

Comments of the Government of Estonia on the Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities concerning the Implementation of the Framework Convention in Estonia

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its second Opinion on Estonia on 24 February 2005. The Opinion of the Advisory Committee is based on the second State Report of Estonia submitted on 16 July 2004, as well as other written sources and information that the experts of the Advisory Committee received at their meetings with government officials and representatives of national minorities during the visit to Estonia from 30 November to 2 December 2004.

The Government of Estonia considers the ongoing dialogue with the Advisory Committee very important. The dialogue has now a history of more than five years and it has had a positive effect on the policies, legislation and various programmes and projects concerning national minorities in Estonia. Estonia has tried to take the proposals and recommendations of the Advisory Committee into account as much as possible and will continue activities for the protection of national minorities, also in the light of recommendations of the Advisory Committee.

The Government welcomes the adoption of the Opinion of the Advisory Committee and would hereby like to submit some remarks and explanations. If necessary, reference has been made to the Opinion of the Advisory Committee.

Article 4 of the Framework Convention

Development of anti-discriminatory legislation

Points 33 and 38 in the Advisory Committee's Opinion deal with the issues relating to the Employment Contracts Act. It is noted under point 33 that Estonia has improved guarantees against discrimination with the amendments to the Employment Contracts Act that entered into force in 2004. However, in point 38 reference is made to the version of Article 10 of the Employment Contracts Act that was in force before 1 May 2004: "It is also to be noted that the above-mentioned Article 10 of the Employment Contracts Act stipulates in its paragraph 2 that it is not contrary to the said article to "require language skills necessary for the work and pay compensation for proficiency in languages"."

With the amendments that entered into force on 1 May 2004¹, Article 10 of the Act was reworded and the Act was supplemented with Articles 10¹-10³ that specify the prohibition of unequal treatment. According to the amended Act, it is considered to constitute unequal treatment where a person applying for employment or an employee is discriminated against on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political opinions or

¹ The full version of the amended Employment Contracts Act in English is available at <http://www.legaltext.ee/text/en/X1056K9.htm>

membership in a political party or religious or other beliefs. Unequal treatment on the above grounds is prohibited in access to employment, concluding an employment contract, remuneration, promotion in employment or office, giving instructions, termination of employment contracts, access to retraining or in-service training or otherwise in employment relations.

Taking account of the sex, level of language proficiency, age or disability in employing of a person, or in giving instructions or enabling access to retraining or in-service training is not considered to constitute unequal treatment if this is an essential and determinative professional requirement arising from the nature of the professional activity or related conditions; allowing a suitable working and rest time regime which satisfies the religious requirements of an employee is also not considered to be unequal treatment.

It is noted in point 37 of the Advisory Committee's Opinion that the drafts of the equality legislation do not explicitly include citizenship as a prohibited ground of discrimination. It is stipulated in Article 9 paragraph 1 of the Estonian Constitution that the rights, freedoms and duties of each and every person, as set out in the Constitution, shall be equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia. According to Article 12 paragraph 1 of the Constitution, everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. Thus, the Constitution explicitly stipulates that it is prohibited to restrict the rights of any person if those rights are listed as the rights of each and every person. The Constitution separately lists civil rights which are directly related to being an Estonian citizen. In some cases these rights also extend to foreign citizens and stateless persons living in Estonia if the relevant law clearly so provides. Such rights are, for example, listed in Article 28 paragraph 2, Article 29 paragraph 1, Article 31 paragraph 1 of the Constitution.

Thus, citizenship is a prohibited ground of discrimination in all cases where Estonian legislation does not provide *expressis verbis* for distinctions concerning the rights of foreign citizens or stateless persons as compared to Estonian citizens. Nevertheless, it cannot be considered as justified to include citizenship as a separate ground of prohibition of discrimination in the same line with such absolute grounds as race or origin, as in accordance with international law citizenship is generally accepted² as a basis for providing distinctions in civil rights.

Aliens Act

In point 43 of the Opinion, the Advisory Committee has mentioned the issue of residence permits of retired former military officers. Retired former military officers of the Russian Federation stay in Estonia on the basis of two international agreements: "Agreement between the Republic of Estonia and the Russian Federation on the withdrawal of the armed forces of the Russian Federation from the Estonian territory and on the conditions of their temporary stay there" and "Agreement between the Republic of Estonia and the Russian Federation on the issues of social guarantees for

² See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(2).

the military pensioners of the armed forces of the Russian Federation on the territory of the Republic of Estonia.” The agreement also regulates the issuing of residence permits to retired military officers and provides for the social guarantees for them. The agreement does not specify the type and duration of the residence permits issued to retired military officers. At the beginning of 2005, the majority of the military pensioners and their family members who are subjects of the agreement had been issued temporary residence permits with a maximum period of validity. Persons identified in the agreements have been refused residence permits only in exceptional circumstances in connection with the threat to national security, which is also a ground provided for in the agreement. The implementation and interpretation of the agreement falls within the competence of the parties to it.

In respect of point 44 in the Advisory Committee’s Opinion, the Government would like to note that, in processing the requests for residence permits and making relevant decisions, officials of the Citizenship and Migration Board take into account the subjective rights of the persons, including the right to private and family life, and in exercising the right of discretion they observe that the decisions are proportional and the subjective rights of persons are protected to the required extent. The case law of the Supreme Court in this field is also taken into account, which *inter alia* has sought guidance from the Council of Europe Recommendation (2000) 15 of 13 September 2000.

Naturalisation process

The number of persons who submitted applications for citizenship and received citizenship grew considerably in 2004 as compared to previous years. In 2005 the trend has continued and in the first six months of the year 3622 persons were granted citizenship, which is equal to the number in the whole of 2003.

To facilitate the naturalisation process, the Integration Foundation will implement a project in 2005-2007 aimed at supporting the aspirations of stateless persons in acquiring Estonian citizenship. Half of the cost of the project will be covered by the European Union. Wide-ranging information campaigns and free training will be targeted to potential citizenship applicants. Training will be offered for a total of 10 000 persons: 7000 adult citizenship applicants and 3000 pupils from non-Estonian basic and secondary schools.

Social marginalisation and its effects

In point 54 the Advisory Committee has noted that the Government lacks data on the proportion of persons belonging to national minorities in prisons. According to the data of the Ministry of Justice, as at 1 January 2005 there were 3463 persons in Estonian prisons, among them 1702 Russians, 1524 Estonians, 74 Ukrainians, 48 Belorussians, 19 Finns, 17 Romas, 15 Azerbaijanis, 11 Latvians. The number of other nationalities was less than ten.

In point 55 the Advisory Committee recommends to continue with the prevention and treatment of HIV/AIDS as an issue of priority. The Estonian authorities are aware of the extent of the problem and the importance of solving it and will continue efforts to this end. In accordance with the recommendation of the Advisory Committee, there

are plans upon the completion of the new HIV/AIDS strategy to translate it promptly to Russian and thus guarantee the availability of the nationally important document also to persons belonging to national minorities who are not proficient in Estonian. The new strategy is multidisciplinary. Estonia wishes to ensure access for all HIV positive people to free ARV treatment and improve the access of non-insured HIV positive persons to minimum health care services.

Article 5 of the Framework Convention

Support to the culture of national minorities

In addition to project based financing, cultural societies of national minorities also receive basic support from the state. The amount of base funding in the budget of 2005 is 3.2 million Estonian kroons.

In respect of point 64 of the Advisory Committee's Opinion, the Government would like to add by way of explanation that under the leadership of the Integration Foundation information days in different places in Estonia have been traditionally organised for target groups after the announcement of the new project competitions (language training, study materials, language days). These information days have been organised in Estonian and Russian.

Article 8 of the Framework Convention

Religious associations and organisations

In point 80 the Advisory Committee notes that the protocol on the organisation of the property relations between the state and the Estonian Orthodox Church under the Moscow Patriarch has not yet been implemented. The speed of settling the property relations arising from the said protocol depends on legal and technical nuances which are different for various objects of property, and the work for implementing the protocol is constantly underway.

In respect of points 81 and 82 of the Advisory Committee's Opinion the Government would like to clarify that the requirement arising from Article 7 of the Churches and Congregations Act for using the Latin alphabet in the name of a religious association should be viewed in combination with the Language Act. According to Article 21(2) of the Language Act, the seals, stamps and letter-heads of associations registered in Estonia, including religious associations, shall be in Estonian. The Estonian text may be accompanied by a translation into a foreign language. Article 22 of the same Act provides that the international form of Estonian names, including the names of associations, in the Latin alphabet shall be identical to the form used in Estonia and, if the names are written in a language which uses another alphabet, the transcription rules established in the Literary Standards shall be applied. Thus, according to effective legislation, writing of names of religious associations in an alphabet other than Latin in other cases referred to in point 81 of the Opinion is allowed and legitimate.

Article 10 of the Framework Convention

Scope of the protection of the state language

In point 92 of the Advisory Committee's Opinion reference is made to the Development Strategy of the Estonian Language for 2004-2010. This is a document that forms part of Estonia's general language strategy. In addition to the said document, also developing of the fundamental principles of Estonia's foreign language policy has been initiated which partly also covers the languages of historical national minorities (German, Russian, Yiddish, Swedish, Finnish). With the order of the Minister of Education a working group was formed with the task to draw up the document by February 2007. Thus, the development of the Estonian language is part of the integrated general language policy.

In respect of the recommendation in point 93 of the Opinion, the Government would like to clarify that the aim of the Development Strategy of the Estonian Language is the promotion of the Estonian language through the improvement of language development and management and improvement of the level of teaching Estonian as a mother tongue. The issues of teaching Estonian to national minorities have been covered in other documents (language learning strategy for non-Estonian-speaking population, state integration programme, etc). The development of the Estonian language does not take place at the expense of the language learning for non-Estonian population and does not contradict their interests, because effective language development and relevant basic research, in turn, support the organisation of language learning for national minorities.

Use of minority languages in relations with authorities

In point 95 the Advisory Committee refers to Article 9 of the Language Act, but actually communication with authorities in a foreign language is regulated in Article 8 of the Language Act.

Article 12 of the Framework Convention

School curriculum

The Government would like to provide additional information concerning points 112 and 114 of the Advisory Committee's Opinion.

In 2004, the Integration Foundation's centre of educational programmes in cooperation with national cultural societies began developing a series of workbooks to introduce different national cultures and traditions to basic school pupils. The first book "Nationalities in Estonia. Lithuanians" was published at the beginning of 2005. Due to the considerable interest of schools and libraries, a reprint of the book is planned. Support was also given to the television series "Ethno-mosaic" about fifteen different national minorities in Estonia. The series explores how various national minorities in Estonia maintain their culture and identity. Video cassettes with the first nine parts of the series will be distributed to all schools.

The compilation of presentations delivered at the seminar "Multicultural schools in Estonia", held at the University of Tartu Narva College, with translations into Estonian and Russian was distributed to libraries, education departments, local

authorities and Russian-medium secondary schools. The presentations dealt with education in a multicultural society, the general bilingual teaching models in Estonia and the relevant experience in Latvia.

In Estonian schools the choice of foreign languages for pupils is voluntary. From the languages of national minorities it is possible to study Russian, German, Hebrew, Finnish and Swedish at general education schools. The Estonian Government supports EU language policy goals according to which EU citizens should speak their mother tongue and at least two foreign languages, including the languages of neighbouring countries. The Estonian state supports teaching of the above-mentioned languages, publication of study materials, teacher training and in-service training.

Teacher training

In the current draft development plan for teacher training³ and the draft of professional standard for teachers (the professional standard will be the basis for framework requirements for teacher training and for university curricula), under basic knowledge and professional skills a separate emphasis is placed on knowledge about the peculiarities of the multicultural learning environment and the skills to cope successfully in it and the ability to anticipate problems; the skills to adjust the teaching and learning environment for learners of different linguistic and cultural backgrounds; the skills to involve members of the community with different cultural backgrounds and parents in organising in-school and out-of-school events.

With support from the EU Phare programme the University of Tartu and University of Tallinn continue drawing up new training modules for the training and in-service training of basic school teachers. The aim is to have ten training modules in multicultural classes for teaching the following subjects: coping in a multicultural environment, mathematics, information technology, biology, geography, history, civic studies, literature, music and manual training. In 2004, training courses were held for 100 teachers and school directors where they were taught to teach classes in a multicultural environment. In 2005, courses for 50 teachers will be offered for teaching history, social sciences, natural sciences and geography.

Contacts between pupils

In point 123 of the Advisory Committee's Opinion, reference is made to the Decree No 10 (1994) of the Minister of Education "The Order of Admission to, Change of and Leaving the School by Basic and Secondary School Students". The Ministry of Education and Research has prepared a draft with amendments to the said Decree, which definitely foresee the omission of the clause saying that schools may verify the pupils' proficiency of the language of instruction upon admission to the school. This clause is in contradiction with the Basic and Upper Secondary Schools Act and the Education Act. The new version of the Decree should be completed by the beginning of the academic year 2005/2006.

³ The draft of the development plan in English is available at the homepage of the Ministry of Education and Research at <http://www.hm.ee/uus/hm/client/download.php?id=1253>

Under the area of government of the Ministry of Education and Research, regular support is given to joint activities of young people belonging to different nationalities, including language camps, exchange programmes, self-initiative events of young people. Until the end of 2007, support for such activities is planned under the action plans of the state integration programme.

Access to higher education

In point 131 of the Advisory Committee's Opinion it is claimed that the number of representatives of national minorities enrolled in doctoral studies in Estonian higher educational institutions is significantly lower than the number of Estonians. In Estonia, currently no data is collected about the nationality of persons enrolled in diploma, bachelor's, master's or doctoral studies. The data of the latest census in 2000 do not reflect the number of persons currently enrolled at universities. In the official education statistics, the nationality of a person is a criterion until the secondary education level. In diploma, bachelor's, master's and doctoral studies no distinction between students is made based on ethnic nationality. It is possible to present data based on the students' citizenship and country of residence.

Article 13 of the Framework Convention

Sunday schools of national minorities

In 2004, 34 Sunday schools received support for financing their activities, in particular teaching of the mother tongue, from the Integration Foundation's centre of educational programmes. A publication was prepared for the representatives of Sunday schools of national cultural societies, explaining them the possibility to register a Sunday school of a national cultural society as a hobby school. As a result, three Sunday schools have registered themselves with the Ministry of Education and Research.

Article 14 of the Framework Convention

Minority languages in basic schools

In response to points 144 and 145 of the Advisory Committee's Opinion the Government would like to note that the Ministry of Education and Research plans to analyse the issues of teaching of the mother tongue of national minorities in general education schools (in accordance with the Government Regulation No. 154, 2003) in autumn 2005. The aim of the analysis is to find out, based on the current experience, the reasons why the possibility is so little used and, accordingly, make the new proposals.

Language immersion programmes

In response to points 147-149 of the Advisory Committee's Opinion: language immersion as a language learning methodology on the implementing level is financed separately from other forms of bilingual instruction. The financing of the language learning programme does not directly affect the financing of other language learning models. In the framework of the language immersion programme, various activities

are financed: teacher training, in-service training, preparing of teaching materials etc., and the additional study materials prepared within this programme are electronically available for everyone who is interested in them, including all the schools and teachers who do not themselves participate in the language immersion programmes. The language immersion programme involves 34 general education schools (approximately 30% of all Russian-medium schools), 13 pre-school educational institutions; and the resources acquired within the language immersion programme can be used in the whole school. In the case of other programmes, teacher training and other activities are supported separately.

Article 15 of the Framework Convention

Estonian language proficiency requirement in employment

In points 163-165 the Advisory Committee has expressed the opinion that the present language proficiency requirements are unrealistic in some sectors and do not fully take into account the practical situation in the sectors concerned. As an example, police and prison officials and teachers in Russian-medium schools have been mentioned. The experience of the Language Inspectorate shows that the language proficiency of officials and teachers has improved in the recent years. Language requirements are applied flexibly, and the inspectors within their right of discretion have extended the deadlines to comply with the requirements and have issued gradual precepts when the employee's language proficiency has been several levels lower than required. The requirement for public officials, including prison or police officials, cannot be made dependent on the region because in exercising their duties they must be able to communicate in the state language also with Estonian inhabitants who are not proficient in Russian, as well as with state agencies (in-service training, certification, etc). In addition, abandoning the Estonian language proficiency requirement would intensify the isolation of regions in northeastern Estonia.

The Advisory Committee has expressed concern that too strict language requirements might even disturb the work of state agencies in this area, as it may be difficult to find people with required proficiency. Such concerns are unfounded as posts are filled by public competition and there have been no problems in practice. Moreover, the employers have the right to employ or appoint to a post a person with a lower level of language proficiency on the condition that the person will pass the proficiency examination within the set deadline.

The Advisory Committee is also concerned that by prioritising the Estonian language proficiency the knowledge of Russian has been set aside though in certain professions it is essential (e.g. for prison guards, because the majority of the inmates are Russian-speaking). The requirement of the knowledge of Russian is compulsory or recommended for prison guards and for various other public officials.

In point 166, the Advisory Committee expresses the opinion that there is a degree of uncertainty amongst those concerned as to the reach of the Estonian language proficiency requirements in the private sphere, because, based on the Government Regulation of 16 May 2001, it is possible to apply both lower and intermediate level language proficiency requirements in respect of service and sales staff. By way of explanation it could be said that the language proficiency requirement is established

by the employer depending on the nature of the work and the employee should be informed about it and it should be written in the employment contract. The employers have not been particularly eager to establish the intermediate level language proficiency requirement. Based on the Language Inspectorate's database, among 939 service and sales staff the intermediate level requirement has only been established for four customer service staff.

In addition to the above, the Government would like to note that in 2004-2005 support for language learning of medical staff, police officials and rescue workers continued (EU Phare Estonian language teaching project). 1500 persons were provided with 120 free language lessons on both basic and intermediate level – police officials, rescue workers, prison officials, medical staff and teachers in non-Estonian schools in Ida-Viru County, Tallinn and Harju County.

In 2004, the Integration Foundation continued implementing and developing the labour exchange programme (working in an Estonian speaking environment). In total, 49 Russian-speaking and 49 Estonian-speaking persons participated in the programme (the target group were teachers of vocational schools and local government officials). In 2004, an additional survey was conducted to find out the current situation and specify the need for Estonian language teaching for police and rescue service workers.

In May 2005, the project financed by the Estonian Government and the European Social Fund was launched, in the framework of which 255 police and rescue service officials participate in free language courses and 145 officials in the labour exchange programme.