GOVERNMENT COMMENTS ON THE REPORT ON ESTONIA

APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Estonia

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Estonia on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 3 July 2009, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

COMMENTS BY THE GOVERNMENT OF ESTONIA

ON THE REPORT OF THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE ON ESTONIA (fourth monitoring cycle)

The Government of Estonia welcomes the continued dialogue with the European Commission against Racism and Intolerance (ECRI) and uses hereby the possibility to submit its comments on some parts of the ECRI's fourth report where, in the Government's opinion, there is a further need for clarifications or additional information. In the interest of clarity references to some individual paragraphs, in addition to some general remarks concerning the report are made.

Concerning ECRI's findings on Estonian language courses (para-s 12 to 17) the Government confirms that the practice in force since 1 January 2009 of compensating the full cost of language studies for people who pass the language proficiency test will continue. In addition to that, in course of 2009/2010, at least 800 persons have the opportunity to attend free Estonian language courses that are available regardless of person's intention or not to take the language proficiency test or apply for citizenship. Furthermore free courses are offered to education workers and police; there are programmes of work-exchange that include a language course and work in an Estonian-language environment.

According to the decree of the Minister of Education and Research of 3 December 2008, as of the schoolyear of 2009/2010 the Estonian language examination for basic schools comprises the Estonian language proficiency test required for acquiring citizenship in all cases. The Ministry of Education and Research has compiled an "information package" about legislative changes for school directors.

In para 19 the report refers to the European Convention on Nationality to which Estonia is not a party. However, under Estonian laws discrimination is prohibited on grounds of religion, race, colour or national or ethnic origin.

With regard to the recommendation in para 20 we would like to recall that it is an internationally recognised practice that in the interests of national security the states have a wider discretion while granting citizenship to persons who have been in foreign security or intelligence service. The Supreme Court of Estonia has ruled that § 21, para 1.5 of the Citizenship Act is in conformity with the Constitution of Estonia, as well as with article 26 of the UN Covenant on Civil and Political Rights. Furthermore, the Government wishes to point out that the law takes into consideration national security as well as right to family life, as § 21 para 2 of the Citizenship Act provides that Estonian citizenship may be resumed by or granted to a person who has retired from the armed forces of a foreign state if the

person has been married for at least five years to a person who acquired Estonian citizenship by birth and if the marriage has not been dissolved.

The Government would like to point out that the information given to in para 22 concerning language requirements is not entirely accurate. According to the government decree in force since July 1, 2008 the former language proficiency qualifications were re-named to levels A to C in line with the Common European Framework of Reference for Languages. The former qualifications remain valid and the decree indicates how former qualification levels correspond to new levels. Some new categories of civil servants who were not specified in the previous decree were added; in some cases it may mean that the employees will have to obtain a higher proficiency in the state language. At the same time a transitional period of 2 years (until July 1, 2010) was established for achieving compliance.

Concerning ECRIs recommendation in para 24 the Government would like to explain the control mechanisms in place for the Estonian Language Inspectorate.

The Language Inspectorate operates under the same regulations as other executive agencies in Estonia. The main function of such agencies is to exercise state supervision and apply the enforcement powers of the state on the bases and to the extent prescribed by law. The minister, in this case the Minister of Education and Research monitors the legality and purposefulness of the activities of government agencies within the area of competence of the ministry and their officials. In the course of the supervision the minister has the power to invalidate legal instruments and acts of the executive agencies. Directors General of the executive agencies exercise supervisory control over the activities of the regional offices of the executive agency or inspectorate and of their officials to the extent and pursuant to procedure specified by the minister.

In addition the acts of the language inspectors can be contested in the administrative courts; where there are issues concerning fundamental rights the office of the Legal Chancellor is available as well as the Gender Equality and Equal Treatment Commissioner in cases of discrimination.

Currently there are 22 employees in the Language Inspectorate; of those 11 are actual inspectors. Each year the Language Inspectorate publishes a report on its activities indicating the number of the inspections carried out and warnings and orders issued. The numbers are broken down according to specific fields, such as education, local government, health services etc; also the trends as compared to previous years are indicated. According to the latest reports, in 2007, 3029 precepts were issued, of those 5 were contested; in 2008 the inspectors issued 2402 precepts and 5 of those were contested either with the director general of the inspectorate or in court. Complaints mostly concerned the requirement to add translation into state language to public information.

The Government would like to inform that the Ministry of Education and Research is already planning new activities to ensure the quality of language courses as recommended in para 27.

Several ECRIs recommendations like in paras 28 to 33 and part II, concern Russian population in Estonia. The Government would like to point out that although there are 25% of Russians among foreign nationals, according to statistics representatives of more than 120 nations live in Estonia. A lot of them have culture and education in their own language and therefore it is not correct to refer to them as "Russian-language minorities".

The Government of Estonia is of the position that the protection of minority rights has to be ensured under all legislation, not by some specific acts only, such as a law on national minorities. The rights of all the minorities are guaranteed by the Constitution and other acts in conformity with the international law. Moreover, in force since 2009 the Equal Treatment Act specifically prohibits discrimination on the basis of nationality (ethnic origin).

The Cultural Autonomy of National Minorities Act which is based on the similar law of 1925, is just an additional possibility for traditional national minorities in Estonia. All the possibilities mentioned in that

law for developing culture, education and religion in their own language are also available for minorities not having cultural autonomy. These rights are guaranteed by the Estonian Constitution.

The integration process is carried out according to the Estonian Integration Strategy 2008 - 2013, that was elaborated in cooperation with the representatives of ethnic minority organisations. The experience of the Government with integration programmes indicates that the most effective way of integration is via implementation of programmes by participation of the intended target groups.

The Government acknowledges the need for a body or forum where the representatives of minorities could communicate, discuss their problems and present their initiatives to the government. We see that such a forum could develop, for example, on the basis of the current cultural organisations of national minorities.

The Government would like to inform that the Ministry of Justice has started preparing amendments to the Penal Code and will take ECRI's recommendation in para 41 concerning racist crimes into consideration.

With regard to para 149 the Government would like to specify that according to the Act on Granting International Protection to Aliens the subsistence allowance is provided to all family members. The allowance is paid according to the principle that the first family member will get an allowance equal to 100% of established subsistence level and the second and every other family member will get an allowance equal to 80% of subsistence level.

With regard to para 156 the Government stresses that according to the Act on Granting International Protection to Aliens an asylum seeker can not be returned to a state where he/she would face serious risks, like a country that does not live up to the principles of the Convention relating to the Status of Refugees. To ensure this, all the applications are analysed case-by-case to determine whether the return to a given state would be safe for each applicant concerned.