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Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 24 June 2005 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Estonia on 23 April 2002, progress has been made in a number of the fields highlighted in that report. The number of stateless people who have obtained Estonian citizenship has been steadily increasing. The Law on Citizenship was amended in 2004 in order to make it easier for disabled people and children under 15 years old to acquire Estonian citizenship. Moreover, the Office of the Legal Chancellor's powers were extended in 2004 to allow it to examine cases of discrimination. The Criminal Code was also amended in 2004 in order to prohibit incitement to hatred and discrimination based on, amongst others, race, nationality or colour. The Law on Employment Contracts was also amended in 2004 in order to include provisions against discrimination in the employment sector.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. Despite the above-mentioned amendments to the Law on Citizenship, there are still approximately 139 000 stateless people in Estonia. This is in part due to the difficulties they face in obtaining free of charge Estonian language courses in order to prepare for the citizenship exam. Furthermore, the Russian community is still disproportionately affected by unemployment. ECRI also notes that there is still a great shortage in Estonia of sufficiently well qualified Estonian language teachers. Estonia has moreover not adopted a comprehensive anti-discrimination law nor has it passed a law on the rights and status of national minorities. Estonia has not developed specific policies for improving the integration of minority groups whilst taking into account their specific needs. In this regard, the Integration Foundation has focused primarily on the language aspect of their integration to the detriment of other issues that also need attention, such as employment and education. Furthermore, Estonia has not developed a consistent policy aimed at bringing the Estonian-speaking and Russian-speaking communities together. Estonia has yet to examine the full extent of the Holocaust in Estonia and to give it its rightful place in the national debate. Moreover, some electronic media continue to publish antisemitic articles with almost complete impunity. Furthermore, the Roma community in Estonia is still disproportionately affected by unemployment and discrimination in the field of education and remains largely ignored by the authorities. Law enforcement officials have received no training on issues pertaining to racism and racial discrimination. Finally, Estonia has not ratified any of the European or international treaties mentioned in ECRI's second report.

In this report, ECRI recommends that the Estonian authorities take further action in a number of areas. It recommends that they continue to provide Estonian citizenship to more stateless people. ECRI recommends in this regard that Estonia provide free of charge language lessons to stateless people who wish to acquire Estonian citizenship and that it continue to train Estonian-language teachers. It also considers that the Law on Cultural Autonomy for National Minorities should be amended in order to reflect the current realities of Estonian society. ECRI further strongly recommends that the Estonian authorities adopt an anti-discrimination law and a law on the rights and status of national minorities, as soon as possible. ECRI also wishes to impart on the Estonian authorities the importance of creating an independent body specialized in the fight against racism and racial discrimination. Moreover, it recommends that Estonia continue to prepare teachers, in particular in the largely Russian-speaking Ida-Virumaa County, for the education reform which requires that all State schools, starting from the 10th grade, start teaching 60% of the subjects in Estonian in 2007/2008.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON ESTONIA

International legal instruments

1. In its second report, ECRI noted that Estonia had signed Protocol No. 12 to the European Convention on Human Rights and recommended that this Protocol be ratified as soon as possible. ECRI also indicated that it understood that discussions were underway in Estonia concerning the ratification of ILO Convention 111: Discrimination (Employment and Occupation) and that this Convention would be ratified once the relevant domestic legislation passed through Parliament. ECRI thus hoped that this ratification would take place shortly. ECRI further encouraged Estonia to make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. ECRI notes that Estonia has not ratified Protocol No. 12 to the European Convention on Human Rights. ECRI welcomes, however, Estonia's ratification of ILO Convention 111 on 8 June 2005. Estonia has indicated that although it has not made a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, it plans on doing so by the time it writes the next report for the Committee on the Elimination of Racial Discrimination, which ECRI understands is in the next couple of years.

3. In its second report, ECRI also encouraged the Estonian authorities to take the necessary steps to introduce domestic legislation with a view to ratifying the UNESCO Convention against Discrimination in Education. It further urged the authorities to ratify the European Convention on the Participation of Foreigners in Public Life at Local Level and to ratify the European Convention on Nationality, the European Charter for Regional or Minority Languages and the European Convention on the Legal Status of Migrant Workers.

4. Estonia has indicated that it has made no steps to ratify the UNESCO Convention against Discrimination in Education as it feels that it would not add anything new to its legislation since this Convention's provisions are contained in its domestic legislation. ECRI further notes that Estonia has not ratified the European Convention on the Participation of Foreigners in Public Life at Local Level. Estonia has also indicated that it has no intention of ratifying the European Convention on Nationality or the European Charter on Regional or Minority Languages. Furthermore, Estonia has not ratified the European Convention on the Status of Migrant Workers.

5. Since ECRI's second report, the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems was opened for ratification on 28 July 2003. Estonia has indicated that it is in the process of ratifying this Protocol. Estonia has further stated that it has not signed the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, which came into force on 1 July 2003 and ECRI understands that it has no intention of doing so.

Recommendations:

6. ECRI reiterates its recommendation that Estonia ratify Protocol No. 12 to the European Convention on Human Rights. ECRI further recommends that Estonia ratify ILO Convention 111: Discrimination (Employment and Occupation) as soon as possible and that it make a declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination.

7. ECRI further reiterates that Estonia should ratify, as soon as possible, the UNESCO Convention against Discrimination in Education, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on Nationality, the European Charter for Regional or Minority Languages and the European Convention on the Legal Status of Migrant Workers.

8. ECRI also recommends that Estonia ratify the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems and the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families.

Constitutional provisions and other basic provisions

- Citizenship legislation

9. In its second report, in the light of the requirement in the Law on Citizenship that those wishing to acquire Estonian citizenship have knowledge of the State language, ECRI strongly recommended to Estonia that the provision of language teaching be improved throughout the country, particularly in those regions where Estonian is not commonly used as an everyday language, and that such teaching be provided free of charge to all persons wishing to obtain Estonian citizenship. ECRI also considered that further measures needed to be taken to increase awareness among non-citizens of the actual requirements of the language examination and to reduce apprehensions about its content.

10. In January 2004, a new amendment to the Law on Citizenship provided that the Government would reimburse 50% of the fee paid by stateless people for language lessons taken in view of acquiring Estonian citizenship. There is however one caveat to this provision as only those who pass the language exam are entitled to this reimbursement. This has resulted in many stateless people having to attend private fee paying language schools in order to prepare for the citizenship exam. ECRI has been informed that a large number of stateless people who want to learn Estonian for the citizenship exam cannot afford to pay for language lessons. Therefore, this situation significantly reduces their chances of acquiring Estonian citizenship. Furthermore, the authorities appear to be unable to recruit sufficiently well qualified Estonian language teachers to work in the Ida-Virumaa County which has the highest number of Russian speakers in Estonia. In Narva and Virumaa, for example, there are still very few qualified native Estonian teachers. ECRI further notes that although the language exam has been simplified, many stateless people still feel that it is too difficult. In this regard, ECRI notes that in 2003, 63% of those who sat for the language exam passed it. ECRI further notes that having to take the language exam is still considered by many to be offensive and humiliating, in particular by those who were born in Estonia[1].

11. All non-Estonian primary school students in Estonia must take an Estonian language exam before proceeding to secondary school. This language exam, if it is supervised by the national examination board, exempts them from having to sit for the language examination in order to obtain Estonian citizenship. However, if a school fails to invite representatives of the national school examination board to supervise this language examination, it will not be taken into account when the students apply for Estonian citizenship. ECRI thus notes that this situation has created problems for some students who have passed the examination without

[1] For more information regarding the situation of stateless people in Estonia, see below the section entitled "Specific issues".

the presence of members of the national school examination board as not all school consistently request them to supervise the language exam. As a result, many students do not benefit from the above-mentioned exemption.

12. In its second report, in view of the fact that the Law on Citizenship prohibits former military and security service personnel and their spouses from acquiring Estonian citizenship, ECRI was of the opinion that the decision to refuse citizenship on the grounds of former military or security service be made on a case-by-case basis, allowing the possibility for exceptions, for example on humanitarian grounds.

13. The situation has not changed much since ECRI's second report as many retired military personnel still face difficulties in acquiring Estonian citizenship. According to Estonian Government statistics, only two retired military personnel have been granted Estonian citizenship since ECRI's second report. Moreover, although retired military personnel who have an Estonian spouse are exempt from the above-mentioned prohibition, ECRI has been informed that the procedure for acquiring citizenship under this exemption is so complicated that very few of them use it. ECRI further notes that military personnel are often obliged to go to court to enforce an international agreement between the Russian Federation and Estonia which provides that they should be granted permanent residence. ECRI also notes that spouses of former military personnel are still forbidden from acquiring Estonian citizenship.

Recommendations:

14. ECRI recommends that the Estonian authorities provide high quality free of charge language lessons to stateless people who wish to sit for the citizenship exam, whether or not they pass the language portion of this exam.

15. ECRI recommends that the Estonian authorities put in place a policy whereby members of the national school examination board are required to be present whenever non-Estonian primary school students take the Estonian language exam in order to enable them all to be exempt from the language portion of the citizenship exam.

16. ECRI reiterates its recommendation that the Estonian authorities examine the situation of retired military personnel and their spouses who wish to acquire Estonian citizenship, on a case-by-case basis.

- ***Language Law***

17. In its second report, ECRI recommended that the implementation of the Law on Language be very closely monitored and that its application be strictly monitored in accordance with its Article 2^1 which restricts the scope of the application of the Law only to expressed public interests permissible under international law and in proportion to the legitimate aim sought.

18. The Estonian authorities have indicated that the Language Inspectorate continues to monitor compliance with the language law both in the public and private sectors. The Language Inspectorate thus has the right to monitor the Estonian language proficiency of private sector employees who provide services to the public (such as doctors, pharmacists, etc.), as it is considered to be in the public interest. The Language Inspectorate can impose fines if a precept to learn Estonian is repeatedly violated. The Estonian authorities have also informed ECRI that the Language Inspectorate makes approximately 1,000 inspections a year. However, ECRI notes that it appears that no system has been put in place to monitor the Language Inspectorate's implementation of the Law on Language.

In this regard, the Office of the Legal Chancellor[2] has brought to the attention of the Ministry of Education the necessity of amending the Language Law in order to clearly define the role of the Language Inspectorate. This is all the more necessary as the language requirement contained in the Language Law may increase the risk of members of the Russian-speaking minority suffering discrimination in the employment sector, especially in the private sector. In this regard, ECRI notes that no study has been carried out in Estonia on this question by, for example the Integration Foundation, which is the body in charge of ensuring the integration of minority groups in Estonia through the Integration in Estonian Society 2000-2007 program. Moreover, ECRI notes that the Language Inspectorate does not appear to take into account regional specificities when applying the Language Law. It has been noted that it is for example somewhat unrealistic to require fluency in Estonian from private sector employees in the Ida-Virumaa County which, as indicated above, is a primarily Russian-speaking region.

19. In its second report, ECRI stressed that the requirements concerning proficiency in Estonian should be accompanied by strenuous efforts to provide high-quality and easily accessible language training courses across the country and free of charge.

20. Since ECRI's second report, the Integration Foundation has put in place a series of training programs for Estonian language teachers. Moreover, the European Union has financed several projects in Narva which provide additional Estonian language courses to unemployed Russian-speakers. However, minority representatives have indicated that there are still not enough good, free of charge Estonian language courses for adults. They thus consider that the Government should organize such courses and monitor them in order to ensure their effectiveness. In this regard, ECRI notes with concern that whilst the Language Inspectorate continues to carry out regular inspections both in the public and private sectors, no programs for providing affordable adult language courses to Russian-speakers have been put in place.

Recommendations:

21. ECRI reiterates its recommendation that the implementation of the Law on Language be closely monitored by the Estonian authorities. It recommends in this regard that the role and powers of the Language Inspectorate be clearly defined by law and subject to a monitoring system, especially with regard to the language proficiency in the private sector.

22. ECRI strongly recommends that the Estonian authorities provide good quality, free of charge Estonian language courses for non-Estonian speakers in order to improve their integration into society. It recommends in this regard that the different needs of minority groups be taken into account for such language courses and that they be extended to the whole country.

- ***Law on Cultural Autonomy for National Minorities***

23. In its second report, ECRI considered that the work on the issue of the Law on Cultural Autonomy for National Minorities should continue as a matter of priority and that the provisions and implementation of the current law should be reviewed, in close cooperation with members of minority groups, in order to evaluate and remedy its shortfalls as a means of protecting the culture and identity of the various minority groups residing in Estonia.

[2] The work of the Office of the Legal Chancellor shall be examined below in the section entitled "Specialised bodies and other institutions".

24. ECRI notes that the Law on Cultural Autonomy for National Minorities still has many shortcomings which prevent most minority groups from enjoying the rights contained therein. The Law still provides that only those minority groups which are comprised of 3,000 people may form a cultural autonomy. Moreover, as the Law still only applies to citizens, there are currently only 4 minority groups which can benefit from it. Therefore, the Law on Cultural Autonomy for National Minorities still has a very limited scope and minority representatives have indicated that it does not work as it currently stands.

25. Minority representatives have further expressed concern at the fact that their proposals to amend the Law on Cultural Autonomy for National Minorities have been largely ignored by the Government and that they have not been consulted on matters pertaining to this Law. ECRI notes moreover that the Law does not take into account the specific circumstances of the different minority groups in Estonia. For example, even if those minority groups which are comprised of 3,000 or more Estonian citizens are entitled to form a cultural autonomy under the above Law, if there is a substantial number of stateless people or non-citizens in their community, any cultural autonomy that they would establish would have no legitimacy within the group as it cannot reasonably be considered to be a representative body.

Recommendations:

26. ECRI recommends that the Estonian authorities amend the Law on Cultural Autonomy for National Minorities in order to enable more minority groups to benefit from the rights contained therein. It recommends in this regard that the Estonian authorities enter into a dialogue with members of minority groups on this subject and take their suggestions and comments into consideration.

27. In its second report, ECRI recommended that the restriction forbidding non-citizens from voting or being elected to the leadership of cultural self-governments be reconsidered, particularly given the sizeable non-citizen population in Estonia. ECRI further noted that only citizens were recognized as national minorities under the law, in accordance with the declaration made by Estonia when it ratified the Framework Convention for the Protection of National Minorities.

28. ECRI notes that non-citizens are still precluded from voting or being elected to the leadership of cultural self-governments. Moreover, it appears that the Estonian Government has no intention of changing this situation. ECRI further notes that Estonia has maintained its declaration under the Framework Convention for the Protection of National Minorities by which only citizens are recognized as national minorities.

Recommendations:

29. ECRI reiterates its recommendation that the Estonian authorities allow non-citizens to vote or be elected to the leadership of cultural self-governments.

- Law on the rights of national minorities

30. ECRI notes that despite the above-mentioned shortcomings in the Law on Cultural Autonomy for National Minorities, Estonia has yet to enact a law on the rights of national minorities. Minority representatives have consistently indicated to ECRI that a law which would clearly define national minorities' status in Estonian society and protect their rights is urgently needed. ECRI notes that such a law has been discussed on a number of occasions at the Presidential

Roundtable for National Minorities[3] and that the question has been on the table for the last 6 years. However, although there have been encouraging signs in the last few years that there is more political will to adopt such a law, the Estonian Parliament has yet to put forward a draft proposal to that end. ECRI would thus like to point out to the Estonian authorities that a law on the status and rights of national minorities would improve their integration into Estonian society and urges the Estonian authorities to give a new impetus to the process of adopting such a law.

Recommendations:

31. ECRI strongly encourages the Estonian authorities to adopt a law which would clearly set out the rights and status of national minorities Estonia in order to improve their integration into Estonian society.

Criminal law provisions

32. In its second report, ECRI encouraged the Estonian authorities to investigate the lack of cases and successful prosecutions brought under Article 72 of the Criminal Code – prohibition on incitement to national, racial, religious or political hatred, violence or discrimination - in order to evaluate the effectiveness of the criminal law provision in combating manifestations of incitement to racial hatred.

33. Article 151 of the new amended Estonian Criminal Code prohibits incitement to hatred or violence based on, amongst others, ethnicity, nationality, race, colour, origin or religion. Furthermore, Article 152 of this Code forbids discrimination on the basis of nationality, race or colour, etc. The Estonian authorities have indicated that since ECRI's second report, 4 cases have been brought to court under Article 151[4]. Three of them have been resolved and the other is still pending. Furthermore, there has been one recorded breach of Article 152, but the case was not brought to court.

34. ECRI notes that according to the Criminal Code, a first time breach of these Articles is considered to be a misdemeanour. It will only be considered a crime if it causes substantial damage to the other person's rights or interests or to public interests. Such an act is therefore only punishable by 30 days' imprisonment or a fine if it does not cause "substantial damage". In this regard, ECRI notes that hate crimes are not always severely punished and is worried that this may send the wrong message to those who are inclined to commit such crimes. ECRI further understands that no information campaign has been carried out by the Government to inform the public about these Articles. This may partly explain why so few cases are brought to court, especially as the decision to prosecute race hate crimes may only be made by the Prosecutor propio motu[5]. Whilst welcoming the above-mentioned amendments to the Criminal Code, i.e., the adoption of Articles 151 and 152, ECRI notes that there is still no provision in this Code which prohibits organisations that promote racism or racial hatred.

35. In its second report, in view of the fact that there were no criminal law provisions defining ordinary crimes with a racist element as racist crimes and no scope for

[3] For more information on the work of the Presidential Roundtable for Minorities, see below the section entitled « Specialized bodies and other institutions ».

[4] One case concerned three people who had drawn fascist symbols on walls: 2 of them were sentenced to 2 years' imprisonment and the other to 1 year. The other concerned a person who was fined approximately 500 euros for sending SMS messages inciting to racial hatred on a television talk show. The third concerned incitement to violence against Jewish people on the Internet and it is currently under appeal.

[5] For further information on measures taken by the Estonian authorities to train judges, prosecutors and lawyers on issues pertaining to racism, see below the section entitled "Administration of justice".

racist motivation to be taken into account by the courts as an aggravating circumstance when sentencing, ECRI encouraged the Estonian authorities, in accordance with its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, to introduce such provisions.

36. There are currently no provisions in the Estonian Criminal Code which allow for the racist element of a crime to be considered as an aggravating circumstance during the sentencing procedure. However, the Criminal Code was amended in July 2004 to include "base motive" as an aggravating circumstance at the sentencing phase of a criminal trial. According to the Estonian authorities, such "base motive" may also include racist motivations, but there are as yet no judicial decisions regarding the application of the "base motive" provision, partly due to the fact that this provision is relatively new. Moreover, the Criminal Code does not define ordinary crimes with a racist motive as racist crimes.

Recommendations:

37. ECRI strongly recommends that the Estonian Government prosecute hate crimes more actively and ensure that people convicted of such crimes are punished in accordance with the severity of their crime. It further recommends that the authorities carry out awareness-raising campaigns throughout the country in order to ensure that law enforcement officials as well as victims of race hate crime are aware of the existence of Articles 151 and 152 of the Criminal Code.

38. ECRI recommends to the Estonian authorities that they ensure, in accordance with its General Policy Recommendation No 7, that the racist motivation of a crime is considered to be an aggravating circumstance at the sentencing stage of a criminal trial. ECRI also urges the authorities to prohibit racist organisations. ECRI further recommends that the Estonian authorities include in the Criminal Code a provision which defines ordinary crimes with a racist motivation as racist crimes.

Civil and administrative law provisions

39. In its second report, ECRI noted that there was no comprehensive body of civil and administrative law prohibiting discrimination in fields such as housing, education and access to public services. It thus strongly recommended the adoption of such a body of legislation. It considered such legislation particularly opportune since a number of changes were underway in the field of civil and administrative law.

40. On 21 October 2002, the Estonian Ministry of Justice presented a Draft Law on Equality and Equal Treatment to Parliament. The aim of this Draft Law was to incorporate, amongst others, EC Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and EC Directive 2000/78 establishing a general framework for equal treatment in employment and occupation. The Draft prohibited direct and indirect discrimination based on, amongst others, race, ethnic origin, colour, language, origin and religious belief. It also laid down principles of equality in areas such as education, employment, social security, health care and access to public services as well as the punishment for breaches of such principles. The Estonian authorities have indicated to ECRI that this Draft was withdrawn at the beginning of 2003 because it was considered to contain already existing constitutional provisions concerning discrimination and equality. ECRI considers that this decision is a set-back in the fight against discrimination in Estonia, especially since minority representatives have expressed their strong support for this Draft. They consider the Draft to be a good piece of legislation which is in line with international legal standards. They have also indicated to ECRI that such a Law is urgently needed in Estonia. ECRI further notes with concern that although

some minority representatives were aware of the existence of this Draft, many more were not. Therefore, it appears that there was not a great deal of consultation and information on the part of the Government regarding this Draft Law.

41. ECRI has been informed that in May 2004, the Law on Employment Contracts was amended to include anti-discrimination provisions. This Law currently contains 7 Articles on discrimination at the recruitment stage as well as regarding salary levels, promotion, working conditions, termination of employment, training, etc. The Law also defines direct and indirect discrimination and provides for a shared burden of proof in employment discrimination cases. ECRI welcomes this decision and considers it particularly opportune as the unemployment level among Russians is higher than among ethnic Estonians.[6] As the amendments to the Law on Employment and Contracts are relatively new, ECRI understands that it is still too early to assess their impact on the job market for the Russian minority in Estonia. However, it hopes that the adoption of this Law will enable the authorities to better integrate members of this minority on the job market.

Recommendations:

42. ECRI wishes to stress to the Estonian authorities the need for a comprehensive anti-discrimination law that would ensure equality for all in areas such as housing, access to public services, education, health care, etc. It therefore strongly recommends that they reconsider adopting the Draft Law on Equality and Equal Treatment, in conformity with ECRI's General Policy Recommendation No. 7.

43. ECRI recommends that the Estonian authorities ensure that the new anti-discrimination Articles in the Law on Employment Contracts are fully applied. In this regard, it recommends that the authorities carry out awareness-raising campaigns and training sessions for employers, judges and prosecutors, throughout the country, regarding this law.

Administration of justice

44. ECRI has been informed by the Estonian authorities that judges, prosecutors and lawyers receive training during their studies on questions regarding racial discrimination. Moreover, judges also receive on the job training on the Criminal Code and on issues pertaining to discrimination. The Estonian Legal Centre also provides legal professionals with training on discrimination, the European Convention on Human Rights and criminal law. However, as indicated above, very few cases have been brought to court under Articles 151 and 152 of the Criminal Code. ECRI therefore considers that this may in part be an indication that judges, prosecutors and lawyers are still relatively unaware of the importance of these provisions and how to implement them.

Recommendations:

45. ECRI recommends that the Estonian authorities continue to provide compulsory courses on issues pertaining to discrimination to judges, prosecutors and lawyers. It further recommends that they be specifically trained on the implementation of Articles 151 and 152 of the Criminal Code.

[6] 16% of the Russian population is unemployed compared with 10% of ethnic Estonians.

Specialised bodies and other institutions

- ***Office of the Legal Chancellor/Ombudsman***

46. In its second report, ECRI indicated that as Estonia did not plan on setting up a specialised body with specific responsibility in the field of combating racism and intolerance as recommended in its General Policy Recommendation No. 2, it encouraged the Estonian authorities to address this issue, by either considering the creation of a specialised body dedicated to combating racism and intolerance, or by allocating additional funds and personnel to the existing Ombudsman's office in order to allow it to provide a specialised function in this area.

47. As of January 2004, following an amendment to the Legal Chancellor Act, the Office of the Legal Chancellor is now empowered to deal with discrimination cases. Furthermore, Article 19 of the Legal Chancellor Act provides for a conciliation procedure when a person is discriminated against in private law by a natural or legal person on, amongst others, the basis of their race, ethnic origin, colour, language, origin, religion or religious beliefs. The conciliation procedure is voluntary, so both parties have to agree to it. However, once they have agreed to resolve their case through this procedure, the Legal Chancellor's decision is binding. Furthermore, if parties are unable to agree to a conciliation procedure, they can bring their case to the courts. ECRI welcomes the fact that the Office of the Legal Chancellor has also been empowered to investigate complaints of discrimination in the public sector. It has indicated to ECRI that not many cases of discrimination (three so far), whether they concern private individuals or entities or public authorities, have been brought before it. Although this is, in part due to the fact that its powers in this regard are relatively new, ECRI also notes that minority groups are not sufficiently informed about the possibility of addressing their complaints regarding discrimination to the Office of the Legal Chancellor.

48. ECRI also welcomes the fact that in 2001, the Office of the Legal Chancellor opened new offices in Narva, Sillamäe, and Jõhvi (in the North-East of the country), which are predominantly Russian-speaking towns. ECRI notes in this regard that the majority of cases brought to the Office of the Legal Chancellor's attention in this region concern migration issues. Many people have also contacted the Office of the Legal Chancellor for information on applying for Estonian citizenship and or a residence permit. In this regard, ECRI considers that Office of the Legal Chancellor's presence in this region which also has a large number of stateless people is crucial to helping them in resolving issues of particular concern to them such as acquiring Estonian citizenship.

Recommendations:

49. ECRI recommends that the Estonian authorities continue to provide support to the Office of the Legal Chancellor, especially in view of its new mandate for fighting discrimination. It recommends in this regard that the authorities carry out awareness-raising campaigns, throughout the country, on the Office of the Legal Chancellor's powers in general and on his new mandate for fighting discrimination in particular. ECRI also recommends that the authorities provide the Office of the Legal Chancellor with sufficient funds for helping people at the local level and especially in the Ida-Virumaa County.

- ***Presidential Roundtable on National Minorities***

50. In its second report, ECRI encouraged the Estonian authorities to clarify the mandate and functions of the Presidential Roundtable on National Minorities and to identify solutions to guarantee its continuation and independence.

51. On 23 May 2003, the structure of the Presidential Roundtable on National Minorities (hereinafter "the Roundtable") was changed. The Roundtable is now composed of representatives of minority groups, experts, representatives of political parties as well as several minority umbrella organisations. All of the Roundtable's members are nominated by the Estonian President as its main task is to act as an advisory body to him. ECRI notes with concern the fact that the Roundtable has more than 100 members, which considerably reduces its ability to function and reach a consensus. Therefore, minority representatives consider that the Roundtable is unable to bring about concrete results regarding issues of concern to minority groups. ECRI notes further that the Roundtable's experts carry out research and make recommendations to the Government, but that these recommendations are not binding. Moreover, the fact that it only meets a few times a year (it held its last regular meeting in October 2004) and only has a small budget gives the impression that even as an advisory body it is ineffective.

52. ECRI has been informed that the City of Tallinn has established a Committee for National Minorities (the "Committee") to deal with social and financial issues concerning minority groups, and in particular cultural issues. This Committee's main task is thus to examine how to best help minority groups in solving practical problems of particular concern to them such as, for example, obtaining subsidies for renting a building for cultural activities. The Committee which has met twice, is composed of minority representatives, members of political parties, heads of the city's districts and local government as well as human rights experts. ECRI welcomes the decision to establish such a Committee, and hopes that it will be able to address issues of concern to the minorities living in Tallinn.

Recommendations:

53. ECRI recommends that the Presidential Roundtable for National Minorities be strengthened in order to improve its effectiveness.

54. ECRI strongly encourages the Estonian authorities to create an independent specialised body for fighting discrimination. In this regard it wishes to bring to the authorities' attention its General Policy Recommendations No. 2 and 7 which set out the powers, function and role of such a body.

Education and awareness-raising

- School education

55. In its second report, given the fact that the majority of schools in Estonia are either Russian-language or Estonian-language schools, which may tend to separate children from different ethnic groups, ECRI felt that it was particularly important to include teaching on the culture and identity of the various groups living in Estonia and to continue and expand exchanges between pupils of different schools in order to foster contacts and friendships among children from all groups in society.

56. ECRI has been informed that children in Estonian schools are not taught about the different ethnic groups in Estonia and their contribution to society. For example, Estonian history books only contain a few lines about minority groups. The Estonian authorities have indicated in this regard that in 2004, the Ministry of Education and Research, together with the Integration Foundation and national cultural societies started compiling a series of basic school exercise books to introduce different national cultures and traditions to schoolchildren. However, ECRI has no information on whether this project has been finalised and the books distributed to all the schools in the country. Moreover, ECRI notes that Estonian-speaking and Russian-speaking children still evolve in two different socio-cultural environments and seldom meet. Members of some minority groups

have organised cultural events[7] with the authorities' help in order to inform school children about their culture. Although such initiatives have been generally well received, they are rather sporadic and are not part of a consistent Government policy. ECRI also notes that as a result of the lack of an education system based on cultural diversity, minority groups rely rather heavily on Sunday Schools to teach their children about their culture, history, etc.

57. ECRI also notes that those measures taken by the Estonian Government to encourage contact between Estonian-speaking and Russian-speaking children tend to focus primarily on integrating Russian-speaking children into society. The Integration Foundation has, for example developed programs through which Russian-speaking children are hosted by Estonian families for two to three weeks in order to learn Estonian and Estonian culture. However, no such programs exist for Estonian-speaking children.

Recommendations:

58. ECRI recommends that the Estonian authorities ensure that school manuals include information on the history and culture of minority groups in Estonia as well as their contribution to Estonian society. ECRI further recommends that the authorities include, as part of the school program, teaching on the benefits of diversity and living in a multicultural society.

59. ECRI further recommends that the authorities do their utmost to reduce the gap between Estonian-speaking and Russian-speaking children. It encourages them in this regard to organize fora where such children can meet and learn about each others' cultures, through exchanges between schools or extra-curricular activities.

Reception and status of non-citizens

- Refugees and Asylum Seekers

60. In its second report, ECRI considered that in the light of the low numbers of people seeking asylum in Estonia, the long delay (approximately 2 years) for processing asylum applications was undesirable and urged the authorities to put in place a system whereby appeals against negative decisions could be made to a second-instance body which could itself issue decisions concerning asylum applications.

61. There are currently only a very small number of asylum seekers in Estonia. The Estonian authorities have indicated that 104 asylum claims have been made in Estonia since 1997. Moreover, since ECRI's second report, only 4 people have been granted refugee status and 9 have received "subsidiary protection". In 2004, 14 people applied for asylum in Estonia and there are currently 7 pending asylum applications. ECRI was further informed that between 2003 and 2004, no one was granted asylum in Estonia and the last time anyone was granted refugee status was in 2001. ECRI notes with concern reports which indicate that the extensive unfettered powers, mentioned below, given to border guards to reject asylum claims at the border means that there are most probably more asylum seekers in Estonia, but that there is no possibility of verifying their exact numbers, precisely because of these powers. This is the reason why ECRI considers that Estonia should have legislation on asylum seekers and refugees which fully conforms with international standards, and, as explained below, which reduces the border guards' powers to review asylum claims. This is all the more

[7] Representatives from the Azerbaijani community informed ECRI that between September and October 2004, 13 schools in Tallinn with more than 1,000 pupils took part in cultural events they had organized about Azerbaijani and Turkish cultures.

important as Estonia's accession to the European Union in May 2004 may, in the future, bring about an increase in the number of asylum seekers in that country.

62. A decision by the Estonian Citizenship and Migration Board (hereinafter "the Board") to reject an asylum application is considered to be an administrative act that may only be appealed before an Administrative Court. This Court however only rules on procedural matters and has no power to make a decision on the substance of the case. Furthermore, when an Administrative Court makes a finding against the Board's decision to reject an asylum application, it sends the case back to the Board. This Court has therefore no power to quash the Board's decision, although an asylum seeker whose claim has been rejected may put his case before a District Court and then the Supreme Court whilst it is being examined by the Administrative Court. Such cases are however extremely rare as although the Citizenship and Migration Board's decision to reject an asylum claim may be appealed, this appeal is not suspensive. In this regard, ECRI has been informed that asylum seekers are usually deported within a few days of a decision to reject their claim.

63. ECRI also notes that, according to the authorities, the length of the asylum procedure has steadily decreased since its second report on Estonia. Government statistics indicate that in 2002, it took on average four and a half months for an asylum application to be processed. In 2003, this period was shortened to 3 months and in 2004, the authorities processed asylum requests in one and a half month. Whilst welcoming the fact that it no longer takes 2 years before an asylum seeker is informed about his fate, ECRI hopes that the steadily decreasing length of time in which asylum claims are being processed is not an indication that asylum seekers are being prevented from fully presenting their case to the authorities. ECRI is all the more concerned about this as in the last few years, very few people have been granted either the refugee status or the subsidiary status. Moreover, it appears that it still took 2 years for the 4 people who currently have refugee status to have their claim processed.

Recommendations:

64. ECRI reiterates its recommendation that the Estonian authorities ensure that asylum seekers whose application has been rejected are able to file an appeal before an appeals court. ECRI further recommends again that the authorities allow asylum seekers to remain in Estonia for the duration of their application, including for the period of their appeal against a decision to reject their claim.

65. ECRI recommends that the Estonian authorities ensure that asylum applications are processed with full regard for the asylum seekers' right to have his claim fully heard and examined by the competent authorities in order to avoid any unduly hastened decisions to reject a claim.

66. In its second report, ECRI noted that the authorities did not provide a system of free legal aid for asylum seekers and recommended that they finance such legal representation.

67. ECRI has been informed that the Estonian Refugee Council (an NGO) provided legal aid to asylum seekers in Estonia until 2003, with the help of the United Nations High Commissioner for Refugees (UNHCR). However, as the UNHCR no longer provides the Estonian Refugee Council with financial assistance, this NGO is currently unable to give legal advice to asylum seekers. ECRI understands that the Estonian Refugee Council made an application for legal aid funding to the Ministry of Justice, to no avail. Therefore, the only legal advice currently available to asylum seekers is provided by the Legal Information Centre for Human Rights (another NGO) by lawyers who work on asylum cases on a Pro bono basis, with, since July 2004, funding from the European Refugee Fund,

following an agreement with the Ministry of Internal Affairs. The Citizenship and Migration Board thus asks these lawyers to sit in on their interviews with asylum seekers. However, the extent of these lawyers' involvement in the asylum procedure is unclear. Furthermore, the Estonian authorities have informed ECRI that although asylum seekers are provided with a translator, they may be obliged to pay for the translation of any material that the court deems irrelevant, but there are no clear criteria as to which types of documents fall within this category.

68. In its second report, ECRI felt that the practice by which border officials were empowered to make a decision on asylum applications which did not have a suspensive effect during the appeal procedure did not provide sufficient guarantees and recommended that it be reviewed.

69. Article 8 *bis* of the Refugee Act, which was amended in 2003, still empowers the Border Guard Authority to examine asylum claims submitted at the border. Border guards thus have the power to, amongst others, receive an asylum claim and to take asylum seekers' statements as well as their fingerprints and photographs. The Estonian authorities have, moreover, indicated that the Refugees Act provides that anyone who submits an asylum application at the border will not be allowed to enter the country if he/she has passed through a safe country, if he/she has been granted international protection or such protection is still accessible, or he/she is a national or resident of a safe third country. Although border guards are required to immediately inform the Citizenship and Migration Board of the submission of an asylum claim[8], the Refugees Act provides that they only involve the Citizenship and Migration Board in the actual review of the claim when it is "necessary".[9] Border guards are also required to seek the approval of the Citizenship and Migration Board before rejecting an asylum claim, but no criteria have been established to determine when they should do so. Moreover, it is also unclear to what extent the Citizenship and Migration Board re-examines border guards' decisions to reject asylum claims. ECRI further notes that under Article 8 *bis* 6), border guards' decisions to reject asylum claims result in the asylum seekers' immediate removal from Estonian territory without the possibility of lodging an appeal. It appears therefore that border guards still have considerable power to make decisions on asylum claims. This is particularly worrying as ECRI has been informed that border guards are not taught about the 1951 Refugees Convention or other international and European standards concerning refugees and asylum seekers, as part of their training. Moreover, no independent system has been put in place to monitor the manner in which the border procedure is carried out. As a result, there is currently no information on the number of asylum seekers whose claims have been rejected at the border since ECRI's second report.

Recommendations:

70. ECRI reiterates its recommendation that the Estonian authorities establish a system for providing free legal aid to asylum seekers in order to enable them to fully put their case to the authorities. ECRI further recommends that the authorities clearly set out what material are considered irrelevant when the services of a translator are requested.

71. ECRI urges the authorities to ensure that border guards' powers to review asylum claims at the border are subject to the constant and binding review of the Citizenship and Migration Board in every case throughout the asylum procedure. ECRI further reiterates that border guards' powers to reject asylum claims at the border without applicants being able to file a suspensive appeal against such a

[8] Article 8 *bis* 5) of the Refugees Act.

[9] *Ibid.*

decision be abolished. Until such time, ECRI strongly encourages the authorities to establish a system for monitoring the manner in which the border procedure is applied.

72. In its second report, ECRI expressed its serious concern at the practice by which during the border procedure, an applicant had to remain at the border and was effectively held in detention.

73. ECRI notes that since its second report, asylum seekers whose case has been reviewed through the border procedure are still held in detention at the border. Article 8 *bis* 4) of the Refugees Act provides that when an asylum seeker submits his claim at the border he shall remain in detention during the initial review of his application. If the detention lasts longer than 48 hours, the border authority must seek permission from an Administrative Court judge to extend the detention. Although the Estonian authorities have indicated that this detention cannot be extended for longer than 3 days, the procedure that is applied thereafter remains unclear.

Recommendations:

74. ECRI recommends that the Estonian authorities review the border procedure so that asylum seekers who submit their claims at the border are not detained during the different stages of this procedure. However, if they are, ECRI recommends that they have access to the United Nations High Commissioner for Refugees and the Red Cross.

75. In its second report, ECRI was of the opinion that asylum seekers, including those whose applications had been deemed unfounded, should not be held alongside convicted criminals within the prison system. ECRI further urged the authorities to ensure that persons faced with detention orders had full access to legal recourse. ECRI further considered that the practice of extending the detention of asylum seekers for indefinite periods of time was unacceptable, and that in those cases where deportation could not be carried out for one reason or another, measures had to be taken to regulate the situation of the persons involved.

76. It appears that asylum seekers are still being held in detention centres for extended periods of time while awaiting expulsion. There is currently no limit on the period of such detention, which can be extended every 2 months. In this regard, the Office of the Legal Chancellor has indicated that during a visit to expulsion centres in December 2004, it had met people who had been held there for a year and a half. Moreover, ECRI notes that people who are under a detention order do not appear to have access to legal advice. In this regard, the Office of the Legal Chancellor has indicated to ECRI that during its visits to expulsion centres, it informed the detainees of their right to complain about measures taken against them.

77. ECRI welcomes the fact that the Estonian authorities have opened a reception centre for asylum seekers whose application is under review. The Illuka Reception Centre for Asylum Seekers, which is in the North-East of the country (220 kilometres from Tallinn), was opened in 2000. This Centre has a housing capacity of 35 people and the Estonian Refugee Council provides most of the legal and psychological assistance to the asylum seekers living there. ECRI notes, however, that there is no school at the Centre and that teachers in the area where it is located are not trained to deal with refugee children or children whose asylum claim is still under review. ECRI further notes that although the law entitles refugees to 160 hours of Estonian language lessons, no system has been put in place to give them access to language courses and teachers.

Recommendations:

78. ECRI urges the Estonian authorities not to detain for an indefinite period of time asylum seekers who are under an expulsion order. It further recommends that the authorities ensure that such people have access to legal aid. ECRI also recommends that the Estonian authorities provide adequate medical care, language lessons as well as all other basic services to asylum seekers and refugees who are staying at the Illuka Centre for Asylum Seekers. It further recommends that they provide adequate training to school teachers in the area to enable them to deal with refugee children and children whose claim is still under review.

79. ECRI recommends that the Estonian authorities carry out awareness-raising campaigns in order to ensure that local authorities understand the benefit of receiving refugees in their municipalities.

80. Although, as indicated above, there are currently very few refugees or people who have been granted subsidiary protection in Estonia, ECRI notes with concern that the authorities have a problem integrating them in society. ECRI has further been informed that those asylum seekers who do receive refugee status often have to remain in the Illuka Centre for a long period of time. The authorities have admitted that they have had problems finding local authorities willing to house refugees as they are not legally bound to do so, despite the fact that they receive Government funding until the refugees' temporary residence permit expires (which is usually 2 or 3 years). In this regard, ECRI notes that out of the 4 asylum seekers who were granted refugee status since its second report, 2 have left Estonia to work in other European Union countries.

81. As previously indicated, ECRI was informed that Article 8 *quater* of the Refugees Act provides that asylum seekers who have arrived from a safe third country and have applied for asylum through the border procedure are not eligible for asylum in Estonia. ECRI has however been informed that Estonia does not have a list of so-called "safe third countries". It is therefore unclear what criteria are used to determine whether a third country is safe or not. ECRI thus notes with concern that this Article gives even more unfettered power to border guards to reject asylum claims.

82. The Estonian authorities are currently drafting a new Law on Foreigners who Need International Protection, which will, amongst others, grant the right to remain in Estonia on "humanitarian" grounds or on a temporary basis. However, ECRI notes that those who will receive protection under this law will not have the same rights as refugees[10], such as, for example the right to work. Furthermore they will only receive a temporary residence permit which will be subject to review once or twice a year.

Recommendations:

83. ECRI recommends that the Estonian authorities adopt the draft Law on Foreigners who Need International Protection, in accordance with the principles contained in the 1951 Convention relating to the Status of Refugees. It further recommends that they involve UNHCR in this process.

84. ECRI recommends that the Estonian authorities review the implementation of the "safe third country" principle by border guards. ECRI further recommends that the authorities apply this principle on a case-by-case basis.

[10] Refugees have the right to work, to welfare, social benefits, housing, health care, etc.

- ***Immigration***

85. In its second report, ECRI expressed its concern at the fact that an immigration quota, which is set yearly at around 0.05% of the permanent population but does not concern EU Member States, Norway, Iceland, Switzerland, Japan and the US, may give scope for discriminatory practices as regards immigrants wishing to enter Estonia from countries other than those who are exempt from the quota. ECRI thus hoped that the Aliens' Act would be amended to reflect the practice based on a court decision which deemed the application of the quota system unconstitutional for a person (from the former USSR) who had applied for a residence permit for family reunification purposes.

86. The Aliens' Act was amended in 2002 in accordance with the above-mentioned decision. Article 6 of the amended Aliens' Act exempts spouses of Estonian citizens or foreigners with a residence permit, as well as minor or adult children, parents, grandparents or wards of Estonian citizens or legally resident foreigners (who have resided in Estonia for at least 5 years) from the immigration quota. However, ECRI has been informed that the authorities are now empowered to examine whether an Estonian's marriage to a foreigner is genuine or not for the purpose of family reunification under the Aliens' Act. ECRI hopes that this does not give unfettered powers to the authorities to breach these couples' right to respect for private and family life. Furthermore, ECRI notes that Government statistics indicate that between 2002 and 2004, only a little over half the established immigration quota was used. ECRI thus hopes that this is not an indication that the immigration quota is being applied too strictly.

Recommendations:

87. ECRI recommends that the Estonian authorities monitor the manner in which the immigration quota is applied in order to avoid any possible discriminatory practices or violations of fundamental rights such as, for example, the right to respect for private and family life.

- ***Resident non-citizens***

88. Concerning the situation of resident non-citizens, see "Specific issues" below.

- ***Non-citizens without legal residence status***

89. In its second report, ECRI considered that the authorities should take steps to regularize the situation of non-legal residents, including for example further simplification of the procedures for applying for residence permits, and campaigns to make it clear that they will not risk expulsion from the country when identifying themselves to the authorities.

90. Government statistics indicate that there are approximately 5,000-10,000 non-citizens who do not have a valid residence permit in Estonia. This number includes people who were living in Estonia before 1991 and newcomers. ECRI has been informed by the Office of the Legal Chancellor that it has raised the issue of people who have been held in detention after going to the Citizenship and Migration Board to get their papers in order with the Ministry of Interior, and that he is still waiting for a response. Furthermore, ECRI has also been informed that the Citizenship and Migration Board has established a 10 days' deadline for those wishing to appeal a decision regarding their residence status. The Office of the Legal Chancellor has indicated that this deadline is also applicable to non-Estonians without a residence permit who have been living in the country for a very long time. ECRI notes in this regard that this delay is considerably shorter than the 30 days deadline established for other administrative procedures.

91. Moreover, ECRI notes with concern that the Law on Obligation to Leave and Prohibition on Entry was amended in March 2003 to provide for the deportation of a foreigner whose residence permit has expired for 7 days or a prisoner without a residence permit, without a judge's expulsion order.

Recommendations:

92. ECRI urges the Estonian authorities to ensure that people who have been living in Estonia for a long time and who make a request to have their situation legalised are not placed in detention by the Citizenship and Migration Board. It further urges the authorities to ensure that people who live in Estonia without a residence permit are given sufficient time to appeal a decision to deport them from the country. ECRI recommends in this regard that the authorities examine each case by taking into consideration the individual circumstances of the person involved.

93. ECRI urges the authorities to ensure that no one is deported from Estonian territory without going through a legal procedure and without a judge's order, and that the Law on Obligation to Leave and Prohibition on Entry is re-amended accordingly.

Access to public services

- Access to education

94. In its second report, ECRI stressed the need to ensure that children from minority groups, including those whose parents cannot pay private education, continue to have access to high quality education in the language of their choice and that they are not placed in a disadvantaged situation due to insufficient provision of Estonian language to them to study a range of subjects in that language.

95. The 2000 Basic Schools and Upper Secondary Schools Act provides that by 2007/2008 all State schools, starting from the 10th grade, should be prepared to start teaching 60% of the subjects in Estonian. ECRI notes, however, that although the authorities have endeavoured to train more Estonian language teachers since the second report, there is still a great shortage of qualified teachers of Estonian as a foreign language and of Russian-speaking teachers who are able to teach in Estonian. This problem is even more serious in the Ida-Virumaa County as very few native Estonian language teachers are prepared to relocate to that region, partly due to the economic situation there. In this regard, ECRI has been informed, for example that in Narva, while some schools have started teaching some subjects in Estonian whilst still using Russian textbooks, not a single school is ready for the 2007/2008 transition, mainly because their staff are insufficiently prepared.

96. Moreover, representatives of minority groups have indicated that measures taken by the Government to use bilingual modules are insufficient as only one such module is used. The Estonian authorities have indicated in this regard, that during the 2004/2005 school year, 27 schools used this module. ECRI also notes that some teachers do not feel sufficiently well prepared for the reform and that they fear this reform may reduce the quality of their pupils' education. The Estonian authorities have indicated in this regard that teachers who have been teaching in Russian throughout their career are the most pessimistic about the reform. Furthermore, ECRI notes that although the Basic Schools and Upper Secondary Schools Act was amended in 2002 in order to allow schools to apply for an exemption from the 2007/2008 deadline, it appears that this provision has not been used.

97. In its second report, ECRI stressed the need to ensure that non-Estonian mother-tongue children have an opportunity to gain exposure to the Estonian language before they start their obligatory schooling.

98. Minority representatives have indicated that there is widespread support within their communities for their children to start learning Estonian at the kindergarten level. Moreover, ECRI notes that in Narva for example, kindergarten schools where Estonian and Russian are taught simultaneously are very popular. ECRI notes in this regard that as of the 2003/2004 academic year, the Estonian authorities started introducing pre-school language immersion in 9 schools, mostly in Tallinn, Ida-Virumaa and Valga. The authorities have indicated on this question that in the 2004/2005 academic year, Tartu University and Narva College organized in-service training for 150 kindergarten teachers of Estonian as a second language. According to the authorities, new study material was also drafted during this training. ECRI considers however that these measures are insufficient, especially as minority representatives have indicated that there is no coherent and consistent policy aimed at teaching in Estonian to minority children at the pre-school level.

99. ECRI has been informed that a law which provides that minority children may study their mother-tongue if the parents of at least 10 children request it for their school was adopted in 2004, and entered into force in 2005. ECRI welcomes this law and notes that this provision has already been used by the Ukrainian community. ECRI thus hopes that more minority groups will be able to benefit from this law in the future and that the Government will provide training to teachers in this regard.

Recommendations:

100. ECRI strongly recommends that the Estonian authorities continue training Estonian language teachers in view of the teaching reforms set out in the Basic Schools and Upper Secondary Schools Act. It further recommends that the authorities provide native Estonian language teachers with incentives to relocate to the Ida-Virumaa County, such as salary increases, free housing and other benefits. ECRI also recommends that the authorities strive to alleviate the fears of Russian-language teachers about the school reform by, for example providing them with ongoing on-the-job training in teaching in Estonian.

101. ECRI reiterates its recommendation that the Estonian authorities establish a policy for teaching Estonian to non-Estonian children in kindergarten. In this regard, it recommends once again that the Government develop a policy of training teachers to teach Estonian and in Estonian at that level.

102. ECRI also recommends that the Estonian authorities ensure that schools are aware of the possibility of applying for an exemption from the 2007/2008 deadline for school reform in order to give them more time to prepare.

103. ECRI recommends that the Estonian authorities provide training to teachers of and in minority languages in order to allow minority groups to benefit from the law which provides for teaching in their mother-tongue.

Employment

104. In its second report, ECRI felt that the situation as regards the economic and employment situation of minority groups should be closely monitored and steps taken to address any problem of disadvantage.

105. ECRI notes that Ida-Virumaa County which, as previously indicated, has a large population of Russian and stateless people has the highest level of

unemployment in the country. This is partly due to structural changes in sectors which used to primarily employ people from these communities. Furthermore, as also previously mentioned, the Russian population in general has a higher level of unemployment than ethnic Estonians. ECRI notes that many people are unemployed in the Ida-Virumaa County as they do not speak Estonian and are thus unable to relocate to other parts of the country to seek employment. The Estonian Government has indicated that since 2001, the State Employment Programme for Ida-Virumaa County is being implemented. According to the Estonian Government, for the 2001-2006 part of the programme, 110,852,000 kroons have been set aside. However, ECRI has no information on any evaluation that may have been made of this programme. Moreover, the Integration Foundation, for example, does not appear to have developed any programs aimed at tackling this problem. Furthermore, no research appears to have been carried out to establish whether discrimination also plays a role in the high unemployment level within the Russian community. ECRI thus hopes that the anti-discrimination amendments that were made to the Law on Employment Contracts will be vigorously applied in order to fight any discrimination that the Russian community may face on the job market.

Recommendations:

106. ECRI strongly recommends that the Estonian authorities develop policies to reduce unemployment in the Russian community. It encourages the authorities in this regard to set up programs for the most vulnerable members of this community such as women and young people. ECRI recommends moreover that the authorities ensure that the Integration Foundation also focuses on reducing unemployment within the Russian community, by for example setting up vocational training and job fairs to that end.

Antisemitism

107. There are currently approximately 3,000 Jews in Estonia. Although there is no institutionalized antisemitism in Estonia and the 27th of January has, since 2003, been commemorated as the Holocaust Memorial Day, ECRI notes that the manner in which the Holocaust and the Second Wold War is viewed tends to minimize the gravity of this period in history. Representatives of the Jewish community have thus informed ECRI that many Estonians view the Nazi occupation in a more positive light than the Soviet occupation. In this regard, a new Law on the Memory of the Victims of the Holocaust, Deportation and Other Victims of Crimes against Humanity was adopted in 2003. Whilst welcoming the adoption of this Law, ECRI hopes that it will provide an opportunity for people in Estonia to better understand the seriousness and full horror of the Holocaust.

108. ECRI has been informed that in August 2004, a monument commemorating Estonians who fought alongside the Waffen SS was unveiled in Lihula (in the Western part of the country). Although the Government removed it soon thereafter, ECRI notes there were demonstrations in favour of keeping this monument in place. Moreover, ECRI also notes that on 2 March 2005, a former soldier in the Estonian SS legion who was protesting against the decision to remove the monument in Lihula wrote an incendiary article in a newspaper published by the Centrist Party in Estonia, in breach of Article 151 of the Criminal Code. ECRI has no information on whether this person has been or will be prosecuted. It therefore hopes that the authorities will duly punish any such acts in order to send a clear message that they are unacceptable.

Recommendations:

109. ECRI strongly recommends that the Estonian authorities carry out information campaigns about the Holocaust throughout the country in order to ensure that the

full gravity of this crime of crimes, its underlying ideology as well as the Nazi ideology are better known. It further recommends that this subject be included in all school curricula.

110. ECRI urges the Estonian authorities to ensure that anyone who incites people to antisemitism by whatever means is punished in accordance with Article 151 of the Criminal Code.

Media

111. In its second report, ECRI encouraged initiatives aimed at reaching the Estonian-speaking and Russian-speaking communities simultaneously, for example through printed press presenting the same article in both languages and more provision of television broadcasting of interest to both communities and made accessible to all residents in Estonia through translations and subtitling.

112. ECRI notes that since its second report on Estonia, the Estonian-speaking and Russian-speaking communities still seem to get their information from separate sources. Statistics thus continue to indicate that few Russian-speakers watch Estonian television and vice versa and that, for example these groups watch different news programs. In this regard, the Russian-speaking communities watch mostly Russian cable television. Moreover, there are currently very few Estonian television programs with Russian subtitles, and any such programs usually only have an educational component. Furthermore, there appears to be no newspapers which publish the same articles in both Estonian and Russian. On a more positive note, ECRI notes that Radio 4, which sends out programs in Russian, has the highest number of listeners in Estonia. It therefore considers that the Estonian authorities should carry out research on the reasons for this success and seek to emulate this type of multicultural exchange through the media.

113. ECRI welcomes the setting-up in 2002 of the Press Council of Estonia, a voluntary self-regulatory body which is empowered to handle complaints about material published in the press. ECRI is also pleased to note that the Estonian Newspaper Association has adopted a Code of Ethics of the Estonian Press which recommends, amongst others, that the media refrain from emphasizing people's race, nationality or religion in news items. However, ECRI has received reports that there are still newspapers which, as indicated above, publish antisemitic articles or racist articles about, for example members of the Roma community[11] without incurring any sanction from these organisations or being prosecuted under Article 151 of the Criminal Law.

Recommendations:

114. ECRI reiterates its recommendation that the Estonian authorities provide both Estonian and Russian-speakers with a forum in which they receive the same information in order to bring these communities closer together.

115. ECRI urges the Estonian authorities to support the work of the Press Council of Estonia and the Estonian Newspaper Association by providing them with funds for training journalists on issues pertaining to racism and racial discrimination. ECRI further recommends that those who publish discriminatory or incendiary articles be duly prosecuted.

[11] For more information regarding the situation of the Roma community in Estonia, see below the section entitled "Specific issues".

Conduct of law enforcement officials

116. In its second report, ECRI recommended that an independent mechanism, separate from the police structures, for investigating allegations of police misconduct be created.

117. ECRI has been informed by the Estonian authorities that there is an internal proceeding for reviewing complaints against law enforcement officials. Furthermore, victims of police misconduct may file a complaint before the courts or the Office of the Legal Chancellor. The authorities indicated that complaints have been filed against law enforcement officials for discrimination, but no further information has been provided on this matter. ECRI therefore wishes to stress the need for further investigation and research by the authorities regarding any abuses committed by law enforcement officials and to focus particularly on the discriminatory aspect of such abuses. ECRI also notes that although law enforcement officials in Estonia are trained in human rights in general, they receive limited training, if any, on racism, discrimination and the relevant provisions of the Criminal Code.

Recommendations:

118. ECRI reiterates its recommendation that the Estonian authorities establish an independent system for monitoring complaints brought against law enforcement officials for discrimination. It also strongly recommends that law enforcement officials be trained throughout the country on issues pertaining to racism and racial discrimination.

Monitoring the situation

119. In its second report, ECRI felt that in order to evaluate the evolving situation of minority groups, it was necessary to set up a system of ethnic data collection and monitoring, in order to uncover any problems or developments, including differences related to direct or indirect discrimination.

120. ECRI notes that when labour market and social studies are carried out in Estonia, the data gathered is disaggregated according to language (i.e., Estonian and Russian) This has, for example, enabled the Government to establish that, as indicated above, the Russian community has a higher level of unemployment than ethnic Estonians. ECRI wishes however to point out that any measures the authorities may develop in any area concerning minority groups will have a much better chance of succeeding if they are consistently monitored to assess their impact and readjust them where necessary. ECRI considers that such ethnic data collection is one of the best tools for this type of monitoring.

Recommendations:

121. ECRI reiterates its recommendation that the Estonian authorities establish a system of ethnic data collection. Such a system should comply with national law, European regulations, international standards as well as recommendations on data protection and the protection of privacy contained in its General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. The authorities should ensure that data is collected with full respect for the principles of confidentiality, informed consent and the voluntary self-identification of the people involved. Furthermore, the data collection system on racism and racial discrimination should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination. Generally speaking, gathering data which is disaggregated according to ethnicity will make it easier to identify areas in which direct or

indirect racial discrimination may exist and to determine the best way of fighting this type of discrimination.

II. SPECIFIC ISSUES

Stateless people

122. The issue of stateless people, whose presence in Estonia came about as a result of the Soviet occupation (1940-1991) which brought a large influx of Russians through either voluntary or involuntary migration continues to pose a great problem in that country. ECRI has noted in this regard that the Estonian authorities still consider stateless people to be "people with undetermined citizenship". This appears to somewhat imply that the issue of their right to Estonian citizenship is still in dispute, despite the fact that, as indicated below, 52% of them were born in Estonia. ECRI has further noted with concern that there is a strong feeling on the part of the Estonian authorities, which was confirmed by NGOs, that stateless people have in fact no right to be in Estonia and should therefore seek to return to the Russian Federation. ECRI thus considers that there needs to be a fundamental change of attitude regarding stateless people in Estonia in order to fully resolve this issue. ECRI feels in this regard that a more constructive approach, which would set aside feelings of resentment for historical events, would contribute to better understanding between ethnic Russians and Estonians and help remove stateless people from the limbo they currently find themselves in. This is all the more so as they can vote in local elections, but do not enjoy some of the rights afforded to Estonian citizens, such as the right to vote in national elections, to become members of political parties or to establish political parties.

123. In its second report, ECRI felt that further steps needed to be taken as a matter of priority to reduce statelessness among adults in Estonia, including the possibility of reviewing the requirements for the acquisition of citizenship and through measures to encourage such persons to apply for citizenship.

124. Although the number of people who have obtained Estonian citizenship has been steadily increasing since the publication of ECRI's second report[12], there are currently still around 139 000 stateless people in Estonia, i.e., approximately 11% of the population. Moreover, there are 30,000 stateless people in Tallinn and 33% of the population in Narva are stateless. Furthermore, the majority of stateless people (52%) were born in Estonia. ECRI is therefore pleased to note that since its second report, the Law on Citizenship was amended in 2004 in order to ease the requirements for obtaining citizenship for certain categories of stateless people. As a result, the waiting period for naturalization has now been cut down to 6 months and a simplified naturalization procedure has been established for people with disabilities. Moreover, children who are younger than 15 years may obtain citizenship without having to pass a citizenship exam, if their parents request it. Furthermore, stateless children who were born after 1992 may also obtain citizenship with a simplified procedure, but only if both parents are stateless. In this regard, ECRI notes that if one parent is in possession of another citizenship, this precludes the child from acquiring Estonian citizenship through the simplified procedure. ECRI also notes that although the stateless parents of a newborn child can apply for citizenship within the child's first year, they remain stateless themselves. Moreover, ECRI was informed that a large number of stateless parents still do not apply for Estonian citizenship for their children, partly due to a lack of information.

[12] In 2003, approximately 3,000 people acquired Estonian citizenship and in 2004, 6,000 people became Estonian nationals.

125. As previously mentioned, the language examination, which anyone wishing to acquire Estonian citizenship is required to pass, remains the biggest obstacle that stateless people face to their naturalization. Moreover, despite the above mentioned amendments to the Citizenship Law, ECRI has been informed that many stateless people who are eligible to use them, such as the parents of children who are younger that 15, fail to do so.[13] ECRI further notes that no research has been carried out by the authorities to find out the reasons for this. In this regard, NGOs have indicated that two possible reasons may explain why the amendments to the Citizenship Law have not significantly increased the number of citizenship applications: one is lack of motivation, and the other is insufficient information. ECRI therefore considers that the success of these amendments depends heavily on any measures the authorities will take to ensure their implementation.

126. ECRI also understands that although there are no specific provisions in the Law on Citizenship regarding older people and the elderly who face considerably more difficulties in learning Estonian, the Estonian authorities are considering easing the requirements for them to obtain Estonian citizenship.

127. In its second report, in view of the fact that stateless people in Estonia have been given the possibility of obtaining "Aliens' passports", ECRI indicated that it had not received information about the extent to which these passports were recognized by other countries and felt that the only long-term solution to this issue was to ensure that such persons gained citizenship.

128. ECRI has been informed that the documents that stateless people are usually given are Aliens' passports and a permanent or temporary residence permit. There are currently approximately 167,000 Aliens' passport holders in Estonia. The Estonian authorities have informed ECRI that although Aliens' passports are recognized by other countries, holders of such passports need a visa to travel outside Estonia, including to the European Union. ECRI notes in this regard that since Estonia's accession to the European Union, stateless people have been placed in an even greater disadvantage compared with the rest of the population, for example with regard to freedom of movement within the European Union.

Recommendations:

129. ECRI recommends that the Estonian authorities carry out surveys to find out the reasons why stateless parents do not apply for citizenship for their under 15 year old children. In this regard, it recommends that they organize awareness campaigns throughout the country in order to inform parents about the possibilities of acquiring citizenship for their children. ECRI further recommends that the language requirements for older people be scrapped or eased in order to make it easier for them to acquire Estonian citizenship.

130. ECRI recommends that the Estonian authorities ensure that the 2004 Law on Citizenship does not result in members of the same family having citizenship and others remaining stateless.

131. ECRI recommends that Estonia continue to provide Estonian citizenship to more stateless persons in the light of its accession to the European Union, in order to avoid creating a two-tier society where a sizeable section of the Estonian population do not enjoy the same rights as the rest of society. It recommends in this regard that they pursue a more pro-active policy of providing citizenship to stateless people.

[13] The Estonian Government has indicated in this regard, that in 2004, 50% of people who acquired Estonian citizenship were under 15 years old.

132. ECRI recommends that the Estonian authorities amend the Citizenship Law as soon as possible in order to make it easier for older people and the elderly to acquire Estonian citizenship.

Russian-speaking minorities

133. In its second report, ECRI encouraged the Estonian authorities in their efforts to integrate both ethnic Estonians and minority groups into one society and expressed the hope that their problems would be given a high political priority and sufficient resources to implement in concrete terms the strategies contained in the programme entitled "Integration in Estonian Society 2000-2007". ECRI further stressed the need to ensure that the specific identities, needs and problems of the different minority groups be taken into account in developing policies and actions to integrate the various components of Estonia into society.

134. Since ECRI's second report, the Estonian Integration Foundation has created several projects aimed at better integrating minority groups in Estonian society[14]. For example, representatives of minority groups may submit a request for funding for various cultural projects to the Integration Foundation. Although they have expressed overall satisfaction with the cooperation of the Integration Foundation in ensuring that their projects receive adequate funding, representatives of minority groups have indicated to ECRI that the Government has not created a clear policy for their integration in Estonian society. Although the Integration Foundation has created other programs for providing, for example civic and multicultural education and developing cooperation between Russian-language and Estonian-language schools, as previously indicated, it has focused almost solely on programs for teaching Estonian to ethnic Russians and Russian-speaking minorities and has yet to examine other ways of integrating these communities into Estonian society. Minority representatives have in this regard expressed their dissatisfaction at having issues of concern to them being treated on a project-basis, rather than as part of an established, long-term Government policy.

135. ECRI notes that minority representatives still consider that the various needs and problems of the different groups living in Estonia are seldom taken into account by the Government. This lack of an integrated approach to the different minority groups in Estonia is reflected in the previously mentioned lacunae in the Law on Cultural Autonomy for National Minorities. ECRI therefore considers that the fact that minority groups' concerns are largely absent from Government policies further highlights the need, as also indicated above, of having a law on national minorities which would establish once and for all their rights and status in Estonian society.

Recommendations:

136. ECRI strongly recommends that the Estonian authorities develop and implement a clear policy of integrating Russian-speaking minorities in Estonian society. ECRI recommends in this regard that minority groups be consulted on this question and that the Integration Foundation's new program, which will start in 2008, focus on all issues relating to minority groups' integration into Estonian society.

137. ECRI reiterates its recommendation that the Estonian authorities take into account all the minority groups living in Estonia and that they develop policies which take into account their specific needs.

[14] According to the 2000 census, there are 144 minority groups in Estonia, the largest of which are the Russians (351,178), Ukrainians (29,012) and Byelorussians (12,241). During that census, 400,000 people declared themselves as Russian-speaking.

Roma Community

138. There are currently approximately 1,100-1,500 Roma[15] in Estonia although it is difficult to establish their exact number as some do not declare themselves as such. ECRI notes with concern that the unemployment level in this community is extremely high (approximately 90%). This is partly due to the fact that very few Roma have attended school. However, discrimination also plays a major role in their exclusion from the employment sector. ECRI therefore considers that the new anti-discrimination provisions in the Law on Employment Contracts should be used to tackle this problem. ECRI has also been informed that although there are between 300 and 350 Roma children of school age, Government statistics indicate that only 67 of them are currently in school. ECRI has further received reports that in Valga and Tartu some Roma children are sent to schools for mentally handicapped children simply because they do not speak Estonian. On the question of Roma children's access to school, the Estonian Government has indicated that in 2004, the Ministry of Education and Research established a committee on Roma education chaired by the Head of the Department of General Education and members of the Roma community. ECRI thus hopes that this committee will be able to solve these problems.

139. As previously indicated, ECRI has also been informed that the written media often publish openly racist articles about the Roma community. ECRI notes with concern that very few, if any, journalists have been prosecuted under Article 151 of the Criminal Code for such articles. Furthermore, with regard to the image given of members of the Roma community on television, ECRI notes that they mostly appear in entertainment shows.

140. ECRI also notes that the persecution of the Roma during the Second World War has not been brought to the forefront of the national debate in Estonia. In this regard, ECRI hopes that any information campaigns and national debate in Estonia on the previously mentioned Law on the Memory of the Victims of the Holocaust, Deportation and Other Victims of Crimes against Humanity will also take into consideration the fate suffered by the Roma during that period.

141. ECRI notes that there appears to be little political will in Estonia to address issues of concern to the Roma community. Moreover, members of the Roma community are not sufficiently involved in projects aimed at assisting them and this often results in the failure of such projects.

Recommendations:

142. ECRI recommends that the Estonian authorities establish policies for better integrating the Roma community in society, especially on the job market and in education. In this regard, ECRI also recommends that the authorities make full use of the anti-discrimination provisions contained in the Law on Employment Contracts in order to tackle the discrimination faced by members of the Roma community in employment. ECRI urges the Estonian authorities to investigate the problem of the education of Roma children and to ensure that those of them who are of school age attend school. Furthermore, ECRI also urges the authorities to ensure that Roma children are not placed in schools for mentally disabled children if they do not suffer any disabilities and that any Roma children in this situation are placed in mainstream schools as soon as possible. ECRI further wishes to emphasize that any policies developed by the authorities to help

[15] In the 2000 census, 542 people, of whom 263 were Estonian citizens, identified themselves as being Roma. Roma live mainly in Varga, Tartu and Pärnu (in the South and Western parts of the country). See, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, On his Visit to Estonia, 27th-30th October 2003, p. 10.

members of the Roma community should be designed with their full cooperation and participation.

143. ECRI further reiterates that people who incite to racial hatred should be duly prosecuted in accordance with Article 151 of the Criminal Code.

144. ECRI recommends that the persecution of the Roma community during the Second World War be included in all school curricula. ECRI further recommends that information campaigns be carried out throughout the country to raise awareness of the horrors endured by the Roma community in the Second World War.

145. ECRI strongly recommends that the presence, culture and contribution of the Roma people to Estonian society be included in all school textbooks. It also recommends that the authorities generally take measures to provide a more positive image of the Roma community in order to help reduce the prejudices they face and help raise their self-esteem.

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