

OSCE
High Commissioner
on National Minorities

His Excellency
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Rävala 9
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The Hague
21 May 1997

Reference no.:
359/97/L

Dear Mr Minister,

With great interest I read your statement in the Permanent Council of the OSCE on 10 April 1997 in which you commented on our conversation in Tallinn on 8 April 1997. I was glad to note your positive assessment of the efforts I have made since 1993 to be of assistance to Estonia in solving its inter-ethnic problems.

I have also studied carefully the papers prepared by your Ministry and sent to the members of the Permanent Council regarding the issues raised during my visit to Tallinn on 8/9 April 1997 and regarding the recommendations I have made to the Government of Estonia during the period from April 1993 to October 1996. Please allow me to send you a detailed reaction which I will also send to the members of the Permanent Council two weeks after you have received this letter.

First of all, I should like to make some general remarks about the situation of the over 200,000 persons in Estonia who have neither the Estonian nor any other citizenship. As I have remarked before, I have found no evidence that persons belonging to national minorities in Estonia are systematically persecuted, or that there are persistent violations of their human rights. The assurance I received in July 1993 from the then Prime Minister, Mr Laar, that Estonia does not intend to start a policy of expulsion from Estonia of Russian speakers has been repeated by subsequent Governments and I feel confident that this will continue to be the case in the future. Regarding the opinion of non-citizens on their present position in Estonia I have noted the findings of the survey conducted in the autumn of 1996 by the International Organisation for Migration (IOM) and UNDP, which show that 6,5% of the non-citizens of Estonia consider their relations with Estonians as very good, 37,4% as good and 50% as satisfactory. Only 6,2% of this group describe their relations as bad or very bad. These figures demonstrate convincingly that inter-ethnic relations in Estonia are, on the whole, good.

Policies of the present Government

The present Government of Estonia has taken a number of steps regarding non-citizens residing in Estonia which I consider to be positive. I welcome the decision of the Government to submit to Parliament a change in the Law on Aliens with the aim of providing those who applied for temporary residence permits with permanent residence permits in 1998, therefore earlier than originally foreseen. I express the hope that the amendment will soon be adopted. If there would be further delay in adoption, the benefit gained would be considerably reduced.

I particularly welcome the appointment of a minister for inter-ethnic relations, Mrs **Weidemann**. This demonstrates the importance your Government attaches to this question.

I also attach considerable importance to the assurance which Prime Minister Siimann gave me that much more attention will be given to the need to provide non-citizens with timely information regarding matters of direct interest for them. He has announced that this will be one of the main tasks of Mrs **Weidemann**. I am convinced that such a policy can help to remove or to prevent misunderstandings amongst non-citizens in Estonia about the intentions of the Government. My office has tried to contribute to a greater flow of information regarding the naturalization process. It has asked the Foundation on Inter-Ethnic Relations, which supports my work, to fund the publication of two brochures on this subject, both in the Estonian and Russian languages. The first brochure contains the list of questions which can be put during the test on the Constitution, and the second provides i.a. information on procedures of application for citizenship, and information on language courses.

Data provided to me show that the production of alien passports has now reached such a level that it can meet the demand for them. However, I was informed that about 50,000 applicants have not yet received these passports by the 15 May 1997 expiration of the validity of former USSR documents in Estonia. I am aware that assurances have been given that documents like driving licences will be accepted for identification purposes as long as the applicants have not yet received their passports, but such documents can of course not be used for travel purposes. I do therefore recommend to your Government to try to speed up the process of distributing alien passports as much as possible.

In my letter of 6 April 1993 to your predecessor Mr Velliste I recommended to your Government to set up the office of "National Commissioner on Ethnic and Language Questions", with its main task to look into complaints regarding these issues. In the document analysing my recommendation which was sent to the Permanent Council, my recommendation on a National Commissioner on Ethnic and Language Questions is commented with the remark "Preparations for the institution of an Ombudsman are currently in progress. The Ombudsman will handle all human rights related pleas". I am of course aware that an Ombudsman can, in principle, perform many of the tasks which I hoped a National Commissioner on Ethnic and Language Questions might be able to undertake. This would only be the case, however, if the Ombudsman would be allowed to extend his activities to all residents of Estonia, and not only the citizens of Estonia. I hope that such a formula is being envisaged.

The naturalization process

Successive governments of Estonia have frequently stressed the importance they attach to the process of integration of non-citizens into Estonian society. The Law of 1 April 1995 on Citizenship requires that persons seeking to acquire Estonian citizenship have to prove their willingness to integrate by passing a test on the knowledge of the state language and a test on the Constitution of Estonia. In this, it follows a line which has been adopted by many other states.

Data provided to me by the Citizenship and Migration Board of Estonia show that, since the time Estonia regained independence through to 1 April 1997, 90,477 non-citizens of Estonia became citizens. They are not all Russian-speakers; 25,251 of them are of Estonian ethnicity. Of the remaining 65,226, 23,326 were granted citizenship without having to pass tests because they could prove that they had voted for independence during the final period of Soviet occupation and 634 were granted citizenship because they had distinguished themselves by working in the interest of Estonia. Under the old Law on Citizenship, valid since the naturalization process started in 1992 until the new Law came into force on 1 April 1995, 35,041 persons became citizens after having passed a language test (a constitutional test was not required under the old law). When the new law had been in force for two years on 1 April 1997, only 6,225 persons had become citizens under its provisions.

This brings me to an analysis of the number of persons residing in Estonia who presently do not have Estonian citizenship. According to the Russian Embassy in Tallinn, the number of persons residing in Estonia who have been granted Russian citizenship had reached a total of 122,393 by 1 April 1997. It is difficult to estimate how many of them have died since. Few seem to have left the country after acquiring Russian citizenship. On the other hand, according to the survey of IOM-UNDP of November 1996, there is a strong likelihood of new applications. It is therefore highly likely that the drop in the number of Russian citizens residing in Estonia because of death or departure from the country will be more than compensated by the number of new applications granted.

Taking into account that the total number of Russian citizens and non-citizens in Estonia is 335,000, the number of persons having no citizenship at all presently residing in Estonia can be estimated at about 210,000 or more than 14% of the total population of Estonia of 1,464,000.

In 1995, 16,690 persons were naturalized, and in 1996 the number reached 22,784. This seems to indicate an increasing tempo of the naturalization process. On closer examination, it becomes apparent, however, that most of those acquiring citizenship in these years had made their application under the old law, which was apparently perceived by many as having easier provisions than the now one. As a consequence, many who felt that they had sufficient knowledge of Estonian to pass the language test, hurried to apply. Under the new Law, the number of applications for citizenship has so far been at a level which seems to indicate a drop of the number of naturalizations in the coming years. According to the data of the Estonian Citizenship and Migration Board, only 5,956 persons applied for Estonian citizenship in 1996; the number of applicants will be lower than 10,000 over the whole of 1997. Moreover, I was informed that a considerable percentage of applications in 1996 and so far in

1997 were on behalf of children, who, in contrast to the old Law, can be simply registered as citizens without having to pass tests if one of the parents is an Estonian citizen or if the child is an orphan or adopted.

It would be a mistake to think that the figures mentioned above show a lack of interest in acquiring Estonian citizenship in the group of those residents of Estonia who have neither Estonian nor Russian citizenship. The IOM-UNDP survey of November 1996 gives convincing evidence of this. In answer to the question: "do you wish to acquire Estonian citizenship?" 62.5% answered "yes"; 11.4% "maybe", and 18.1% "if the conditions for obtaining citizenship change". Clearly the percentage answering yes would be considerably higher if the conditions for obtaining citizenship would be made easier.

As for the future, it is remarkable that no less than 84.2% answered positively to the question whether they wanted their children to have Estonian citizenship; only 3% answered with "no" or "probably not". (The corresponding answer for Russian citizens residing in Estonia was 58.7%.)

The survey also clearly indicates why so many have not yet applied for Estonian citizenship. 70.2% of those polled answered that they would not be able to pass the language examination. No less than 95.4% want the Citizenship Law of Estonia to be changed. The language problem is also illustrated by the answer to the question regarding the knowledge of the Estonian language. Only 9% of those polled say that their knowledge of Estonian is excellent; 16.4% that it is very good or good. But 36.4% state that their knowledge is poor and 18.2% state that they have no knowledge at all; 28% consider their knowledge to be fair.

These data inevitably lead to the questions whether the requirements for citizenship are too high. In my view this is the case regarding the constitutional tests. Questions like:

- who decides the question of handing over a citizen of Estonia to a foreign state?
- who has responsibility for securing (people's) rights and freedoms?
- name three basic obligations of each citizen established in the Constitution of the Estonian Republic.

are difficult to answer, even though a candidate can consult the text of the Constitution and of the Law on Citizenship during the examination. It requires a certain training to find one's way in the text of a law. Also, the argument that the percentage of applicants successfully passing this test is often as high as 90% is not convincing. It is in my view more relevant to investigate to what extent the high percentage of non-citizens interested in acquiring Estonian citizenship is deterred from applying by the requirements of this test. While I do agree that it is reasonable to demand from candidates for citizenship that they have some basic knowledge of the Constitution of the country, it goes in my view too far to include questions which citizens of many European countries, perhaps also of Estonia, might find difficult to answer.

Regarding the language test, I have come to the conclusion that, after various changes have been made in the test, a level of knowledge is now required which cannot reasonably be considered as being too high. That does not mean that the test does not provide a formidable barrier for the many non-citizens of Estonia who so far have

only a limited knowledge, or no knowledge at all, of the Estonian language. I therefore welcome the decision of the Government to make an effort to increase the number of qualified teachers in the Estonian language, especially in those areas of Estonia where Russian speakers constitute the majority of the population. The IOM-UNDP survey of November 1996 provides interesting material in this respect. Amongst Russian citizens residing in Estonia 92.4% agreed or strongly agreed that their children ought to learn Estonian. Amongst non-citizens of Russia and Estonia residing in Estonia 95% agreed. The children themselves feel the same way. In the book "Russian youth in Estonia – a sociological mosaic", published in January 1997 by a group of sociologists, mention is made of the fact that 80% of 7th grade pupils (around 13 years old) in Russian language schools in Estonia feel that the learning of the Estonian language is important for them.

There is equally a need for the training of adults in the Estonian language. The interest is clearly there. Amongst the residents of Estonia who have neither Estonian nor Russian citizenship, over 50% of those polled in the IOM-UNDP survey said that they had tried to improve their knowledge of Estonian since Estonia regained independence. In the age group of 18-29 year-olds, 2/3 of those polled stated that they have tried to do this.

Improved and intensified teaching of the Estonian language for Russian speaking school pupils and parallel efforts to provide large scale language training for adults are essential in order to ensure that the naturalization process is not going to slow down or even stagnate because too many potentially interested non-citizens are not able to pass the language test. Foreign assistance to Estonia in this field has already been provided, and I express the hope that this aid will be continued and expanded.

In October 1996 the Government set up the Language Training Centre, entrusted with two main functions:

- 1) acting as a clearing house for coordinating outside assistance and distributing funds to designated projects around the country and
- 2) as a centre for drawing of a language strategy for teaching Estonian in schools and to adults.

The vital role this Centre has to play in the present difficult stage of the naturalisation process is evident. I recommend to the Government to ensure that the drawing up of the Language Strategy Document will be speeded up and given top priority. I also seem to be desirable that the Working Group which has been coopted by the centre for drawing up the language strategy will have at any rate one Russian member with experience in this field.

Children of parents residing in Estonia neither of whom are citizens of Estonia or any other state

In my letter of 6 April 1993 to the then Foreign Minister Velliste I made the following recommendation to the Government.

"Children born in Estonia who would otherwise become stateless should be granted Estonian citizenship, taking into account article 3, paragraph 6, of the Estonian citizenship Act, article 24, paragraph 3, of the International Covenant on Civil and

Political Rights, and article 7, paragraph 2, of the Convention on the Rights of the Child”. (Article 3, paragraph 6 of the Law on Citizenship then in force stated that Estonian citizens are “Children born in Estonia, if the father at the time of their birth was a stateless person”).

Earlier, in December 1992, a mission on behalf of the CSCE (now OSCE) Office for Democratic Institutions and Human Rights (ODIHR), composed of the experts Professor Christian Tomuschat, then of the Institute of International Law at the University of Bonn, and Ambassador Klaus Törnudd of the Ministry of Foreign Affairs of Finland, had made a similar recommendation. The report states i.a.:

“...international commitments flow from article 24, paragraph 3, of the International Covenant in Civil and Political Rights, according to which every child has to acquire a nationality. By virtue of this provision, States are obligated to confer their nationality on any children who otherwise would remain stateless at birth.”

And the report concludes:

“In full conformity with the Citizenship Act (article 3, paragraph 6) it should be ensured that children born from former nationals of the USSR, who would otherwise be stateless, are registered as Estonian citizens.”

In 1995 a new Law on Citizenship came into force in Estonia, and article 3, paragraph 6, was dropped. But Estonia, apart from being a party to the International Covenant on Civil and Political Rights, is also a party to the Convention on the Rights of the Child. This treaty entered into force for Estonia on 20 November 1991. Article 7 of this Convention, to which Estonia became a party without making any reservations, is more explicit than the article of the Covenant on Civil and Political Rights quoted above and reads as follows:

“1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. State Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular when the child would otherwise be stateless.”

On the implications of this Convention for Estonia I should like to make a number of comments, which I am making after having consulted the following international experts: Professor Geraldine van Bueren of the Faculty of Law at the University of London, Director of the Programme on International Rights of the Child; Professor Thomas Burgenthal, Presiding Director of the International State of Law Centre at the George Washington University, member of the UN Human Rights Committee; Professor Asbjorn Eide, Director of the Norwegian Institute of Human Rights at the University of Oslo and Chairman of the UN Working Group on the Rights of Minorities; Ambassador Thomas Hammerberg of Sweden in his capacity as Vice-Chairman of the UN Committee on the Rights of the Child; Professor Martin Scheinin of the Faculty of Law at the University of Helsinki and member of the UN Human Rights Committee; and Professor Christian Tomuschat of the Faculty of Law at Humboldt University in Berlin. Although the formulations chosen are mine, all experts consulted endorsed the essence of my legal argumentation and conclusions without reservation.

The argument has been made that Article 7 of the Convention on the Rights of the Child would not have any practical consequences for Estonia, because most stateless children have as parents former USSR citizens who have the option of acquiring the citizenship of the Russian Federation. I am of the opinion that this is not a valid argument for several reasons. Firstly, the right articulated in Article 7 of the Convention on the Rights of the Child, of which the child is the intended beneficiary, cannot be made dependent upon the possible exercise of an option available to the parent. Secondly, the availability to a parent of an option cannot be considered to confer a duty to make use of it; otherwise there would no longer be any “right” to a nationality (as articulated in Article 15 of the Universal Declaration of Human Rights, Article 24, paragraph 3, of the International Covenant on Civil and Political Rights and Article 7 of the Convention on the Rights of the Child). Finally, Article 3 of the Convention on the Rights of the Child requires that “on all actions concerning children [...] the best interest of the child shall be a primary consideration”. It cannot be considered to be in the best interest of the child if he could be obliged to become a citizen of a state where he does not live and probably, like most of the persons of Russian ethnicity born in Estonia, does not intend to live in the future.

Opening the door for granting Estonian citizenship on the basis of the Convention on the Rights of the Child does not imply that Estonia could be obliged to apply the *ius soli* to anyone born in the territory of Estonia. The obligation in question exists only and exclusively for those children born in Estonia who would otherwise be stateless. In this respect I refer to the relevant legislation of Finland. There, like in Estonia, the legislation is based on the hereditary principle (*ius sanguinis*). But an exception is made for stateless children. According to the Act on Citizenship, a child becomes a Finnish citizen if she or he is born in Finland and does not, from birth, receive any other citizenship.

In the not you attached to your letter of 23 April 1997 to me, the argument is made that there is no legal obligation for Estonia automatically to grant Estonian nationality to all children born in Estonia. In my view the Convention on the Rights of the Child does not oblige Estonia to grant Estonian citizenship automatically to children born in Estonia who would otherwise be stateless. Taking into account the formulation of Article 7 of the Convention, a state still acts in conformity with the provision if it obliges parents to lodge a formal application for citizenship on behalf of the child (a request to which the state has to accede) and if it insists that the presence of the child and its parents in the state is not a temporary one by requiring a previous period of residence of some years. In this regard I refer to the European Convention on Nationality which was adopted unanimously by the Committee of Ministers of the Council of Europe on 15 May 1997, with prevention of statelessness as one of its essential principles. Article 6, paragraph 2, of this Convention mentions two options: either automatic conferral of citizenship upon otherwise stateless children, or conferral of citizenship on application after a period of residence “not exceeding five years immediately preceding the lodging of the application”. It is my understanding that State practice within Europe is mainly in conformity with the requirements of Article 6 of the European Convention on Nationality, which, in turn, is in conformity with the requirements of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

One of the comments in the note you sent me is that the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child limit the freedom of citizenship legislation to settle these issues only if its standard are arbitrary or rob the right of its content. My view is that, while Article 7 of the Convention of the Rights of the Child leaves a certain latitude, the limits of this latitude have been drawn in Article 6 of the European Convention on Nationality, which reflects current State practice in Europe. It would in my view not be in conformity with Article 3 of the Convention on the Rights of the Child, which requires that “in all actions concerning children [...] the best interest of the child shall be a primary consideration”, if the waiting period before an application for citizenship of the child can be made would be extended beyond 5 years. It goes without saying that maintaining the obligation to pass language and constitutional tests for the category of children described in Article 7 of the Convention of the Right of the Child would rob the right conferred in this article of its meaning, taking into account the fact that such tests would in all likelihood only be passed when these children approach adulthood.

Taking all the aspects of the problems into consideration, I recommend to the Government to base itself on the formula on which consensus was recently reached in the Council of Europe and which provides that otherwise stateless children will be granted citizenship on application after a period of residence not exceeding five years immediately preceding the lodging of the application. In making this recommendation, I have taken into account that the citizenship Law of Estonia presently in force, in contrast to the previous law, does not provide for the granting of citizenship to otherwise stateless children on the basis of Article 7 of the Convention on the Rights of the Child. However, Article 123 of the Constitution of Estonia makes it clear that international law prevails over domestic law, should there be a conflict.

There are in my view not only strong legal, but equally strong political, arguments for following the line I have recommended regarding stateless children in Estonia. Estonia has always maintained – in my view on solid grounds – that it can only accept persons as citizens who are sufficiently integrated in Estonian society. But as you have yourself remarked in a recent speech in Strasbourg, Mr Minister, it is above all the younger generation of non-citizens which is eager to integrate. The IOM-UNDP survey showed that 2/3 of the age group between 18 and 29 has tried to increase its knowledge of the Estonian language. They consider Estonia not as an alien country, but as their country. *A fortiori* this will apply to those who are presently school children who were nearly all born in Estonia and most of whom have few if any memories of the Soviet past. I have already quoted a sociological survey amongst seventh grade pupils of Russian schools showing that they see the need to learn the Estonian language, and that their parents are equally convinced of this, clearly also because they realise that it would be in the interest of the future careers of their children to know the Estonian language. At the same time, a major effort on the part of the Government is underway to ensure that children in Russian schools get an adequate training in the Estonian language. Therefore, the risk is very small that the group of children in Estonia to whom I recommend to confer Estonian citizenship will have inadequate knowledge of the Estonian language. It is also against this background that I am convinced that Estonia can undertake the step I recommended without damaging its interests.

Conclusions and recommendations

In conclusion, I should like to stress again the importance I attach to a number of recent steps taken by the Government which show its determination to pay increased attention to the interests of those residents of the country who are not Estonian citizens, such as the appointment of a minister for inter-ethnic relations, the steps taken to ensure a greater flow of information of relevance for these persons and the plan to seek a change of the law enabling non-citizens to receive their permanent residence permits earlier than foreseen under the present legislation. I express the hope that everything possible will be done to speed up the distribution of alien passports to those who have applied for them.

I note with satisfaction that quite a number of recommendations I have made in the period April 1993-October 1996 have been accepted by the Government. I also note that plans to introduce the institution of an Ombudsman are well under way. If the Ombudsman would be able to deal with the complaints of all residents of Estonia, and not exclusively its citizens, he could in effect fulfill the role of the National Commissioner on Ethnic and Language Questions suggested in one of my recommendations.

The other recommendations which I have made earlier and which I hope your Government will accept are:

- 1) the simplification of the constitutional test. I want to stress that I am not making a plea for the abolition of the test, only for the deletion of the more difficult and intricate questions.
- 2) the granting of Estonian citizenship to children in Estonia who are presently stateless or who would become stateless at birth, in accordance with Article 7, paragraph 2, of the Convention on the Rights of the Child to which Estonia is a party. I want to stress that I am not arguing for an automatic granting of citizenship to this category of children. Parents will have to show interest by making an application. In addition, it is in my view reasonable and in accordance with the European Convention on Nationality and the Convention on the Rights of the child if Estonia would require that the parents had lawful and habitual residence for a period of five years immediately preceding the lodging of such an application.

These are the proposals I want to submit to you, Mr Minister. I am looking forward with great interest to your reply. I am sending a copy of this letter to your colleague Mrs Veidemann.

Yours sincerely,

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OSCE High Commissioner
on National Minorities

Ministry of Foreign Affairs
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04 June 1997

Dear Mr. Max van der Stoel,

Thank you very much for your May 21, 1997 letter. I found our discussions during your visit in early April most inspiring and I'm glad to see that so did you. I highly value the profoundness of analysis performed in your letter. I'm also pleased at the earnestness and energy you devote to my country. It is very important for us that you consider the development in Estonia positive and the outcome of public opinion surveys on inter-ethnic relations encouraging. I would like to assure you that the successful integration of non-Estonians into our society and through it into Europe is a firm aim of my government. It is very motivating that you so highly appreciate our efforts made thus far.

You have raised many important issues for Estonia in your 21 May 1997 letter. Namely, the issue of distribution of aliens' passports, the draft law on Ombudsman and the question of giving top priority to language training, as well as the questions of the constitutional test and citizenship of non-citizens children.

Nearly 150 000 persons have applied for the aliens' passports as specified by the Law on Aliens. By the date of expiration of former soviet passports May 15, 98 000 people had received aliens' passports. A wide-range media campaign was launched by Citizenship and Migration Board to inform the population about the expiration and about the importance of collecting their new passports. By now it could be sad that the persons who desired aliens' passports have received them.

The problem of distribution of alien's passports is virtually solved by now and the only persons without passports are those who, in spite of an active information campaign, have failed to apply for or collect their documents.

After Soviet passports became invalid other official documents with photo identification are to be used instead to receive pensions and child benefit payments. For registering births and deaths the old Soviet internal passport may still be used.

The draft law on Ombudsman, currently under preparation in the Ministry of Justice, does not foresee any discriminatory provisions. All residents of Estonia will have a right to lodge a complaint, which I consider the only rightful way of doing it.

I can assure you that the Government of the Republic of Estonia does also agree with the necessity of giving a top priority to speeding up the issues concerning language training.

As you may know, a 6-member working group has been formed under the auspices of the Language Strategy Centre with the task of preparing a long-term **language strategy policy paper**. The members of the working group are experts in various fields including a demographer and a civics educator. The preliminary draft of the language strategy will soon be ready, at which time it will be submitted to the government for approval. The strategy will be the basis for: (1) proposed amendments in curricula, examinations, language standards; (2) co-ordinating the division of duties amongst institutions; (3) language programs and projects – initiation, evaluation, planning of foreign aid participation, financial allocation; (4) planning state budget resources.

In conjunction with the Language Strategy Centre and the Ministry of Education the EU-PHARE assistance of 1.4 mECU has been allocated to assist Estonia in implementing its language strategy – both through the standard school system and through adult education aimed at acquiring citizenship.

The Government has declared in its programme the integration of non-citizens into Estonian society through advanced language training as one of its key priorities. This means that state budget financing for language teaching will also be considerably increased.

Estonian is taught in all Russian-language secondary schools, but the Government decided to make another important step towards improving the quality of teaching Estonian as a foreign language. To stimulate with additional salary qualified teachers to apply for work in the Russian language area of northeast, the establishment of the status of a specially qualified state-language teacher will be introduced in the nearest future. This means the placement of one or two of these teachers in every Russian-language secondary school.

The Government has also planned, in order to encourage non-citizens to apply for Estonian citizenship, the establishment of an integration fund for compensating the costs of language studies. The compensation will be granted to successful applicants and thus make the language courses for people who take their studies seriously, free of charge.

During your last visit many issues were addressed, most specifically the issues of simplification of the constitutional exam and granting of citizenship to non-citizens' children on the basis of their parents application.

While compiling the 100-question exam the applicant's interests were of the utmost concern. It was agreed that while the test must not be unnecessarily difficult it must concentrate on issues, a new citizen would benefit from – primarily on the rights and obligations of a citizen.

Although the examination questions are published in the State Gazette and answers are freely available to the general public, and the passing rate is over 90%, the Government of Estonia, in order to make it *even* easier for applicants to comprehend, finds it very useful to continue discussions and improvements of the naturalisation test on the basis of your recommendations.

Examination of the data available in the European Documentation Centre on Nationality situated in the Council of Europe, which the Governments of the Member States have presented, has shown that European legislations on citizenship are far from being in alignment. Although some laws are in conformity with your recommendations regarding the granting of citizenship to children who are born in the country and would otherwise be stateless, the laws in a number of countries do not follow the principle of your recommendation. It can therefore not be argued that Estonian legislation in the present formulation is at variance with international practice or with practice in Council of Europe States. For example:

- a) In Austria, according to Art. 14 of the Proclamation of 19.07.1985 prolonging the Code on Nationality, Austrian nationality has to be granted to an alien born in the territory of the Republic and who has been stateless since birth, after altogether ten years of regular residence, of which five years uninterrupted, preceding his naturalisation, if the request is filed after the age of 18 and not later than two years after majority.
- b) In most of the Nordic countries, relevant legislation provides that if an alien does not have nationality of any country --- a declaration (request for citizenship) may be made after the alien has attained the age of 18, if , when the declaration is made, he has resided in the country continuously for the last five years and has, moreover lived in that country previously for periods amounting in the aggregate to not less than five years. Such declaration cannot be made by a guardian or by the person having custody.
- c) In the Federal Republic of Germany the new Aliens Act of 09.07.1990 does not make any distinction between stateless children born in Germany and children born in Germany with a foreign nationality. According to Art. 85 of the Act, an article adopted to facilitate the acquisition of German nationality by second or further generations of immigrants, a non-german applicant must be naturalised if he/she fulfils inter alia, the following conditions: being between 16 and 23 years of age, having lived lawfully in Germany for eight years and having been educated in Germany.

- d) In Malta, according to Art. 3 (6) of Act nE XXIV of 01.08 1989, a person shall be entitled, on making an application to the minister in the prescribed manner, to be granted a certificate of naturalisation as a citizen of Malta, if he satisfies the Minister that he is and always has been stateless and a) that he was born in Malta b) ---not relevant---. It is understood that the person making the application shall be of full age and of full capacity.
- e) In The Netherlands, the relevant Act of 19.12.1984, section 3 (3) provides that a child shall be a Netherlands national if it is born to a father or mother who is residing in the Netherlands or the Netherlands Antilles at the time of its birth and who was born of a mother residing in one of these countries. This would seem to be a provision applicable only to third generation stateless persons, as, had the parents or the grandmother had Netherlands nationality themselves, other provisions of the article would apply.
- f) In Switzerland the applicable rules are contained in the updated version of the Federal Law of 29.09.1952; they do not include any specific provisions on the status of children born to stateless persons. As the Swiss legislation on nationality , does not grant the mechanism to acquire Swiss citizenship, Switzerland mad a reservation to article 7 of the UN Convention on the Rights of the Child.

According to our information, some countries have dealt with questions related to childrens' statelessness on an ad hoc basis and not changed their legislation.

It is difficult to accept singling out Estonian legislation as discriminatory. Moreover, even in countries where the legislation has been changed in the direction recommended, practice is not always consistent with your recommendations.

The position of the authorities of several EU member states is that children born in these countries to parents who were citizens of the former USSR are not considered to be stateless, as they have the possibility to acquire citizenship through a simple administrative procedure, namely registration to the citizenship of the Russian Federation, the successor state of the USSR.

Estonia is building its future as an integrated multiethnic society for decades to come. The government considers as its ultimate goal not just mere naturalisation of aliens, but integration of non-citizens and is therefore creating a wide range language training system. We consider communication between communities and thus learning the state language as one of the main mechanisms for integration. As you also recognise in your letter, 95% of non-citizens and 92,4% of Russian citizens agree or strongly agree that their children ought to learn Estonian. As children feel the same way, considering that children learn languages with an ease and the government has provided opportunities, they should have no difficulties in naturalisation through learning the language in a fast pace. According to our estimation, following of your recommendation might diminish the motivation of non-citizens to learn the state language and reduce their possibilities of integration into Estonian society.

IN CONCLUSION

- The Government of Estonia has already fulfilled 28 out of your 30 recommendations made during the whole period since 1993.
- The Government of Estonia is seriously considering your recommendations to simplify the constitutional test.
- Through constantly improving language training, the Government of Estonia has created a credible mechanism for children born in Estonia to acquire Estonian citizenship. However, the recommendations to grant citizenship to non-citizens' children born in the country, based only on the application of their parents, does not appear to be based neither on universal principles and obligations of the OSCE, nor on established common practice in OSCE Member States. If the recommendation reflected recognised international legal obligations it should be followed uniformly by all the Contracting Parties to the UN legal instruments referred to, and not be invoked only in respect of Estonia. Indeed, Estonia should not be singled out from having adopted a legislation, which, as regards the specific issue raised by you, does not differ from that of several other European States, also members of the OSCE and the Council of Europe. However, if this recommendation remains standing for Estonia, it should be made a general and universal principle of the OSCE. As international obligations are superior to Estonian internal legislation, Estonia would then certainly follow this principle.

These are my comments to the ideas and proposals reflected in your letter, dear High Commissioner. I look forward to continuing constructive cooperation between you and my government.

Yours sincerely,

Toomas Hendrik Ilves