - the creation and promotion of that which unites all members of society - and on the other hand *the opportunity to preserve ethnic differences* - the offering to ethnic minorities of opportunities for the preservation of their cultural and ethnic distinctiveness.

7. Despite the positive shift in mentalities and in practice, a number of challenges still remain, however, in the practical implementation of the laws and policies, in the efforts to reduce the socio-economic differences between the different groups of the population, as well as in the protection of the minority languages and identity.

## **Citizenship**

8. The legislative process following the independence in 1991 was largely guided by the principle of restoration, which meant, inter alia, that automatic acquisition of Estonian citizenship required a connection to the pre-Soviet era Estonia. Consequently, hundreds of thousands of persons who had settled in Estonia during that era did not acquire citizenship automatically, and had to go through a naturalisation process. Although various measures have been taken in recent years to improve the access to Estonian citizenship, the population census conducted in the year 2000 indicated that more than 170.000 persons still had the status of non-citizens, while 117.000

had been granted citizenship since 1992. Of the total population of approximately 1.370.000 persons, 80 percent have Estonian citizenship, 7 percent have a citizenship of another country (mainly Russian), and 12 percent are “persons whose citizenship is undetermined”<sup>3</sup>, which in practice means that they do not have citizenship of any state.

9. The lack of citizenship deprives these persons of a number of rights, mainly in the field of political rights, and carries an increased risk of social exclusion. Although non-citizens have the right to vote in local elections, they do not have the right to vote in national elections, establish political parties, or become members in political parties. Moreover, the enjoyment of the rights guaranteed under the Framework Convention for the Protection of National Minorities, was limited by Estonia to those who have Estonian citizenship when it ratified the Convention.<sup>4</sup> Whilst I was informed that with regard to social security, there are no legislative differences between citizens and non-citizens, there are still some citizenship criteria in certain (notably public) areas of employment – at least some of which however could be seen as justified. It is also to be underlined, that non-citizens, like citizens, contribute to the society in a similar manner as taxpayers.

10. The slow pace of naturalisation was explained both by the difficulties that some persons continue to experience in passing the examinations required for the acquisition of Estonian citizenship and by the relatively limited motivation of some of the non-citizens to seek naturalisation.

11. Further measures are needed to ensure that all newborn children of non-citizen parents acquire a nationality after birth, the possibility of which is guaranteed by the law on the basis of an application by the parents.<sup>5</sup> I was, however, informed that many parents do not apply for Estonian citizenship for their children or, apparently, for any other citizenship, and leave it up to the child to decide whether to apply for citizenship through naturalisation when she or he turns 15. I would like to recall that the right to acquire a nationality entails a positive obligation for the State to ensure an effective exercise of this right. Consequently, a state should not accept a situation where newborn children are rendered stateless on the basis of a mere option available for the parents to apply for another citizenship.

12. In order to ensure the effective enjoyment of the right of the child to acquire a nationality from birth<sup>6</sup>, I proposed during the visit, that the interpretation of the Law on Citizenship be modified so that the registration of a new-born child of non-citizens would be automatically considered as an application for Estonian citizenship, unless the parents of the child declare in

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<sup>3</sup> Terminology used in the 2000 population census.

<sup>4</sup> While welcoming that the Estonian authorities appeared to take *de facto* a considerably more inclusive approach, the Advisory Committee noted that this declaration was restrictive in nature and not suited for the existing situation in Estonia. See *Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Estonia*, doc. ACFC/INF/OP/I(2002)005, adopted on 14 September 2001, para. 17.

<sup>5</sup> According to *Estonian Citizenship Act of 1995* “a minor under 15 years of age who was born in Estonia after 26 February 1992 shall acquire Estonian citizenship by naturalisation if: 1) his or her parents apply for Estonian citizenship for him or her and if the parents have legally resided in Estonia for at least five years at the time of submission of the application and are not deemed by any other state to be citizens of that state on the basis of any Act in force”.

<sup>6</sup> Article 7 of the *Convention on the Rights of the Child* states that ‘1. The child shall be registered immediately after birth and shall have the rights from birth to name, right to acquire a nationality... 2. States parties shall ensure the implementation of these rights in accordance with their national law and their obligation under the relevant international instruments in this field, in particular where the child would be otherwise stateless.’

writing that they have applied for citizenship of another state, under which laws the child is entitled to acquire citizenship of that country. Such a solution would ensure that every child acquires a citizenship at birth, instead of subjecting the child to statelessness at least until she or he turns 15 and becomes eligible for a naturalisation process on his or her own right. This interpretation would ensure that a child acquires one citizenship or another from birth, without the effect of imposing Estonian citizenship on those who apply for another citizenship.<sup>7</sup> Several official interlocutors during my visit expressed openness to examine this proposal.

13. An alternative might be to modify the birth registration forms so as to permit the expression of the desire of the parents to request or decline Estonian citizenship for their newborn child. The expression of the corresponding desire would thus constitute an application for naturalisation. If the parents decline Estonian citizenship for their child, they should provide proof of having applied for citizenship of another state, under which laws the child is entitled to acquire citizenship at birth.

14. Many of my interlocutors noted that the level of language proficiency required for acquiring Estonian citizenship continues to be too high for some persons, particularly for the elderly, and for many those who live in regions prominently inhabited by Russian-speakers. It was estimated that 20 percent of candidates do not pass the language exam. I find it imperative to strengthen the efforts to ensure that the language requirements do not constitute an insurmountable obstacle for obtaining citizenship. While welcoming the fact the elderly (those born before 1 January 1930) are exempt from the written test, I would like to suggest that successful participation in a language course would be regarded as sufficient proof of their knowledge of the language without having to pass the exam. In this context, I would like to recall the recommendation made by the OSCE High Commissioner for Minorities already in 1996, in which he called for the abolishment of the oral test for the elderly.<sup>8</sup> I was also informed that, although the legislation grants significant exemptions for persons with certain disabilities from compliance with the requirements set forth for the naturalisation, the pace of naturalisation is strikingly low among persons with disabilities.<sup>9</sup> Further efforts appear therefore important to promote the access to the naturalisation process for these persons.

15. I was able to observe, that substantive efforts have been undertaken to facilitate the learning of the Estonian language for the purposes of improving access to citizenship. Further efforts are however needed to ensure that all individuals have effective access to such education. Since the costs of language exams have created impediments to some persons, I was pleased to learn that as of 1 January 2004, the total costs of the language exams will be reimbursed within three months to all those who passed the exam<sup>10</sup>. I would, however, like to suggest that the

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<sup>7</sup> In this context, I would also like to recall that the United Nations Human Rights Committee recommended that Estonia “should seek to reduce the number of stateless persons, with priority for children, inter alia by encouraging their parents to apply for Estonian citizenship on their behalf”. See *Concluding observations of the Human Rights Committee on Estonia*, 15 April 2003, Doc. CCPR/CO/77/EST.

<sup>8</sup> See the letter dated 28 October 1996 by Mr Max van der Stoep, OSCE High Commissioner on National Minorities to the then Minister for Foreign Affairs of the Republic of Estonia, Mr Siim Kallas, published on 2 January 1997.

<sup>9</sup> See Article 34 (2) (3) and (4) of the *Citizenship Act* relating respectively to visually impaired persons, hearing and speech impaired persons, and persons without active legal capacity.

<sup>10</sup> The amendment adopted to the *Citizenship Act* on 10 December 2003.

exams be made free of charge irrespective of whether the person succeeds in the exam or not. A fear of failure in the exam, and the corresponding costs, may provide an unwelcome disincentive for taking the exam. Financial constraints should not create an obstacle for the effective realisation of such a fundamental right as the right to nationality.

### **Issues relating to the use of the Estonian language in the education system and the labour market**

16. Improving the knowledge of the Estonian language is one of the corner stones of the Estonian integration programme. It became evident to me that there is a strong willingness among the minorities to learn the Estonian language, even in the regions predominantly inhabited by Russian-speakers. An important element in the process of enhancing the knowledge of the language is the provision of education in Estonian at schools.

17. According to the Basic Schools and Upper Secondary Schools' Act, the language of instruction in the upper secondary schools (classes 10 – 12) shall be Estonian, which in practice means that at least 60 percent of the instruction shall be in this language.<sup>11</sup> In order to allow the schools to prepare for this requirement, the law stipulates that the transition to instruction in Estonian shall be started not later than the academic year 2007/2008. Moreover, in March 2002, an amendment to the legislation was adopted, which gave the upper schools' board of trustees the right to apply for exemption from the language requirement.<sup>12</sup> I was informed, however, that the possibility of exemption continues to be criticized and questioned by some politicians. For reasons explained below, I find it very important that this possibility is maintained.

18. During my visit, I was informed that one of the main problems is the lack of teachers in Russian-speaking schools with a sufficient knowledge in Estonian. The Mayor of Narva felt that, due to lack of resources, it would be very difficult to fully implement the reform in northeastern parts of the country by 2007, and therefore the possibility of progressive implementation must be ensured. It was stressed that there is a strong willingness within the Russian-speaking population to adopt the reform, but significant further investments are needed to ensure its success. The authorities have recognised these challenges and the Ministry of Education is currently conducting a detailed analysis on the feasibility of this language reform, the results of which will be finalised shortly.

19. In order to respond to these challenges, special institutions have been established where education of the Estonian language is provided for Russian-speaking teachers. I visited the Estonian Language Immersion Centre of the Integration Foundation in Tallinn, which was established for the purposes of coordinating language education programmes especially for Russian-speaking teachers. Whilst many good results have been achieved, it was felt that reaching the 2007 goal would be very difficult with the resources currently available for teacher

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<sup>11</sup> See Article 9 of the *Basic Schools and Upper Secondary Schools' Act*.

<sup>12</sup> According to Article of the above law, "Permission for instruction in another language shall be granted by the Government of the Republic on the basis of an application by a local government council. A corresponding proposal shall be made to the local government council of the board of trustees of an upper secondary school based on the development plan of the school".



training. It was also emphasised that it is imperative to better prepare the students for the reform through increased provision of education in Estonian in preschools and in primary schools. The legislation requires that teaching of Estonian language is provided at all levels of schooling, including pre-school, but the lack of preschool teachers with sufficient command of Estonian remains a serious problem.

20. Significant further investment into the language training programmes is imperative in order to prevent the potential risks that the language reform in upper secondary schools might carry particularly to those students whose command of Estonian is not at the academic level. Difficulties in learning in their second language might increase the rate of school dropouts and failure in the final exams, which in turn amplifies the difficulties in accessing higher education. It may also carry an increased risk of social exclusion.<sup>13</sup> Emphasis should be placed on analysing the potential risks and on designing programmes to prevent them.

21. The Minister of Education brought to my attention a serious concern relating to the reform of the language certificates required for employment, which had the potential of jeopardising the employment of thousands of Russian-speakers, including a large number of Russian-speaking teachers at the beginning of year 2004. The Law on Languages requires that all employees of the public sector and many employees in the private sector pass a language exam if they have not graduated from Estonian-language schools. A new system of language certificates was introduced in 1999, which required that everybody had to retake the language exam according to the new criteria. The new exam system had received wide criticism for being too demanding. For instance, it was brought to my attention that passing the new system of exams at the highest level had proved difficult even for Estonian native speakers. The old language certificates were supposed to become invalid by 2002, but the deadline was later postponed to January 2004.

22. According to the Minister of Education, there were, however, still several thousand people who have not acquired the new language certificate, and were therefore under the threat of becoming unemployed. I was very pleased to learn that, since my visit, this problem has been resolved by the Estonian Parliament, which adopted on 10 December 2003 amendments to the Law on Languages recognising the “old” language certificates to be valid after January 1, 2004. This is a very welcome development, and indicative of the prevailing spirit. I was, however informed by non-governmental organisations that the Language Inspectorate continues to have the possibility of verifying the Estonian language proficiency, irrespective of whether the person has a valid language certificate, and of imposing sanctions for those who fail.<sup>14</sup> I encourage the Language Inspectorate to adopt an approach, which better reflects the spirit of these amendments.

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<sup>13</sup> For a detailed analysis on the potential risks, see Paul Downes, *Living with Heroin – Identity, Social Exclusion and HIV among the Russian-speaking minorities in Estonia and Latvia*, Tallinn 2003, published by the Legal Information Centre for Human Rights, Tallinn and Educational Disadvantage Centre, St. Patrick’s College, Drumcondra, Dublin.

<sup>14</sup> Reportedly, ten teachers have already been punished by the Inspectorate with a fine of 2.500 EEK, which is very high as compared with the average monthly salary of 4.169 EEK of personnel working in the education field.

**Preservation of minority languages, identities and cultures**

23. I would like to underline that the emphasis placed on the enhancement of the knowledge of the Estonian language must not be implemented in a manner which jeopardises the possibilities of the minorities to preserve their own language, and to use it in the manner guaranteed in the Framework Convention for the Protection of National Minorities. As the Advisory Committee on the Framework Convention noted, the status of the state language is regulated and protected in great detail, whereas corresponding standards on the status and protection of minority languages are limited in their number and scope.<sup>15</sup> For instance, the effective possibility of learning also in minority languages at schools must be maintained.

24. With regard to correspondence with state and local authorities, the Constitution guarantees the right to receive a reply in a minority language in municipalities where at least 50 percent have a language other than Estonian as their mother tongue. This provision is positive in communities like Narva, where approximately 90 percent of the population have Russian as a mother tongue. Members of the Russian-speaking minority noted, however, that the requirement of 50 percent creates significant difficulties for the Russian-speakers in places like Tallinn, with large Russian-speaking minorities who do not, however, fulfil the 50 percent requirement. While I was informed that in practice, authorities do show flexibility in the interpretation of the law, I would like to recall, that the Advisory Committee noted that this requirement is high from the point of view of Article 10 of the Framework Convention.

25. Increased attention should also be placed on the preservation of the distinct identities and cultures of the numerically smaller minorities, including those who might use Russian as their mother tongue, but do not belong to the Russian minority. Also, a member of the Roma community noted that there is not sufficient recognition of the Romani culture or language in Estonia.<sup>16</sup> He emphasised the importance of improving access to education by Roma children, since school non-attendance and school drop-outs remain a serious concern, and informed of an initiative to establish a commission for this purpose, which I welcome. It was also stressed that further measures are needed to improve access to employment, since the unemployment rate is extremely high among the Roma population, and many are disproportionately affected by poverty. I encourage the Government to take further measures to address the situation of the Roma, and in this respect, would like to refer to the recommendations of the Round Table on Roma in the Baltic States organised by the the Council of Europe Specialist Group on Roma/Gypsies in year 2000 in Estonia, which inter alia, called for the establishment of “an effective consultative/communication body between the national authorities and the Romani representatives in order to encourage Roma participation in all decision-making processes and to ensure the sustainability of policies and projects launched by the authorities”.

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<sup>15</sup> *Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Estonia*, op cit., para. 39.

<sup>16</sup> According to some estimations, there are approximately 1000 Roma in Estonia, while in the 2000 population census, 542 persons, including 263 Estonian citizens, declared themselves as the Roma.

## **II. The prison system and the justice system**

### **A. Conditions in prisons and detention facilities**

26. The conditions in Estonian prisons and detention facilities have been a concern of the Committee for the Prevention of Torture (CPT) for some time, with visits in 1997 and 1999 identifying significant shortcomings with respect to material conditions, health care and excessive use of violence. The CPT visited Estonia again in September 2003.

27. My visits to the Rakvere police detention centre, and the Maardu juvenile remand prison, confirmed a number of concerns relating to the material conditions and also revealed certain problems relating to the judicial procedures concerning the placement in detention. The material conditions were far from satisfactory in the police detention centre in Rakvere, which at the time of the visit hosted 19 detainees. There was no space for activities indoors or outdoors, so the detainees had to stay in their cells 24 hours a day. The only occasion to leave their cells was to take a shower once a week. One cell of approximately 20 m<sup>2</sup> accommodated eight men, who had to sleep next to each other on thin mattresses on a wooden platform on the floor. Daylight was very scarce, and the cell was filled with cigarette smoke. The toilet seat was in one corner of the cell, separated only with a low curtain. Most of the detainees stay in the centre for a period of one or two weeks, but some stay significantly longer, up to a few months waiting for their trial, which has been identified by human rights organisations as a serious concern. Indeed, in principle, remand detainees should no longer be detained in police facilities after the initial authorisation of pre-trial detention.

28. The personnel were fully aware of the problems and showed strong willingness to implement improvements, should there be resources available. The personnel also complained that, due to lack of resources, there were no medical exams of the detainees upon their arrival, and no in-house medical personnel, or sufficient medication. In one cell there was a 14-years old boy, who appeared significantly younger, who had been in the centre for 3 months, with no possibility of taking part in educational or other activities. I find it imperative to afford resources for a total refurbishing of this establishment and for the provision of proper medical care. It is also important to offer a regime of activities, including at least one hour of out-door activities daily. It must moreover be ensured that juveniles are not kept in same detention facilities with adults.

29. A number of the detainees maintained that the centre was much better than the one from which they had been recently transferred, namely the detention centre in Kohtla-Järve. According to the detainees, eighteen persons had shared a cell of a similar size in that Centre, and the floors on which they slept had been cold and humid. Reportedly, there had been several detainees with tuberculosis in the centre, sharing the same cells with others and access to medical care had been practically lacking. The detainees said that no visits from family members were allowed in the centre in Kohtla-Järve, and correspondence was very limited. While I was not able to visit the detention centre in Kohtla-Järve, the conditions described by the detainees were very much in line with information that I had received from other sources, including the Ombudsman. I discussed these matters subsequently with the authorities, who informed that measures have been taken to

prevent the spread of tuberculosis in prisons and detention establishments. According to official information, the number of persons suffering from tuberculosis in prisons has started to decrease in recent years, and in 2002 there were 22 reported cases of tuberculosis within the prison population, of whom six had been infected in a prison. Further measures are still needed to stop the spread of the disease and to provide adequate medical care.

30. Whilst the material conditions in the Maardu juvenile remand prison were of much higher standard, the Director noted that when the prison was built in the early 1990s, no space had been built for educational, sport or other activities. The prison personnel had, therefore later turned some of the cells into classrooms and a library. Outdoor activity was limited to one hour per day. During the wintertime, there was only a small, barred inner-yard for outdoor activity. During the summer time, the detainees could also use a big yard which had been turned into a sports field. I welcome the efforts taken by the prison authorities to improve access to educational and recreational activities, and encourage further efforts in this respect. For instance, the use of the sports field should also be ensured in the wintertime.

31. Both the Minister of Interior and the Minister of Justice confirmed that the conditions in such institutions continued to be an issue of concern. A reform of the prison system is ongoing, with the aim of having 1500 – 2000 new prison places by the year 2006. Some of the old prisons will be closed down, and a new prison will be built in the northeast of the country.<sup>17</sup> Lack of resources continues to create an obstacle on the way of the reforms. The Minister of Justice informed me that the intention is to increase the involvement of the private sector in the management of the prisons. In the near future, the prison administration and management will be conducted by a state-owned company. He emphasised, however, that the prison system would not be privatised, but that the provision of certain services will be increasingly undertaken by private companies. The Ministry of the Interior expected that certain changes to administrative structures that will take effect on 1 January 2004, allowing more budget flexibility, would help to allocate increased resources to efforts aimed at guaranteeing minimum conditions in detention facilities.

32. The spread of infectious diseases in prisons and detention facilities continues to be an issue of significant concern. The Director of the Maardu prison informed that 29 of the 131 detainees were known to be infected with HIV. He noted that there had been a significant increase in HIV infections during the past three to four years. Previously those with HIV/AIDS had been separated from other inmates, but this was no longer the case. As stated in the European Prison Rules, no segregation should be made on the basis of HIV/AIDS, unless the health of the individual so requires. Given the exceptionally high number of HIV positive inmates in the prisons, all possible measures must be taken in order to prevent the transmission of the virus among the inmates. The authorities have recognised that significant efforts must be undertaken in order to tackle the issues that are at the origins of the spread of HIV/AIDS in prisons, such as the use of drugs and violence among the inmates. It was noted that more and more prisoners who use narcotic substances are identified each year, and although the fight against drug addiction in prisons has strengthened, there are still difficulties in identifying the channels through which drugs are brought to prisons.

33. In July 2002, the Ministry of Justice adopted an ‘HIV/AIDS prevention action plan for years 2002-2006 in the area of government of the Ministry of Justice’, with the objective to prevent the spread of HIV infection in prisons and among probationers and to secure high quality

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<sup>17</sup> For a detailed description of the reforms, see *Estonian Prison System Yearbook 2002-2003*, Ministry of Justice.

anti-virus treatment for persons with HIV-infection. I welcome the strong emphasis placed on information and awareness-raising in this Plan, and would like to propose, that as long as there continue to be drugs in prisons, exceptional measures, such as needle exchange programmes, be undertaken. I was also pleased to learn that a drug free section has been established in the Viljandi Prison, and I would encourage the establishment of such sections in other prisons as well.

34. The Minister of Justice informed that increased consideration has been given in recent years to alternative penalties, and in particular to the need to diminish the number of juvenile prisoners. A probation system was introduced 5 years ago, and currently there are 6800 persons serving their sentence on probation. The Minister also noted that there is one open prison in the country, and plans are under way to build more such prisons. I welcome these efforts, but the high level of prisoners per capita in the country indicates the need to use alternative penalties more frequently.<sup>18</sup> I fully agree with the Minister that emphasis should be placed on diminishing the number of juvenile prisoners. Alternative penalties, such as community work, combined with programmes promoting reintegration in the society are certainly better suited to juvenile delinquents. Penalties served outside a prison environment also have the potential of reducing recidivism. The length of preliminary investigations is also of particular concern for juvenile detainees, who frequently do not have any educational opportunities while in custody.<sup>19</sup>

#### **B. Issues relating to legal assistance and pre-trial detention**

35. While visiting the prison and the detention centre, many of the detainees informed me that they did not have a lawyer to represent them at the court which authorises their detention. They explained that having a lawyer would in their view not help with anything, they are too expensive and hardly ever visit the detainees. Many had therefore declined the right of being represented by a lawyer, but some had, nevertheless, received a bill for the services of a lawyer after a trial. The Minister of Justice explained to me, that the courts have an obligation to appoint a legal representative if the defendant is a minor, suffers from a mental disability or is suspected of having committed a particularly serious crime. Many of the detainees also told me that they had not been personally present at the court hearings concerning their detention. Some of them told that their lawyers had advised them not to appear before the court, since it would not be useful. The Code of Criminal Procedures currently in force indeed allows a person to waive his or her right to be heard by a judge. I was pleased to learn that, under the new Code on Criminal Procedure which will enter into force on 1 July 2004, the appearance of the defendant at the hearing where the detention is decided shall be mandatory. In addition to being an important procedural guarantee, the mandatory appearance before the Court provides the opportunity to protect against any ill-treatment.

36. This situation indicates the urgent necessity to improve access to free legal aid, and to better inform the detainees about their rights, including the provisions relating to legal assistance. After my visit, I was pleased to learn that the Government adopted a draft law on free legal

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<sup>18</sup> According to the *Estonian Prison System Yearbook*, op cit., there are 340 prisoners per 100.000 inhabitants, which is six times higher than in the Northern countries, see p. 5.

<sup>19</sup> According to information received from non-governmental organisations, one third of the juveniles held in preliminary investigations stay in custody for six months or more. See *Additional Report on the Convention on the Rights of the Child, Additions, Comments and Submissions of Estonian non-governmental organisations*, Tallinn, 2002.

assistance on 29 January 2004, which is expected to be adopted by the Parliament during the spring 2004, and that the funds allocated for free legal assistance will be increased<sup>20</sup>. The representative of the Bar Association noted that the compensation paid for advocates who are giving free legal assistance is far too low, and, although it will be significantly increased in 2004, the hourly rates will continue to be inadequate to attract a sufficient number of adequately trained advocates.

37. The representative of the Bar Association expressed serious concern over the provisions of the Code of Criminal Procedure relating to the search of advocates offices and seizure of confidential data in the possession of advocates, which would remain largely unmodified in the new Code of Criminal Procedure which will enter into force in July, 2004.<sup>21</sup> According to the new Code, a search may be conducted in the advocate's office, inter alia, for the purposes of confiscating a document necessary for the adjudicating of a criminal matter, with the permission of a judge or a court. The representative of the Bar Association explained that the law does not define any terms upon which the court may refuse a search permit of advocates offices and seizure of confidential data, and that there is no right to appeal such a decision. The Commissioner is concerned that these provisions, which do not provide adequate guarantees in situations where the advocate is acting as a defence lawyer, may significantly weaken the position of the defence and the confidentiality attached to the lawyer-client relationship. They moreover jeopardize the principles of equality or arms and rules relating to the professional secrecy of advocates. This may have serious implications for the ability of the accused to adequately prepare his defence, and thereby for the effective exercise of the rights guaranteed in Article 6.3 and Article 8 of the European Convention on Human Rights. I strongly encourage that these provisions be reviewed in order to ensure that the rights of the defendants are respected.

### III. SITUATION OF PERSONS WITH DISABILITIES

38. Although the Government is increasingly placing emphasis on promoting the independent living of persons with disabilities, many continue to live in large institutions, because of lack of rehabilitation and support services enabling a life outside an institution. Non-governmental organisations active in disability rights expressed concern that those who move away from institutions, are faced with significant problems in reintegrating into the society due to the lack of such services. According to information provided to me by NGOs, only 13 percent of persons with disabilities are employed, and the salary paid for work at special facilities is one half of the minimum salary. Whilst the emphasis placed by the authorities to integrating children with

<sup>20</sup> The funds allocated for free legal assistance for 2004 will be 59 million crowns, where as the sum for 2003 was 26,88 million.

<sup>21</sup> Article 91 ("Search") of the *new Code of Criminal Procedure* reads:

(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for the adjudication of a criminal matter, property to be seized for the purposes of compensation for damage caused by a criminal offence, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area.

(2) A search shall be conducted on the basis of an order of a Prosecutor's Office or a court ruling. The search of a notary's office or advocate's law office shall be conducted on the basis of an order of a Prosecutor's Office and with the permission of a preliminary investigation judge or on the basis of a court ruling.

(3) In cases of urgency, an investigative body may conduct a search on the basis of an order of the investigative body without the permission of a Prosecutor's Office, but in such case the Prosecutor's Office shall be notified of the search within twenty-four hours and the Prosecutor's Office shall decide on the admissibility of the search.

disabilities in regular schools is very positive<sup>22</sup>, I was informed that the insufficient number of special needs teachers, and the lack of facilities (such as elevators or special teaching equipment) remains a serious concern.

39. I visited the Valkla Social Welfare Home which is a special care home for persons with mental disabilities and/or a variety of physical disabilities. At the time of the visit, the Home accommodated 232 persons, of whom approximately 35 were under permanent surveillance and accommodated in a separate building. Most of the persons stay in the centre for very long periods of time, many even permanently. Due to recent renovations, the material conditions in the Home appeared to be good, apart from the section where persons were held under permanent surveillance. That building appeared to be from another era as compared with other parts of the Home. The temperature inside was very low, and the material conditions very poor. I was pleased to learn from the Director that this building will soon be closed and the persons will be transferred to another building, which was currently under reconstruction. According to the Director, placement in the institution was in principle based on the request of the person concerned, but in practice it is usually the family who requests the placement. Apart from the decisions to place the person under permanent surveillance, she informed that there is no involvement of the courts in the decisions relating to the placement of the persons in the Home.

40. I also visited the Psychiatric Clinic of Tallinn, where I met with the Director and a number of staff members. The material conditions appeared to be good in the sections that I visited, and there was an atmosphere in which the dignity of the patients was respected. The personnel, who appeared to be very attentive, regretted that the limited resources available for the Clinic often meant that it was difficult to benefit from the advances in treatment methods, and that there was at times shortage of quality medication. It was also regretted, that after leaving the establishment, the patients often could not afford the most appropriate medication.

41. The Director informed me about the procedures relating to an involuntary placement of a person in an psychiatric or therapeutic establishment. According to the 1997 Mental Health Act, a person is admitted to the psychiatric department of a hospital for emergency psychiatric care without the consent of the person or his or her legal representative if 1) the person has a severe mental disorder which restricts his or her ability to understand or control his or her behaviour; 2) without inpatient treatment, the person endangers the life, health or safety of himself or herself or others due to a mental disorder; and 3) other psychiatric care is not sufficient.

42. The decision on the involuntary admission of a person is taken by a physician of the psychiatric department. Within forty-eight hours after commencement of the inpatient treatment, two psychiatrists must carry out a medical examination of a person admitted for involuntary treatment. If both psychiatrists declare the admission to be justified, the person shall be kept in involuntary treatment for up to fourteen days. The involuntary treatment may continue for more than fourteen days only with the authorisation of a court. On the first occasion, an administrative court judge may grant authorisation for involuntary treatment of a person for up to thirty days, and on subsequent occasions, the judge may extend the authorisation for involuntary treatment of a person for up to ninety days as of the day following the end of the previous period.

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<sup>22</sup> The Education Act gives priority to ensuring conditions enabling children with special needs to study in regular schools, but if this is not possible, studying possibilities must be ensured in special schools.

43. Since the involuntary placement of a person in a psychiatric or therapeutic establishment involves a limitation to the right to liberty as guaranteed in Article 5 of the European Convention, and given the particular vulnerabilities to abuse of those with mental or intellectual disabilities, such placement must always be surrounded by the safeguards stipulated in that article. Such a decision should only be taken by a competent and objective authority, offering guarantees of independence and impartiality. Moreover, it must be possible for the individual concerned to challenge the lawfulness of a decision authorising placement or treatment before an independent judicial or other appropriate review body. Therefore, the period of 14 days foreseen in the Mental Health Act without any court involvement is clearly too long, and places persons who are admitted in a psychiatric establishment at a disadvantage compared with people detained on criminal charges, whose detention exceeding 48 hours is to be authorised by a Court.<sup>23</sup> As the Estonian Ombudsman has noted, the Constitutional provisions relating to deprivation of liberty shall be implemented not only in relation to persons who are detained as suspects in criminal proceedings, but they should provide protection in situations of all forms of deprivation of liberty.<sup>24</sup> In view of the above, I find it important that legislation be modified accordingly. It is also important to underline that the admission of a person to a psychiatric establishment on an involuntary basis cannot be construed as authorising medical treatment without his or her consent. There would appear to be some confusion in the Act regarding the decisions authorising involuntary placement and involuntary treatment. Whilst the two decision may be taken simultaneously, they must be taken separately.

#### IV. TRAFFICKING IN HUMAN BEINGS

44. Particularly during the 1990's Estonia was reportedly a significant source country for women and girls trafficked for prostitution and other forms of sexual exploitation abroad, mainly to the Nordic countries. While no Government statistics on the extent of trafficking exist, the Minister of Interior informed that the numbers have significantly reduced and that Estonia is at present mainly a transit country for women trafficked from St Petersburg region to EU countries. It appears however, that there is a clear need to conduct thorough research and analysis in order to determine the full extent and nature of trafficking in the country. Such information is essential for addressing the issue in an effective manner. I find it very positive that a research project has recently been launched by the International Organisation for Migration aimed at examining the extent of trafficking in human beings in Estonia.

45. Internal trafficking continues to be an issue of considerable concern. Especially women from north-eastern part of the country are trafficked to work in brothels in Tallinn and in other cities. The Minister of Interior noted that much stronger stance from local authorities is needed in order to tackle prostitution. He stated, for instance, that local authorities are often unwilling to terminate licences of businesses operating hidden brothels under the cover of a bar or shop, despite requests from the Ministry to do so.

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<sup>23</sup> See also the *Concluding Observations of the UN Committee on Civil and Political Rights, op.cit.* in which it was noted that “the period of 14 days of detention for mental health reasons without any review by a court is incompatible with Article 9 of the Covenant’.

<sup>24</sup> Article 21 of the *Constitution of Estonia* provides that no one shall be held in custody for more than forty-eight hours without the specific authorization of a court.



46. Although the crime of trafficking is not defined as such in the Estonian legislation, several provisions were introduced into the Penal Code in 2002, which are relevant in this context. These include provisions on the crime of enslavement, abduction, sale or purchase of children, and pimping or providing premises for the purposes of prostitution.

47. The provision of protection and assistance for the victims of trafficking appears to remain insufficient. At present, there is one shelter in the country specifically for victims of trafficking and victims of domestic violence, but the Minister for Social Affairs informed that a centre for victims of trafficking will be opened in Tallinn in the near future. While certain non-governmental organisations provide important services to victims of trafficking, the involvement of and support by state institutions to such efforts should be significantly strengthened.

48. Further efforts must also be placed on tackling the root causes of trafficking, in order to effectively prevent this modern-day slavery. Discrimination of women in the field of employment and the precarious socio-economic situation of many people in the North-East of the country are said to be among the factors increasing the vulnerability of women and girls for trafficking.

49. I find it essential to adopt of a comprehensive plan of action, addressing the different stages of trafficking, including prevention, protection, assistance, and reintegration of the victims. I was pleased to learn that discussions have been recently started on a draft action plan, and I would like to encourage the early adoption of such a plan. Moreover, as the Minister of Interior stressed, trafficking in human beings must be tackled in cooperation between countries of origin, transit and destination. Estonia is actively participating in regional and international initiatives to combat trafficking.

## V. DOMESTIC VIOLENCE

50. I was informed that domestic violence against women is widely spread in Estonia, with two thirds of all violence cases occurring within the home.<sup>25</sup> As in many other countries, only a small fragment of domestic violence cases are reported. According to a pilot survey conducted by the Ministry of Social Affairs in 2000, two thirds of the women interviewed had been subject to violence since the age of 16, and only one third of them reported the incident to the police. To a large extent, domestic violence continues to be an issue surrounded by taboo and silence, although it has recently become more publicly discussed and condemned. I was informed that the police and prosecutors often still see domestic violence as a private matter, not as a crime deserving particular attention, and that victims frequently have difficulties in proving their cases before the courts.

51. I discussed these issues with the Minister of Interior and Minister of Social Affairs who both agreed that further efforts are needed to address domestic violence. The Minister of Interior noted that the fact that so few cases are brought to prosecution is not only due to the passivity of the police, but that women very seldom contact the police or seek shelter in fear of retaliation by the violent partner. The Minister regretted that there are not enough shelters for violence victims, in fact there is only one in the whole country specifically for women who are victims of domestic violence, and one for women with their children. He expressed willingness of strengthening the efforts, but noted that resources available are highly insufficient. The Minister proposed that one

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<sup>25</sup> See *Violence against Women in Estonia according to data from a sociological research*, Estonian Open Society Institute, 2001.

solution to address the risks of the women to be subjected to new violent attacks after returning from a shelter could be to establish long term shelters for the victims. In my view, a much preferable solution would be to introduce a system of restraining orders for the violent partner, so that the victim could stay at home, instead of the violent partner. Subjecting the victims of violence to live outside their homes for long periods of time would actually penalise them, instead of the violent partner.

52. I find it important to strengthen the legislative framework for combating domestic violence. The definition of domestic violence, both physical and psychological should be included in the legislation, as well as provisions on the protection of victims and the prevention on future violations. Useful guidance on this issue can be found in the recent Council of Europe recommendations.<sup>26</sup> It is moreover essential to strengthen information and awareness raising programmes, both of the public at large, in order to reinforce the understanding that domestic violence is a crime deserving punishment, and more specifically, among the police and the judiciary so as to enable them to respond appropriately in such cases.

## **VI. ISSUES RELATING TO NON-DISCRIMINATION AND ENJOYMENT OF SOCIAL AND ECONOMIC RIGHTS**

53. Although the principle of non-discrimination is enshrined in the Estonian Constitution, and certain laws contain anti-discrimination provisions, the absence of specific anti-discrimination legislation in many other fields was identified as an impediment to achieving full equality. I therefore strongly encourage the enactment of legislation prohibiting discrimination in areas such as access to housing, education and services, and to take steps towards the ratification of Protocol 12 to the European Convention on Human Rights, and the full transposition of the EU equality directive into the Estonian legislation.<sup>27</sup> I also encourage Estonia to ratify the Additional Protocol to the European Social Charter relating to the collective complaints procedure, and welcome the fact that a domestic consultation procedure relating to accession to this Protocol has recently been initiated by the Ministry of Social Affairs.

54. The Minister of Social Affairs noted that one of the greatest challenges is to respond to the drastic increase in HIV/AIDS infections in the country since the year 2000, which has made Estonia the country with the highest reported number of HIV infections per capita in Europe. The majority of those infected are children or young adults.<sup>28</sup> In response, the Estonian Government adopted in January 2002 a National HIV/AIDS prevention programme for 2002-2006, which aims at stopping the spread of the virus and at ensuring the high-quality treatment and other care and social services for those infected with HIV. The respect for human rights was identified as one of the programme implementation principles. The Government has also significantly increased the budget allocations for HIV/AIDS prevention. The Minister of Social Affairs welcomed the recent decision by the Global Fund to Fight AIDS, Tuberculosis and Malaria to fund a prevention programme in Estonia, which is hoped to substantially increase the possibilities to fight against the epidemic. The programme to be implemented under this Fund will place

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<sup>26</sup> Recommendation (2002) 5 of the Committee of Ministers of the Council of Europe on the Protection of women against violence and Recommendation 1582 (2002) on Domestic violence against women adopted by the Parliamentary Assembly.

<sup>27</sup> Directive 2000/43/EC *'Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin'*.

<sup>28</sup> According to information I received from non-governmental organisations, the majority of those infected are between 14 and 24 years of age, for instance in Tallinn more than 80 percent.

particular emphasis on the reduction of the risk of infection among targeted groups and on the improvement of the quality of life of those infected.<sup>29</sup> Among those at greatest risk of infection are injecting drug users, and the Minister expressed particular concern at the increased drug use by children as young as 10 to 12 years. The Minister informed me that a Government programme against drug use was to be adopted on 30 October 2003, and emphasised the importance of increased attention to the prevention of drug use at schools. I welcome the attention paid by the Government to the fight against HIV/AIDS and drug use, and cannot but urge to maintain this priority.

55. Non-governmental organisations brought to my attention certain problems relating to patients' rights. I was informed that six percent of the population are not covered by medical insurance, and therefore have access only to emergency medical care. Those who are covered by the insurance, face problems due to the fact that a person cannot get treatment outside the place of his or her official residence, which can be particularly problematic for those who temporarily work outside his or her place of residence. Concerns were also expressed at the fact that a law on patients' rights has not yet been adopted and that there is no complaint procedure available for patients. I encourage an early adoption of such a law, with the establishment of a commission to examine possible compensation claims by patients.

56. A representative of Estonian Pensioners' Association expressed concern at the precarious social situation of the elderly in Estonia, which was largely due to the very low level of pensions. It was felt that the low level of pensions was not caused by lack of funds, but the question was rather one of priorities – the representative noted that only five percent of the budget was allocated to pensions whereas in many other countries it was 12 – 14 percent.

57. Further measures are also needed to achieve gender equality particularly in the labour market. I was informed, that despite the relatively high level of education among Estonian women, gender-based discrimination within employment continues to be an issue of concern, including the persistence of a significant wage differential between men and women. Non-governmental organisations also expressed concern at the lack of gender equality legislation, and at the persistence of traditional, or degrading images of women in the media. After my visit, I was pleased to learn that the Government approved a draft Gender Equality Act in January 2004, and submitted it to the Parliament. I strongly encourage the early adoption of such a law.

## **VII. RELIGIOUS COMMUNITIES**

58. As part of my ongoing dialogue with leaders of religious communities in Europe, I met with Jan Kiivit, Archbishop of the Estonian Evangelic Lutheran Church, Stephanos, Metropolitan of the Estonian Orthodox Church and Cornelius, Metropolitan of the Estonian Orthodox Church of the Patriarchate of Moscow. I was informed that religious freedom was very well respected in legislation as well as in practice. Archbishop Kiivit informed me about the activities of the Evangelic Lutheran Church in the field of social affairs, and stressed that efforts are needed to decrease the existing differences in living standards between different parts of population and between different regions. He noted that the situation of pensioners is of particular concern.

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<sup>29</sup> See 'A national partnership to Increase the Scale of Estonia's Response to a Concentrated and Rapidly Developing HIV Epidemic'.

59. During my meetings with the Metropolitans of the two Orthodox Churches, I was informed about the current relations between these Churches, which had been an issue of concern during the period following the restoration of independence. While the Estonian Orthodox Church under the jurisdiction of Constantinople was registered in 1993, being considered by the Estonian Government the legal successor to the pre-World War II Estonian Orthodox Church, the Estonian Orthodox Church of the Moscow Patriarchate was registered only in April 2002. Consequently, the Estonian Orthodox Church of Constantinople acquired the ownership of all property belonging to the Orthodox Churches. It gave, however, the permission to the Estonian Orthodox Church of the Moscow Patriarchate to use some of the property. I was informed that for nine years, the unregistered status of the Estonian Orthodox Church of Moscow Patriarchate made the negotiations of the church property ownership problematic, and brought along significant tensions between the two churches. Through the registration of the Estonian Orthodox Church of the Moscow Patriarchate in 2002, it acquired the legal personality, and hence became capable of obtaining de jure control over the properties that it had used.

60. During my visit, I was informed, that the two Churches had not yet fully resolved the property ownership issues, and that the Estonian Orthodox Church of Moscow Patriarchate continued to hold on lease the properties that it is using, instead of having acquired de jure ownership. I would like to encourage the two Churches to continue their dialogue on this matter with a view of finding an early solution to the problems.

## **RECOMMENDATIONS**

61. Since its accession to the Council of Europe in 1993, Estonia has made commendable efforts in respect of human rights promotion and protection. It is, moreover, evident that the authorities remain committed to undertaking further efforts in areas where problems persist. In order to provide assistance to Estonia in promoting the respect for human rights, the Commissioner, in accordance with Article 8 of Resolution (99) 50, makes the following recommendations:

1. Take further measures to make naturalisation of non-citizens more accessible, by, inter alia,
  - a. ensuring that the language requirements required for obtaining Estonian citizenship do not create an insurmountable obstacle for obtaining citizenship;
  - b. by adapting the application procedures for citizenship for newborn children so as to ensure that all new-born children of non-citizens acquire a citizenship from birth;
2. Increase investment in language training programmes in order to ensure that the language requirements for upper secondary schools do not have detrimental effects for students with native language other than Estonian;
3. Take further measures to ensure the preservation of minority languages, and to increase the possibilities of using minority language in relations with the authorities in communities with substantial minority communities, but which do not fulfil the 50 percent requirement;

4. Strengthen efforts to improve the conditions in prisons and detention facilities; ensure that adequate medical care is provided in such establishments; and continue with the efforts to reduce drug use and the risk of HIV infections in prisons;
5. Ensure access to free legal aid and the knowledge of detainees of their right to legal representation; ensure the presence of detainees before judges deciding on the continued pre-trial detention; ensure that provisions relating to search in advocate's offices do not jeopardize the rights of defendants; use alternative penalties more frequently in particular for juvenile offenders;
6. Amend the legislation with respect to the involuntary placement and treatment of persons with mental disabilities in psychiatric or therapeutic establishments by ensuring the involvement of a judge at an early stage;
7. Strengthen the efforts aimed at providing services and rehabilitation programmes for persons with disabilities with a view to promoting their independent living; provide increased opportunities for children with disabilities to attend regular schools;
8. Conduct detailed research and analysis of the extent and nature of trafficking in human beings; adopt a comprehensive plan of action against trafficking in human beings; provide adequate protection and assistance to victims and witnesses;
9. Ensure greater protection and assistance to victims of domestic violence, through strengthening the legislation, training programmes for judiciary and law-enforcement officials and awareness raising campaigns;
10. Continue the efforts aimed at stopping the spread of HIV/AIDS and at providing appropriate care for those infected with the virus; adopt a law on patients' rights;
11. Strengthen the legislative framework in the field of non-discrimination, and equality between men and women; ratify Protocol 12 to the European Convention on Human Rights, and the Additional Protocol to the European Social Charter relating to the collective complaints procedure.

## ADDITIONAL COMMENTS

62. This report has been presented to the Committee of Ministers' Deputies of the Council of Europe on 12 February 2004. At the end of this presentation, and in the light of the comments brought to by the Permanent Representative of Estonia, the Commissioner decided to add the following information about recent progress relating to issues dealt with in the report :

1. Several steps have been taken under State Integration Program, inter alia, to facilitate procedures and speed up processing of applications for citizenship. Concerning the questions of citizenship for children different possibilities are under discussion by competent authorities (§§ 11 – 12 of the Report).
2. The system of language exams and tests is a process which has to be constantly developed and adapted for improvement. The Estonian language tests, developed under the guidance of Council of Europe experts, have been improved under supervision of relevant working group of university experts since 2001. In 2003 a number of changes were introduced in tests with a view to take account of specific problems identified previously (§§ 14-15);
3. A number of initiatives have been taken for the preservation of the distinct identities and cultures of the numerically smaller minorities – e.g. all minorities' cultural associations, Sunday schools etc. are subsidised by state; since 2003 a new initiative was introduced whereby on parents' request children may receive teaching in mother tongue in certain number of lessons at schools, where study language is not their mother tongue; teachers of mother tongue of different minority languages have received training; there is also state funding for media in minority language (§ 25).
4. Concerning the constant improvement of prison conditions it can be mentioned that a new prison in Tartu was opened in 2002 and 2 new prisons will be built in 2005-2006. National Strategy for Prevention of Drug Addiction for the years of 2004-2012 has been elaborated by Ministry of Social Affairs (§ 31 - 32).
5. As regards involuntary placement of a person in a psychiatric or therapeutic establishment amendments to the relevant law have been drafted by the Ministry of Social Affairs. According to the draft law in case of involuntary medical treatment the first decision for placement is made by the doctor for max 48 hours; for placing a person for treatment for longer than 48 hours there must be court permission; correspondingly, as regards involuntary placement, amendments to the civil code are prepared, providing distinct rules to be followed when placing persons in closed establishments, including psychiatric ones (§ 43).
6. Estonia is recognizing that trafficking in human beings is a serious concern at the national and at the international level. Estonia is cooperating in this field with different international organizations (such as Council of Europe, Council of Baltic Sea States, UN) and is participating in different programs with Nordic and Baltic States and USA. A national Round Table has been established and one of its tasks is to draft a National Action Plan to fight against trafficking in human beings. In cooperation with IOM a

project is carried out to map the situation of trafficking in human beings in Estonia (§§ 44-49).

7. On 17 December 2003 the Estonian parliament adopted the law on victim support. The new law enlarges the system of victim support services and increases the amount of compensation paid by the State to the victims. The fight against domestic violence has been defined as one of the priorities in the field of criminal law for 2004 (§§ 50-52).
8. Pensions are increased on the yearly basis of indexation, which is bound to overall level of income and inflation; in addition in 2002 and 2003 there have been three ad hoc increases in pension level, and similar proposals have been made for 2004-2006. In Estonia pensions are funded from social tax revenues and not directly from the budget; from the budget only certain types of pensions are funded; on average, during 1999-2002, pensions made up to 6.9-7.5% of the GDP (§ 56).

63. The Commissioner welcomes these developments.

Alvaro Gil-Robles  
Commissioner for Human Rights