

IHF FOCUS: Judicial system; conditions in prisons and pre-trial detention; protection of ethnic minorities; protection of asylum seekers and immigrants; women's rights¹.

On 8 November, the European Commission published its 2000 regular report on Estonia's progress towards EU accession, noting that Estonia by and large continued to fulfill the Copenhagen political criteria set for EU candidates. Estonia had addressed most of the short-term priorities of the 1999 Accession Partnership concerning human rights, including amending the Language Law, adopting the state integration program for non-Estonians, and reinforcing the training of judges.² At the same time though, much remained to be done in terms of judicial reform, prison conditions remained poor, and Estonia's asylum legislation and practice were not yet in line with EU standards.

Judicial System³

According to the EU Commission, Estonia made some progress in terms of its judicial system, in particular with regard to judges' training. However, there was no noticeable improvement in judges' workload and the backlog in the system did not improve noticeably. The quality of court decisions varied considerably, and remained unsatisfactory in the lowest level courts. Among other things, judges appeared to be uncertain when applying the law – particularly in administrative and penal matters - which led to numerous appeals to higher instances.

No concrete developments took place in 2000 with regard to the reform of the penal and civil law systems in order to complete the transition from the former system. Cooperation between the different authorities (police, prosecutors and judges) still required reinforcement.

The probation system, established in June 1998, worked well. On 1 May 2000, there were approximately 5,800 probationers in Estonia, 5,400 of whom were conditionally sentenced and 400 of whom were conditionally released.

Conditions in Prisons and Pre-trial Detention⁴

Prison conditions remained poor despite considerable progress in this area, according to the EU Commission. The prison population rate was 320 prisoners per 100,000 inhabitants.

As a first step in reforming the prison system, the administration and control of prisons were brought under the direct responsibility of the Ministry of Justice. In March, the Ministry of Justice adopted a development plan of the prison system, to be implemented by the year 2003. In June 2000, the Imprisonment Act was adopted in order to introduce further Council of Europe recommendations in this area, such as the abolition of in-prison regimes. In addition, prison reform began to be implemented. However, delays occurred in the construction of a new prison in Tartu, which, together with the introduction of the probation system, should considerably alleviate the overpopulation of prisons. Efforts were undertaken to improve training among prison employees, including the teaching of the Estonian language.

There were some isolated reports of ill-treatment suffered by prisoners in custody, including the use of punishment cells. However, some progress was made as regards pre-trial detention periods, which were shortened. In addition, in July 2000 the Government adopted its main goals in the fight against crime until 2003, which included considerably shorter custody periods.

Protection of Ethnic Minorities

Non-Estonians constituted about 35 percent of Estonia's total population (1,445,580⁵). Approximately 28 percent of the total population (406,000) was of Russian origin.

The rights of the Russian-speaking minority (with or without Estonian nationality) continued to be largely observed and safe-

guarded. Russian continued to be widely used in courts and in the administration in those areas where Russian-speakers comprised the majority of the local population. Furthermore, non-citizens who had been legally resident in Estonia for the last five years were allowed to vote in the local elections. However, non-citizens were subject to some restrictions affecting the right to be on the board of state-owned companies, to belong to a political party or to be employed in certain areas of the public administration.⁶

Citizenship and Residence

Generally, Estonia fulfilled the OSCE recommendations in the area of citizenship and naturalization. Between 1992 (when the Citizenship Law came into force) and late 2000, 112,822 non-Estonians had been granted Estonian citizenship. According to the Legal Information Centre for Human Rights (LICHR), some 60 percent of the non-Estonian minority were non-citizens in 2000.⁷

As of late 2000, 192,072 non-citizens had been granted permanent residence permits and 84,180 held temporary permits. A large-scale process of converting temporary residence permits into permanent ones was underway. The new provisions of the Aliens Act allowed persons applying for an extension of a residence permit or for a permanent residence permit to stay legally in Estonia until a decision was made concerning their application. However, minimum income requirements for persons applying for a residence permit remained in force.⁸

There were no exact figures on the real number of the persons residing in Estonia either without citizenship or without a residence permit (so-called "illegals"), but the LICHR estimated the number to be between 30,000 and 80,000.⁹

According to the LICHR, the "illegals" could be divided into four categories. The first group was comprised of persons who had a permanent residence permit (*propiska*) in the former Estonian SSR but

who – for various reasons – could not apply for a residence permit within the set deadline. The second group included persons who did not have permanent residence in the former Estonian SSR and were therefore not eligible for permanent residence in the independent Estonia. If they wished to apply for permanent residence, they were obliged to do it outside Estonia. Many, however, could not or would not do this because they lacked the official documents or feared being expelled from the country. Also, the application procedure was long (a minimum of 1.5 years) and the expenses relatively high. The third group was comprised of persons convicted on criminal charges and unable to submit an application while in prison. The fourth group began forming in 1997 and included foreigners who had unsuccessfully sought political asylum in Estonia.¹⁰

Integration of Non-Estonians

In March 2000, the Estonian Government adopted the state integration program, "Integration in Estonian Society 2000-2007" to address one of the short-term priorities of the 1999 Accession Partnership. The program focuses on four main areas: integration through the education system targeting adults and children; language training for adults and socially disadvantaged groups such as unemployed persons; activities intended to protect the cultural rights of minorities and promoting a positive attitude towards integration among Estonians and non-Estonians through a public awareness campaign.¹¹

The UN Committee on the Elimination of Racial Discrimination (CERD) saw this program as a positive development in the field of minorities. However, in its March recommendations, the Committee regretted that the definition of national minorities contained in the National Minorities Cultural Autonomy Act only applied to Estonian citizens. It noted that in light of the significant number of non-nationals and stateless persons residing in Estonia, such a

restrictive and narrow definition might limit the scope of the integration program.¹¹

Language Policy¹³

There were clear improvements in the field of language policy. As recommended by the EU in 1999, the Estonian Parliament amended the Language Law in April 2000. The law regulated the use of the Estonian language in the public and private sectors. The new provision stipulated that the compulsory use of Estonian in the private sphere had to be clearly justified on the grounds of a specific public interest, such as public security, public order, public health, health-protection, consumer protection or safety at work. The law had been criticised for restricting the right to use a minority language in the private sphere.

Under the Parliamentary and Local Elections Law, language requirements for candidates to parliamentary and local elections remained in force. These restrictions affected the right of non-Estonian speakers to choose their candidates, particularly at the local level.

A new integrated language certification system was also adopted that homogenized the previous system, which involved three different tests (for naturalization, for education/graduation exams and for professional certification). It was decided that the new system would involve a single comprehensive language testing methodology that would fall under the responsibility of the National Examination and Qualification Center.

In addition, the naturalization process for disabled applicants, as well as children under 15 years of age whose parents were stateless, was eased by removing the requirement to test their knowledge of the Estonian language and Constitution.¹⁴ These changes should help to speed to the naturalization process, particularly for graduates of the basic and upper secondary schools.

While recognizing that having the appropriate language skills enables minority group members to receive better positions

in the labour market etc., non-Estonians continued to criticize the emphasis placed on the interconnection of Estonian language skills in naturalization and the integration program. Many perceived them as a tool for assimilation instead of integration. Since its adoption, the Language Law requirements had created the main hurdle for those minority members eligible for naturalization.¹⁵

According to the LICHR, the “forced linguistic integration” imposed on the Russian-speaking minority in the 1990s brought about less improvements than expected: still only about 29 percent of non-citizens in Tallinn spoke some Estonian, and only 35 percent spoke it relatively well.¹⁶

Education

In the field of education, the Law on Basic and Upper Secondary Schools was amended in April 2000 to guarantee that, as of 2007, 60 percent of teaching in upper secondary schools is to be in Estonian, while the remaining 40 percent may be in another language. Initially, the law foresaw that all upper secondary instruction would be provided exclusively in Estonian by that date.¹⁷ According to the LICHR, only 11 percent of non-Estonians supported the abolishment of Russian-language secondary schools.¹⁸

Family Reunification

The Aliens Act was amended six times between September 1999 and November 2000. Most of the amendments related to the immigration quota regime. Following a decision of the Estonian Supreme Court, spouses and children of Estonian citizens or holders of a valid residence permit were excluded from the immigration quota. Although more efforts were needed in this area, according to the EU Commission, the amendments constituted a first step in resolving the issue of family reunification in Estonia – a problem that had been criticised often in previous years.¹⁹

Protection of Asylum Seekers and Immigrants

Asylum

As of 5 June, 47 asylum applications had been made since Estonia gained independence, but only three applicants were granted refugee status. Eight applications were refused and 20 cases were pending. Sixteen cases were not decided, either due to the death of the applicant or the withdrawal of the application.²⁰

Estonia's legal framework with regard to political asylum was not yet in line with EU standards. Legal and administrative adjustments were necessary to enable Estonia to accede to the Dublin Convention, including eliminating exclusion clauses or the lack of safeguards in the accelerated procedure applied at the border. In addition, state-financed legal aid for asylum seekers was unregulated. Asylum procedures remained too slow, border guards needed more training to correctly distinguish between illegal immigrants and asylum seekers, and the administrative and judicial capacity to deal with asylum cases needed to be enhanced. In April 2000, the new Illuka Reception Centre for Asylum Seekers was opened.²¹

Expulsion

From 1999 to May 2000, Estonian courts ruled on twelve expulsions of illegal residents at the request of the Police Board, the Board of the Border Guard or the Citizenship and Migration Board (CMB). During the same period, 1,309 requests for persons to leave Estonia voluntarily were issued.²²

The Russian-speaking community criticised the fact that the 1999 Law on the Obligation to Leave the Country and the Prohibition of Entry provided for the expulsion of a person illegally residing in the territory of Estonia without distinguishing between "domestic illegals" (e.g. members of minority groups with no legal residence)

and persons who had recently arrived from abroad. According to the law, if an expulsion order was delivered but impossible to carry out, the foreigner should be placed in an expulsion camp. According to Article 196 of the Code of Executive Proceedings, until special expulsion camps are in operation, the persons to be expelled were to be held in a closed prison, or in custody (for up to ten days). The maximum period of stay in an expulsion camp was two months, and could be extended by an administrative court judge at the request of the CMB until expulsion could be executed – i.e. virtually indefinitely. At the same time, the law did not provide such persons any other legal basis for residing in Estonia.²³

Due to the lack of funds to build special expulsion camps, people deemed to be expelled were held in the Tallinn City Prison together with criminals. The conditions were poor, with poor quality nutrition, hygiene and medical care. Persons awaiting expulsion were neither allowed to leave the "camp" territory or to work and earn money to buy personal hygiene products or for others purposes. Without money, such persons could not send personal letters, since prison staff were only obliged to pay the postage for official letters. On occasion, personal letters did not reach the recipient.²⁴

Persons awaiting expulsion did not have access to competent legal counsel, as the lawyers in prisons were often not trained in expulsion issues. No assistance in this field was given by the CMB. While the LICHR assisted some persons to submit an application for a temporary residence permit, the Ministry of the Interior refused to deal with the cases, citing lacking documentation. However, according to the LICHR, it was impossible for these people to provide for all necessary documentation in practice. Moreover, the CMB had already received all the necessary documentation for the expulsion procedure.²⁵

Endnotes

- ¹ See IHF, *Women 2000, an Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States*, November 2000.
- ² EU Commission, *2000 Regular Report from the Commission on Estonia's Progress Towards Accession*, 8 November 2000.
- ³ Unless otherwise noted, based on EU Commission, op. cit.
- ⁴ Based on EU Commission, op. cit.
- ⁵ As of 1 January 1999.
- ⁶ EU Commission, op. cit.
- ⁷ Vadim Polestsuk, Legal Information Centre for Human Rights, "Current Problems of Integration and Naturalization in Estonia," a paper presented at the seminar "Refugee Policy, Integration and Naturalization of Ethnic Minorities in the Baltic Region," Tallinn, 26-27 September 2000.
- ⁸ EU Commission, op. cit.
- ⁹ Andrei Arjupin, Legal Information Centre for Human Rights, "The Status of Illegal Aliens Subjected to Expulsion," a paper presented at the seminar "Refugee Policy, Integration and Naturalization of Ethnic Minorities in the Baltic Region," Tallinn, 26-27 September 2000. The EU Commission cites the figure of 30,000.
- ¹⁰ Vadim Polestsuk, op.cit.
- ¹¹ EU Commission, op. cit.
- ¹² *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Estonia*. 19/04/2000. CERD/C/304/Add.98.
- ¹³ Based on EU Commission, op. cit.
- ¹⁴ RFE/RL Newline, 15 June 2000.
- ¹⁵ Vadim Polestsuk, op.cit.
- ¹⁶ Ibid.
- ¹⁷ EU Commission, op. cit.
- ¹⁸ Vadim Polestsuk, op. cit.
- ¹⁹ EU Commission, op. cit.
- ²⁰ Ibid.
- ²¹ Ibid.
- ²² Ibid.
- ²³ Andrei Arjupin, op.cit.
- ²⁴ Ibid.
- ²⁵ Ibid.