




Institute for Peace Research and Security Policy at the University of Hamburg




Wolfgang Zellner/Randolf Oberschmidt/Claus Neukirch (Eds.)  
Comparative Case Studies on the Effectiveness of the  
OSCE High Commissioner on National Minorities

Margit Sarv

Integration by Reframing Legislation:  
Implementation of the Recommendations of the  
OSCE High Commissioner on National Minorities to  
Estonia, 1993-2001

Working Paper 7



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## Editors' Preface

With the present series "Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities," we are publishing the results of the five country studies on Estonia, Latvia, Ukraine, Macedonia and Romania of the project "On the Effectiveness of the OSCE Minority Regime. Comparative Case Studies on the Implementation of the Recommendations of the High Commissioner on National Minorities (HCNM) of the OSCE". A comparative analysis on the differing success rates and conditions of the High Commissioner's facilitation and mediation efforts in these countries will follow.

The High Commissioner project was a challenging and fascinating task for several reasons. *First*, we had to deal with a new instrument of crisis prevention, one of the most innovative developments resulting from the international community's reaction to the shocking and for most of us surprising new reality of inter-ethnic conflict and war after the end of the East-West confrontation. When the High Commissioner's mandate was adopted, there was little experience with how to deal with this kind of conflict. And when we started the project in 1999, there was no empirical in-depth analysis on the High Commissioner's work. Thus, we found a rather empty field and had to start from the scratch.

*Second*, we had the privilege to deal with Max van der Stoep, the first incumbent of this new institution. When he took office, nearly everything that today goes to make the High Commissioner - sufficient funds, advisers, working instruments, contacts, experience - was not yet in place. It was fascinating to follow the straight-forward way this great European statesman used the raw material of the mandate and his own experience of a whole life devoted to peace and human rights to frame the institution of the High Commissioner to what it is today: an established and overall respected institution of European crisis prevention. Max van der Stoep and his advisers in The Hague have shown vivid interest in our project; they have encouraged us and have always been ready to answer our questions. We are very grateful for all their help.

*Third*, it was a great pleasure for us to work with a team of young, motivated and talented academics in the countries analysed: with Dr. Teuta Arifi in Macedonia, Jekaterina Dorodnova in Latvia, István Horváth in Romania, Dr. Volodymyr Kulyk in Ukraine, and Margit Sarv in Estonia. They not only collected and analysed piles of materials in eight languages to draft reports into a ninth one, but more importantly, they enriched the project with their specific experiences, avenues of access and points of view to an extent which would have never been achievable without them. We want to thank all of them for years of work and devotion.

We are also very grateful to Klemens Büscher, who worked with the project's Hamburg staff from the beginning of 1999 to mid-2000. The project owes very much to his superb expertise and analytical skills. And we want to warmly thank Kim Bennett, Jeffrey Hathaway, Katri Kemppainen and Veronica Trespalacios who have polished about 700 pages of English-language text written by non-native speakers.

Last, but by no means least, we are especially grateful to the *Deutsche Forschungsgemeinschaft*, whose generous grant first of all enabled us to carry out this demanding and rewarding research.

Hamburg, May 2002  
The editors

## List of Abbreviations

### *International Institutions*

CBSS	Council of Baltic Sea States
CiO	Chairman in Office (OSCE)
CoE	Council of Europe
CoE/PA	Council of Europe, Parliamentary Assembly
COPRI	Copenhagen Peace Research Institute
CSCE	Conference for Security and Co-operation in Europe (OSCE)
CSO	Committee of Senior Officials (OSCE)
EBRD	European Bank for Reconstruction
EC	European Community
ECHR	European Court of Human Rights
ECMI	European Centre for Minority Issues
EU	European Union
FIER	Foundation on Inter-Ethnic Relations
HCNM	High Commissioner on National Minorities (OSCE)
IFSH	Institut für Friedensforschung und Sicherheitspolitik Hamburg
IOM	International Organization for Migration
NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OSCE	Organization for Security and Co-operation in Europe
PC	Permanent Council (OSCE)
PHARE	Poland and Hungary Action for the Reconstruction of the Economy (EU)
RFE/RL	Radio Free Europe/Radio Liberty
UN	United Nations
UNDP	United Nations Development Programme

### *Other Countries*

KGB	Komitet gosudarsvennoj bezopasnosti [Committee of State Security, USSR/RSFSR]
RSFSR	Russian Socialist Federative Soviet Republic
US	United States
USA	United States of America
USD	United States Dollar
USSR	Union of Socialist Soviet Republics

### *Republic of Estonia*

EEK	Eesti kroonides [Estonian Crowns]
ESA	Eesti Statistikaamet [Estonian Statistical Office]
ESSR	Estonian Socialist Soviet Republic

FM	Foreign Minister
ID	Identification Document
LICHR	Legal Information Centre for Human Rights
MP	Member of Parliament
OSTK	Ob'edinennyi sovet trudovykh kollektivov [Union of Councils of Worker Collectives]
PM	Prime Minister
RT	Riigi Teataja

## Chapter 1. Introduction

This study on the recommendations of the OSCE High Commissioner on National Minorities (HCNM) to Estonia was prepared in the framework of the larger project "On the Effectiveness of the OSCE Minority Regime. Comparative Case Studies on the Implementation of the Recommendations of the High Commissioner on National Minorities of the OSCE", comprising five country studies and a comparative analysis. The research was sponsored by the German Research Association (*Deutsche Forschungsgemeinschaft*) and was carried out from 1999 to 2002 by an international team of five researchers in the countries analysed, as well as by two researchers working at the Institute for Peace Research and Security Policy at the University of Hamburg. The objective of this study, as well as the one of the whole project, "lies [...] in the investigation of the effectiveness of the OSCE minority regime in light of the implementation of the HCNM's recommendations."<sup>1</sup>

Alongside the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE field missions, the High Commissioner on National Minorities is one of the main instruments for early warning and conflict prevention of the new CSCE/OSCE,<sup>2</sup> as it developed after the 1990 Paris Summit. Because of its flexible mandate and its high degree of institutional autonomy,<sup>3</sup> the HCNM can even be viewed as being one of the most innovative instruments. The basic stipulation of the HCNM's mandate<sup>4</sup> reads as follows:

The High Commissioner will provide "early warning" and, as appropriate, "early action", at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but in the judgement of the High Commissioner, have the potential to develop into a conflict within the OSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO [Committee of Senior Officials].<sup>5</sup>

The instrument of the OSCE High Commissioner was formed and developed by the first incumbent, former Dutch Foreign Minister Max van der Stoep. He held the HCNM office from January 1993 to June 2001, and Van der Stoep's name became basically synonymous to the HCNM. As his successor, Swedish diplomat Rolf Ekéus, took office only on 1 July 2001, this study will be restricted to Van der Stoep's work.

The HCNM became involved in Estonia in January 1993, just a few days after he had taken office. Thus, he traveled to Estonia as early as possible, although this was fairly late when compared to other international actors. A wide range of fact-finding missions from the United Nations (UN), the Council of Europe (CoE) and even the OSCE had visited Estonia in 1991 and 1992.<sup>6</sup> However, the involvement of the HCNM was the most consistent and long-lasting approach to the conflict between the Estonian government and Estonia's Russian-speaking population. Ultimately, he even outlasted the OSCE Mission to Estonia, which was active in the country between April 1993 and December 2001. The profound interest in Estonia of influential OSCE participating States, such as the Nordic countries (Sweden held the Chairmanship-in-Office in 1993), the USA and Russia was a crucial factor for the early and extensive involvement of the OSCE in Estonia. The fear that an escalation of the conflict between the Estonian government and the Russian-speaking population in Estonia might have wider security implications motivated the Nordic countries and the USA to engage the OSCE in this conflict. Given that this view was

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<sup>1</sup> Zellner 1999, p. 31.

<sup>2</sup> The Conference on Security and Co-operation in Europe (CSCE) was, starting from 1 January 1995, renamed the Organization for Security and Co-operation in Europe at the 1994 Budapest Summit. For reasons of consistency, the abbreviation OSCE will be used throughout this study, regardless of which year is made reference to. Citations are the only exception.

<sup>3</sup> On the HCNM's working principles and practical approach, see Kemp (Ed.) 2001, and Simhandl 2002, pp. 69-106.

<sup>4</sup> As the history and substance of the HCNM's mandate has been extensively dealt with in the literature, we can do without repeating this exercise. Cf. Zaagman/Zaal 1994, Zaagman 1994, The Foundation on Inter-Ethnic Relations (FIER) 1997.

<sup>5</sup> CSCE Helsinki Document 1992, para. 3.

<sup>6</sup> Cf. Birkenbach 1997a.



widespread in the early 1990s, Estonia indeed seemed, in the light of the HCNM's above-mentioned mandate, to be a typical case to be taken up by the HCNM. The Russian Federation, on the other hand, saw the chance to influence the Estonian policy towards the Russians in Estonia with the help of the OSCE. Estonia, on its side, accepted this involvement, as it hoped to receive OSCE backing for the core principles of its policy.

In 2002 we might disregard the fears of 1992 or 1993 as unrealistic. However, the list of missed or failed opportunities for conflict prevention has become too long over the last decade to allow ourselves to be that shortsighted. The High Commissioner's involvement in Estonia can be regarded as an example of successful conflict prevention, and taking a closer look at the HCNM's activities and investigating his effectiveness might also spark new ideas on the future development of the HCNM as an instrument for early warning and conflict prevention. Analysing the HCNM's work under the aspect of the multitude of actors present in Estonia might in particular provide us with some ideas on the HCNM's role within the conflict prevention network of OSCE, CoE, EU and other actors in the OSCE area. At this point, some terms, which will be used extensively in the following pages, need to be clarified: "non-Estonians", "Russian-speakers" and "non-citizens".

"Non-Estonians" are defined as all inhabitants of Estonia who are not part of the titular nation, regardless of their mother tongue or citizenship. The category "Russian-speakers" includes all persons living in Estonia who speak Russian as their mother tongue, or who use it in every-day life, as most Ukrainian, Belarusians or other former Soviet nationalities do. This category does not include non-Estonian minorities such as Finns or others who rarely use Russian. As more than 90 per cent of the Russian-speakers living in Estonia are actually Russians,<sup>7</sup> the categories "Russians" and "Russian-speakers" will be used interchangeably to a certain extent. Additionally, the category "non-citizens" will be used for persons who reside permanently in Estonia, but who do not have the Estonian citizenship. Their legal status, not their ethnicity, is a criterion in this case. Practically all of these persons are, however, non-Estonians.

Following this introduction, the relations between Estonians and Russians prior to Estonia's independence from the Soviet Union in 1991 will be briefly discussed, in order to understand the underlying historical and psychological dimensions of the current conflict constellation. For one, it is important to understand the demographic factors, as well as the psychologically traumatic effects that the Soviet occupation during 1940 and 1991 had on Estonia. These factors are central for an understanding of the Estonian approach towards the Russian-speaking settler community after 1991. Secondly, it is important to show the differentiation within the group of Russian-speakers, and especially the growing support for Estonian independence among non-Estonians in 1990-1991. As 55 per cent of non-Estonians supported Estonian independence in 1991, and a Russian-Estonian agreement, which envisaged Estonian citizenship for all Russians residing in Estonia who wished to receive it, had been signed in the same year, the conflict constellation in Estonia was actually dispersed in summer 1991. The main cleavage at the time ran between Russian-speaking hardliners with a pro-Soviet or chauvinistic Russian orientation and the more or less multi-ethnic pro-independence camp. The Russian Federation, being the homeland of a great majority of Estonia's non-Estonians, also played quite a constructive role during this period.<sup>8</sup> However, the conflict constellation became more ethnified, as the radicalization of Estonian politics right after independence resulted in a citizenship policy that effectively disenfranchised the vast majority of the Russian-speaking population. The background and details of this policy will be discussed in the first subchapter of chapter 3, which analyses the Radicalization Period from 1991 to 1994. This study is chronologically divided into three sections: Radicalization from 1991 to 1994, Stabilization from 1995 to 1997 and Liberalization since 1998. This sequence was chosen in order to illustrate the overall changes in the environment that influenced the HCNM's work in Estonia. All three chapters are, however, subdivided into content-oriented subchapters. These will discuss the most central issues in each respective period.

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<sup>7</sup> See Eesti Statistikaamet/Statistical Office of Estonia, *Ethnic Composition of the Population*.

<sup>8</sup> Cf. Neukirch 2001, p. 8.

During the radicalization period from 1991 to 1994, this was clearly the citizenship and aliens' legislation, which in combination with other more specific laws provoked the summer crisis of 1993. The degree of ethnification and the level of escalation in July 1993 were the highest in Estonia during the whole period that is analysed in this study. The HCNM's mediation efforts in this crisis will be analysed in subchapter 3.7, after the discussions on his recommendations on the Law on Citizenship (subchapter 3.3) and the draft Law on Aliens (subchapter 3.6). The latter two are preceded by subchapters on the respective legislation itself (3.2 and 3.5 respectively). The issue of language-training for non-Estonians will be discussed in between separately (3.4), as the acquisition of language skills in Estonian was not only crucial for the naturalization process, but also for the overall integration of the Russian-speakers. The implementation of the Law on Aliens in 1993 and in 1994, after the summer crisis had been overcome, will be discussed in subchapter 3.8. The agreement on the withdrawal of the Russian troops, which were still stationed in Estonia until August 1994, will be elaborated on separately in subchapter 3.9.

The stabilization period, discussed in chapter 4, was mainly initiated through internal developments (4.1), namely the change of government after the parliamentary elections of March 1995. To be sure, the new Law on Citizenship of 1995 did not lead to a real improvement in the situation, and instead provoked new as well as restated recommendations by the High Commissioner (4.2 and 4.3). Realizing this, the HCNM shifted his focus from the citizenship to the aliens' legislation, with regard to which he was more successful: In 1996 and 1997 real improvements were forthcoming in the question of passports for non-citizens residing in Estonia (4.4) and in the question of residence permits (4.5). A special subchapter is dedicated to the discussion surrounding the ratification of the Framework Convention for the Protection of National Minorities and, in order to counterbalance the chapter on the internal developments that shaped the stabilization period, the influence of international actors during this period will be briefly discussed in subchapter 4.7. The conclusions drawn in 1997 by the Estonian Ministry of Foreign Affairs on the recommendations of the HCNM and their implementation by Estonia will provide the guideline for a concluding analysis on this chapter.

The fifth chapter, titled the Liberalization Period since 1998, deals with those issues which stem from earlier, until then unimplemented recommendations of the HCNM – namely the integration process (5.1), the issue of granting citizenship to stateless children (5.2) and the creation of an ombudsman's office (5.4) – as well as with new or renewed recommendations which were provoked by the setbacks in the language legislation. These setbacks, which took place during the period of liberalization, underlined how problematic the relationship between Estonian and Russian-speaking Estonians still is, and how easily the level of escalation might rise again. This by no means indicates that a violent outbreak of the conflict might be a realistic scenario. To a greater extent than in chapter 4, chapter 5 brings forward the argument that the level of escalation has been notably reduced, and that the conflict constellation as such has been effectively dispersed, when compared with the period from 1991 to 1994.

As this study is part of a series of comparative studies, the conclusions, presented in chapter 6, aim not only to offer an analytical analysis of the HCNM's work, but also to lay out the main points required for the comparative analyses. In the framework of this project, a differentiation is made between three tightly interrelated but analytically discernible levels of potential effectiveness: (1) operational effectiveness, i.e. influencing the negotiation process as such, (2) normative effectiveness, i.e. changing the frame of reference for this process by the introduction of international norms and standards and (3) substantial effectiveness, i.e. achieving results. In order to prove the latter, it is first crucial to establish whether a correlation exists between the recommendations of the HCNM and the actions of domestic actors, concerning both legal acts and their implementation. Secondly, it has to be developed whether and to what degree the activity of the HCNM was a causal factor for the actions of domestic players. Thus, the concluding chapter will start with a review of the recommendations that the HCNM issued. In this chapter, the internal and external factors contributing to their implementation will be integrated. Only upon this foundation will it be possible to elaborate on the effectiveness of the HCNM in operational, normative and substantial terms.

## Chapter 2. The Legacies of Soviet Rule: A Brief History of Estonian-Russian Relations up to 1991

For an understanding of the conflict formation in Estonia, it is important to take into account the particular stress that Estonians place on e.g. language and home country,<sup>9</sup> as well as the socio-economic and cultural differences between the Estonian population and the Russian-speaking majority that immigrated into the country after 1945. Estonians have resided in their historical home country since around 3,500 BC,<sup>10</sup> and have retained their Ugro-Finic language despite having been under the foreign rule of Danes, Germans, Swedes and Russians for most of the period since the 13<sup>th</sup> century. The threat of this foreign rule resulted in a feeling that the small Estonian nation had to protect its language and culture, and has formed the perception and way of thinking of many Estonians. With regard to the relationship to the Russian migrants, it is of particular importance that the Estonian culture was continuously under the influence of Protestantism, and thus clearly remained separate from the Russian-Orthodox culture of immigrants that entered the country after 1940. This was possible despite two centuries of rule by the Russian Empire and Russification policies at the end of the 19<sup>th</sup> century, and can be explained by the economically and culturally dominant role played by Baltic Germans. Estonians also identified with the collective values of Soviet-socialist culture to a lesser extent than those Russian-speaking migrants who had immigrated after 1940. Instead, Estonians shared a national Estonian culture that stressed individuality, national freedom and material values more than society and immaterial, moral values.<sup>11</sup> These values further strengthened in Estonia during the period of independence from 1918 to 1940. The process of Estonian nation-building reached its peak during this period. This was made possible by state education and the simultaneous formulation of an Estonian constitution and legal system, the establishment of Estonian parties, the standardization of written language, the setting up of an Estonian education system and the freedom of Estonian culture to further develop without being bound and limited by foreign rule.<sup>12</sup> Due to the acceleration of its modernization process, Estonia was socio-economically more developed than Russia in 1940.<sup>13</sup> Though this development process led to contradictions and conflicts within Estonian society, it was not the cause for conflict situations with ethnic groundings.

The Molotov-Ribbentrop Pact of 23 August 1939 predetermined the end of Estonian independence. In its annexes that violated international law,<sup>14</sup> Germany left Estonia and Latvia, as well as Bessarabia, to the Russian zone of influence. Using diplomatic and military pressure, the Soviet Union transformed Estonia into a Soviet protectorate within the following weeks,<sup>15</sup> and eventually occupied it completely on 16 June 1940.<sup>16</sup> On 6 June 1940, the "wish" of the Estonian Soviet Socialist Republic (ESSR) to accede the Soviet Union was complied with.<sup>17</sup> From the viewpoint of international law, the case was not one of accession but one-sided appropriation of the Estonian national territory by the Soviet Union, resulting from the use of force without the means of war.<sup>18</sup>

The process of Sovietization of Estonia was initiated immediately.<sup>19</sup> Leading politicians, members of the military, police officers, administrative employees, members of the clergy and intellectuals were deported or executed in 1940/41. By August 1940, 90 per cent of industry had been nationalized and land plots of

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<sup>9</sup> Cf. Kaskla 2001, p. 733.

<sup>10</sup> Cf. Taagepera 1993, pp. 11-13.

<sup>11</sup> Cf. *ibid.* p. 95.

<sup>12</sup> Cf. Raun 1997, p. 498; see also Rauch 1970, pp. 72-74, 84-89, 113-115.

<sup>13</sup> Cf. Raun 1991, pp. 125-127; see also Schlau 1991, p. 367.

<sup>14</sup> Cf. Thiele 1999a, pp. 8-11.

<sup>15</sup> Cf. Raun 1991, p. 141; see also Taagepera 1993, p. 60.

<sup>16</sup> Cf. Taagepera 1993, p. 61.

<sup>17</sup> Cf. Raun 1991, p. 145f; see also Clemens 1991, p. 53 and Taagepera 1993, pp. 61-63.

<sup>18</sup> Cf. Thiele 1999a, p. 16. For further information on how the Soviet occupation of Estonia violated international law, see Meissner 1991b, pp. 275-286.

<sup>19</sup> For a detailed description of the Sovietization process in the first years of Soviet occupation, see Misiunas/Taagepera 1983, pp. 29-44.

over 30 hectares were appropriated. The Estonian Orthodox Church was placed under the Moscow Patriarch.<sup>20</sup> The German occupation (July 1941 - September 1944) and the renewed invasion by Soviet troops resulted in the loss of around 30 per cent of Estonia's pre-war population through fleeing, expulsion, deportation and death.<sup>21</sup> Further population loss, contributing to the experiences of war and collective memory of Estonians,<sup>22</sup> resulted from violent resistance of Estonian guerrillas, the so-called Forrest Brothers, and further deportations through a collectivization campaign in spring 1949.<sup>23</sup>

The demographic changes that occurred in Estonia after the Second World War were fundamental. In 1934 Estonia was a homogeneous nation state with its titular nation encompassing 88.2 per cent, and the largest minority, that of Russians, comprising 8.2 per cent. By 1989 the percentage of Estonians in the population fell to 61.5 per cent, while the proportion of Russians rose to 30.3 per cent.<sup>24</sup> Alongside the nearly complete disappearance of the small German, Swedish and Jewish minorities, the Estonian war and post-war losses, as well as the manifold increase of the Slavic population were evident. The figure of around 977,000 Estonians who lived in the present territory of Estonia in 1934 fell to 892,700 by 1959. Despite natural population increase, their number only increased to 963,300 by 1989.<sup>25</sup> In contrast, the number of Slavs that lived in the ESSR tripled to 272,700 by 1959. Due to continuous migration, this figure further doubled to 550,800 by 1989.<sup>26</sup>

In the case of Estonia, the cause for this immense scale of immigration was the Soviet-directed industrialization process, which in turn was only possible due to the resettlement of industrial workers that was required as a result of high war and post-war losses.<sup>27</sup> The population structure changed fundamentally after 1945, in particular in the city of Narva, which lies on the border to Russia. The percentage of the Russian population rose from 29.7 to 85.1 per cent between 1934 and 1979. Estonians, who were not allowed to return to the city that had been destroyed by the war, comprised only slightly less than five per cent of the population in 1979. A similar change in population structure, caused by the Soviet-directed industrialization process, also took place in other Estonian cities. In Kohtla-Järve, the centre of oil shale industry, the Estonian population percentage decreased from 91.8 per cent in 1934 to 26.4 per cent in 1979. In 1979, only 3 per cent of the population of the marine basis Paldiski was Estonian (1934: 94 per cent). Hardly any Estonians lived in Sillamäe, which was also a "closed city", similar to Paldiski.<sup>28</sup> In Tallinn, which saw its population triple from 1934 to 1979, the percentage of Russians increased from 5.7 to 38 per cent, rising further to 41.2 per cent in 1989. Comprising 47.7 per cent of the population, Estonians had also become a minority in Tallinn by 1989.<sup>29</sup> In contrast, the rural regions around Narva, Kohtla-Järve and the capital Tallinn retained a population majority of Estonians (68 and 78 per cent respectively). Also Tartu remained mostly Estonian, despite a Russian percentage of 20.6 (1934: 4.5 per cent) and a rapid percentage increase.<sup>30</sup> The conclusion therefore holds that the continuing migration of non-Estonians was aimed at two urban centres: 92 per cent of Russians and Belarusians, as well as nearly 88 per cent of Ukrainians lived in cities in 1989.<sup>31</sup> Russians and Estonians rarely intermeshed in Narva, Sillamäe, Paldiski, Tallinn or other mixed cities. Most Russians who migrated into the area moved to suburbs that had been built for migrants, and showed very little interest in learning the

<sup>20</sup> Cf. Raun 1991, pp. 150 - 152, 156.

<sup>21</sup> Cf. Taagepera 1993, p. 71; see also Raun 1991, p. 166.

<sup>22</sup> Cf. Lieven 1994, p. 82f.

<sup>23</sup> Cf. Misiunas/Taagepera 1983, pp. 81 - 91; see also Uipobuu 1991, p. 113; Raun 1991, pp. 174-181; Taagepera 1993, p. 79f and Shtromas 1996, pp. 86-97.

<sup>24</sup> Raun 1991, p. 130; see also Raun 1997, p. 409.

<sup>25</sup> Due to emigration and low birth rates, this figure again fell to 939,310 by 2000 (Estonia Today, 5 February 2001).

<sup>26</sup> Cf. Raun 1997, p. 405; see also Zvidrinš 1994, p. 372.

<sup>27</sup> Parallel to a similar situation in Moldavia, Estonians argue that the planned Russification of Estonia was the real cause for massive immigration. However, a more realistic explanation is that this was only a side-effect to the process. Cf. Wiegandt 1995, p. 117. Independent of the real motivation, it remains a fact that the number of industrial workers quadrupled in Estonia between 1944 and 1955, and rose by a further 56 per cent by 1975. Cf. Raun 1991, p. 176, 199.

<sup>28</sup> Cf. Raun 1991, p. 207.

<sup>29</sup> Cf. *ibid.* p. 248f.

<sup>30</sup> Cf. *ibid.* p. 207.

<sup>31</sup> Cf. Kionka 1990g, p. 22.

Estonian language or engaging in the culture.<sup>32</sup> Russians did not find this necessary, as their living and working quarters, as well as the state bureaucracy, was Russian speaking.<sup>33</sup> Therefore, only 13.7 per cent of Russians and 11.8 per cent of the non-Russian minority could speak Estonian in 1989. The proportion that could prove at least a minimal proficiency in Estonian lay at 28 per cent.<sup>34</sup> Estonians themselves also showed very little interest in building contacts to settlers. Only ten per cent of Estonians entered mixed marriages.<sup>35</sup> Estonians and non-Estonians therefore lived segregated in the ESSR. The police, security service and management personnel comprised of immigrants in the ESSR, who also dominated the all-union industries, which employed 80 per cent of workers.<sup>36</sup> In contrast, Estonians often worked in the cultural, scientific or education sector, and also dominated the agricultural sector. The Soviet modernization process eventually led to the establishment of two parallel societies in Estonia, which were divided ethnically, linguistically and culturally (see above), as well as spatially and with regard to education and employment.<sup>37</sup>

Initially, Estonians were also largely absent from leading positions in the party and state. These positions were filled by Russian immigrants or by so-called Russian-Estonians, who had migrated to Estonia during the Tsarist era and had been socialized by Soviets after 1917. Only these Estonians were trusted by the Soviet leadership.<sup>38</sup> In particular the 1978 order from Moscow that Russian-Estonian Karl Vaino should become 1<sup>st</sup> Secretary instead of Vaino Väljas led to disappointment amongst Estonians, who initially hoped to be able to influence the future of their country through the communist system, despite being a nominal minority in the nomenclature.<sup>39</sup> Only in 1988 was the position of 1<sup>st</sup> Secretary held for the first time since Nikolai Karotamm was removed from office in 1950 by an Estonian national, Vaino Väljas.<sup>40</sup>

The above-mentioned massive demographic changes and the limited possibility for political influence resulted in a feeling in Estonians of being threatened. The danger of becoming a minority in the Republic appeared to be real by the end of the 1980s.<sup>41</sup> The linguistic Russification of Estonian public life, as well as the spread of Russian education to schools was viewed as an additional threat to the Estonian language and culture. Furthermore, the refusal of Russians to speak Estonian was taken as an insult, and the annoyance of the Estonian population with respect to this development continued to rise in the eighties.<sup>42</sup> This annoyance was coupled with frustrations about the actual or supposed preference of migrants.<sup>43</sup> In the end of the eighties, these feelings added to a general anti-Russian attitude.<sup>44</sup> Fundamental, however, was that the continuous Russification and halting migration were viewed by many Estonians as undermining the survival of the Estonian nation. The perception of such a fundamental threat laid the basis for future policy decisions that would be made in the fields of language and citizenship. However, the catalyst for the Estonian national movement in the end of the eighties proved to be the contradictions that arose from centralized industrial policies in the field of the environment. After the Second World War, the Estonian economy was completely centralized and incorporated into the economic system of the Soviet Union. Over 90 per cent of industry was controlled directly from Moscow in 1980.<sup>45</sup> The interests of Moscow with regard to economic developments did not always coincide with Estonian interests. The extraction of oil, phosphor and uranium resulted in extensive environmental damage in Estonia, and the Republic only benefited from this extraction to a limited extent. The planned expansion of phosphor extraction

<sup>32</sup> Cf. Kionka 1990h, p. 23; see also Shafir 1995, p. 156.

<sup>33</sup> Cf. Clemens 1991, p. 153.

<sup>34</sup> Cf. Lieven 1994, p. 186.

<sup>35</sup> Cf. Clemens 1991, p. 67, p. 227; see also Raun 1991, p. 205.

<sup>36</sup> Cf. Aklaev 1999, p. 155.

<sup>37</sup> Cf. Shafir 1995, pp. 152-161.

<sup>38</sup> Cf. Shtromas 1996, p. 99; see also Misiunas/Taagepera 1983, pp. 77-81, 282-284.

<sup>39</sup> Cf. Semjonov 2000, p. 40f.; see also Raun 1991, p. 190.

<sup>40</sup> Cf. Lieven 1994, p. 94.

<sup>41</sup> Cf. Kionka 1990g, p. 21.

<sup>42</sup> Cf. Brettin 1996, p. 138f; see also Taagepera 1992, p. 124.

<sup>43</sup> Cf. Kolstoe 1995, p. 111; see also Semjonov 2000, p. 40; Butenschön 1992, p. 40; Uibopuu 1989, p. 42f.

<sup>44</sup> Cf. Brettin 1996, p. 137.

<sup>45</sup> Cf. Raun 1991, p. 198.

eventually faltered in spring 1987, due to growing resistance among the Estonian population.<sup>46</sup> The planned expansion would not only have posed a threat to 40 per cent of Estonian drinking water, but would have also been linked to a further wave of immigration.<sup>47</sup> While such contradictions of the Soviet modernization process had been ignored to a large extent until the mid-1980s, and had only been tackled concretely with regard to particular cases, *glasnost* and *perestroika* enhanced liberalization and opened windows of opportunities to act,<sup>48</sup> simultaneously also reducing the threat of possible repression. The relatively mild reactions towards Estonian dissidents in the last 15 years also contributed to more fearless action.<sup>49</sup> The discussion over the annexation of Estonia in 1940 and the legitimacy of Soviet rule, which had been conducted until 1987 in the inner private sphere and by particular dissident groups, was carried over into public debate.<sup>50</sup> On 24 February 1988, over 8,000 people demonstrated to highlight that 70 years had passed from the proclamation of the Estonian Republic.<sup>51</sup> Later on in the year, the separate protests for the environment, for economic development, historical discussion, for worries about the future of the Estonian language as well as anti-Russia resentment accumulated into an Estonian national movement, the "Singing Revolution".<sup>52</sup> This initially called primarily for democratization and autonomy, but in 1989 developed into an independence movement. What remained constant in this "revolution" was the absence of violence, which was strengthened by contacts to sympathizing environmentalist and human rights movements in Northern and Western Europe.<sup>53</sup>

In 1987/88, public discourse in Estonia appeared to split along linguistic lines. While articles in the Estonian Communist Party newspaper attempted to unify Estonian nationalism with Soviet patriotism, the Russian edition defended the rights of Russians in Estonia.<sup>54</sup> Although the "National Front for the Support of the Perestroika" (*Rahvarinne*), which had been established in April 1988, was also supported by reform-oriented Russians, its goals and members were primarily Estonian.<sup>55</sup> As a reaction to the Estonian national movement, the "International Movement of Workers in the Estonian SSR" (*Internacional'noe dvizhenie trudjaščichsja Estonskoj SSR*), in short the Intermovement (*Interdvizhenie*), was formed in July 1988 to act as a counterbalance. This primarily represented Russian party and state officials, army personnel as well as workers from industry centres with a Russian population majority.<sup>56</sup> Due to its nationalistic Russian rhetoric, the Intermovement failed to appeal to the masses.<sup>57</sup> According to polls, only 10.9 per cent of the non-Estonian population supported it in 1989.<sup>58</sup>

On 30 November 1988, a second Russian movement was founded - the Union of Councils of Worker Collectives (*Ob'edinennyi sovet trudnykh kollektivov, OSTK*). This organization was an umbrella to 140 companies that stood under direct control of Moscow ministries and had been founded "from above",<sup>59</sup> i.e. by the directors of the companies, in order to prevent disorder amongst Estonian workers.<sup>60</sup> The *OSTK* was in general more moderate than the Intermovement, and was supported by 17.9 per cent of non-Estonians.<sup>61</sup> Only a third of the non-Estonian population favoured a radical, pro-Soviet organization in the beginning of 1989. A relative majority (32.2 per cent) continued to support the Communist Party, and

<sup>46</sup> Cf. Butenschön 1992, pp. 29-36; see also Taagepera 1993, pp. 120-124.

<sup>47</sup> Cf. Raun 1991, p. 223.

<sup>48</sup> Cf. *ibid.* p. 237.

<sup>49</sup> Cf. Taagepera 1993, p. 118.

<sup>50</sup> Cf. Raun 1991, p. 223; see also Clemens 1991, p. 75.

<sup>51</sup> Cf. Brettin 1996, p. 149f.

<sup>52</sup> This term was formulated based on a festival "Estonia's Song 1988". Hundreds of thousands of old and new patriotic songs were sung at this festival in the Estonian language. Cf. Thiele 1999a, p. 37.

<sup>53</sup> Cf. Birckenbach 1997b, pp. 12-14.

<sup>54</sup> Cf. Clemens 1991, p. 78, 156f.

<sup>55</sup> Cf. Brettin 1996, p. 148; see also Butenschön 1992, pp. 37-46; and Taagepera 1993, p. 142.

<sup>56</sup> Cf. Brettin 1996, p. 159f.

<sup>57</sup> Cf. *ibid.* p. 163.

<sup>58</sup> Cf. Ilves 1989, p. 15.

<sup>59</sup> Cf. Aklaev et al. 1995, p. 2.

<sup>60</sup> As a countermovement, the company managers that stood under the republic's administration, or who alternatively wished to be in this position, founded a (pro-Estonian) League of Worker Collectives. Cf. Lieven 1994, p. 103.

<sup>61</sup> Cf. Ilves 1989, p. 15.

around 20 per cent of non-Estonians even supported the democratization attempts of the National Front as well as the environmental ideas of the Greens.<sup>62</sup>

On 16 November 1988, the Supreme Soviet of the ESSR accepted a declaration of Estonian sovereignty with five abstentions and one no-vote.<sup>63</sup> The declaration established that laws of the Republic had primacy over laws of the Union.<sup>64</sup> Furthermore, in the end of 1988 important steps were taken to strengthen the position of the Estonian language: In a meeting on 7 December that altered the constitution, Estonian became an official language of the ESSR, and on 18 January 1989 the new language law was passed.<sup>65</sup> The new law granted the citizens of the ESSR the right to use the Estonian language in public administration.<sup>66</sup> Simultaneously, the use of Russian language was also guaranteed.<sup>67</sup> Following an order on 14 July 1989, minority-language proficiency became a prerequisite for certain jobs - these were divided into six categories from A to F - and had to be proven within two to four years with a language test.<sup>68</sup> The working language of official institutions and the language used in the economic sector was now Estonian,<sup>69</sup> although in regions with a Russian minority - with the exception of Tallinn - Russian could be used for an interim period.<sup>70</sup> In order to guarantee the position of the Estonian language, education was to take place in Estonian in a broad range of regions, although Russian would also be a language of education in regions with a Russian majority.<sup>71</sup> Overall, the law strengthened the position of the Estonian language, but also defended that of the Russian language.<sup>72</sup> Nevertheless, and even though also non-Estonian parliamentarians had voted in favour of the declaration of sovereignty and for the language law,<sup>73</sup> non-Estonians viewed the laws very negatively, and protest demonstrations erupted especially in Narva.<sup>74</sup>

Further conflict material was produced in summer 1989 by the new communal election law, which coupled active and passive election rights in Estonia to residence duration in the ESSR.<sup>75</sup> The Intermovement and the *OSTK* reacted to this law with a strike, which paralysed the Estonian economy to a great extent and pressured the Estonian leadership into concessions.<sup>76</sup> The pattern of this conflict was carried out in the following way: Estonian politicians continued to strive for policies that furthered independence and sovereignty, while the pro-Soviet forces, comprised of the party, army and economic sector, continued to oppose this development, mobilizing the insecurities of the regions with Russian majorities.

In the beginning of 1990, the independence of Estonia appeared to be unavoidable.<sup>77</sup> This goal was supported by 96 per cent of Estonians,<sup>78</sup> and was striven for by various Estonian-dominated political groupings. These, however, argued about the best way to attain independence.<sup>79</sup> The National Front and the Estonian reform wing that arose from the Communist Party, the Union "Free Estonia", continued to pursue a way that could be called "marsh through the institutions". Independence was to follow from negotiations with Moscow and through the existing institutions of the ESSR. On the other hand, the Estonian Party of National Independence, which had been founded in February 1988, and the Estonian National Heritage Society, which was founded in 1986, refused to recognize the legitimacy of these

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<sup>62</sup> Cf. *ibid.* p. 15f.

<sup>63</sup> Cf. Meissner 1991a, p. 384.

<sup>64</sup> Cf. Bungs 1989; see also Uibopuu 1989, p. 46.

<sup>65</sup> Cf. Raun 1995, p. 517f. Eesti NSV keeleseadus [Law on Language], 18 January 1989.

<sup>66</sup> Eesti NSV keeleseadus [Law on Language], 18 January 1989, art. 2.

<sup>67</sup> *Ibid.*

<sup>68</sup> Cf. Brettin 1996, p. 255, 259.

<sup>69</sup> Eesti NSV keeleseadus [Law on Language], 18 January 1989, art. 8, 11, 12.

<sup>70</sup> *Ibid.*, art. 36.

<sup>71</sup> *Ibid.*, art. 19, 20.

<sup>72</sup> Cf. Brettin 1996, p. 260.

<sup>73</sup> According to Brettin (1996, p. 245), only 186 of the parliamentarians were of Estonian nationality.

<sup>74</sup> Cf. Gorohhov 1997, p. 126.

<sup>75</sup> Cf. Brettin 1996, pp. 263-266.

<sup>76</sup> Cf. Taagepera 1993, p. 155; see also Girnius 1989; and Brettin 1996, p. 268.

<sup>77</sup> Cf. Taagepera 1993, p. 173f.

<sup>78</sup> Cf. Raun 1991, p. 229.

<sup>79</sup> Cf. Kionka 1990c.

institutions. These two organizations, whose members mostly comprised former dissidents, called for a Congress of Estonia to be elected. In their view, this would be the legitimate institution of the Republic of Estonia, which had been under foreign rule since 1940. The election for this preparliament was organized by the Committee of the Estonian Citizens on 24 February 1989,<sup>80</sup> and was carried out between 24 February and 1 March 1990.<sup>81</sup> Citizens of the Republic of Estonia and their descendants held the right to vote. Immigrants who had entered the country after 1940 were therefore consciously excluded from this parliament, but could - in the case that they supported Estonian independence - register as candidates for Estonian citizenship and elect observers who did not have the right to vote into the Congress. Shortly after the election of the Congress, on 18 March 1990, the first free elections for the official Estonian parliament, the Highest Soviet, were held. The Independence Party was not represented in this election, as it declined to participate in an election for an institution of a foreign ruler, and which also included representatives of "migrants".<sup>82</sup> The National Front, its allies (49) and the reform communists (29) therefore achieved a majority with 105 seats.<sup>83</sup> The *OSTK* and the Intermovement attained 27 seats, therefore falling short of their most important goal - a blocking minority of 35 per cent against constitutional changes.<sup>84</sup> The main conflict line in the new parliament ran between the Estonian independence supporters and the non-Estonian anti-independence movement. The formation of these mainly parallel ethnic (Estonian/non-Estonian) and political (pro-independence/pro-Soviet Union) cleavages had developed gradually during the previous years, continuously becoming more fixed. On 25 March 1990 the Communist Party of Estonia also split along these lines.<sup>85</sup> Nevertheless, in May 1990 the number of non-Estonian supporters of independence has substantially risen: Up to 26 per cent from around 5 per cent in the previous spring of 1989.<sup>86</sup> According to Shafir, this increase was mostly caused by democratically oriented Russian-speaking intellectuals and young workers, who believed economic and social development would be more successful in an independent Estonia than as a part of the Soviet Union.<sup>87</sup> Older immigrants, who had been born outside Estonia and who had closer ties to the Soviet Union, and in particular representatives of the Soviet system in the party, administration and businesses, built the core of the anti-independence movement.<sup>88</sup> Their regional basis lay mostly in Narva, Sillamäe and Kohtla-Järve. Estonian independence was not in the interest of members of the local administration and the management of the all-Union companies, and these therefore attempted to mobilize Russian-speaking workers against the new Estonian leadership. Control of local media by radical forces, language barriers between Estonians and Russians, and the limited attempts of Estonians to spread their views into the Northeast made their task easier.<sup>89</sup>

On 30 March 1990, the day that it was constituted, the Supreme Soviet of Estonia voted on the status of Estonia.<sup>90</sup> With a two-third majority, it *de facto*, but not *de jure* proclaimed the commencement of the transition phase to reinstate independence that had been lost in 1940 with Soviet annexation.<sup>91</sup> This decision further increased tensions between independence supporters and the anti-independence movement. When on 15 May 1990 around 5,000 pro-Soviet demonstrators attempted to storm the seat of the Estonian government on the Tompea castle, a temporary danger even existed that the violence would erupt.<sup>92</sup> However, neither side was mentally or materially prepared to use violence in May 1990. To be sure, on the non-Estonian side, political organizations, which had access to light weapons, had formed paramilitary organizations in the late eighties. The Estonian side, which was also politically organized and

<sup>80</sup> Cf. Kionka 1990b, p. 32.

<sup>81</sup> Cf. Butenschön 1992, pp. 74-77.

<sup>82</sup> Cf. *ibid.* 1992, p. 76.

<sup>83</sup> As one candidate could officially be nominated by several parties, the classifications were not always clear. Cf. Ishiyama 1994, p. 182. E.g. Taagepera, 1993, p. 176, arrives at slightly differing results.

<sup>84</sup> Cf. Taagepera 1993, p. 176; see also Kionka 1990e, p. 23.

<sup>85</sup> Cf. Ishiyama 1993, p. 290.

<sup>86</sup> Cf. Ilves 1989, p. 15f; see also Taagepera 1993, p. 176f.

<sup>87</sup> Cf. Shafir 1995, p. 184f.

<sup>88</sup> Cf. Kolstoe 1995, p. 113.

<sup>89</sup> Cf. *ibid.*, p. 157.

<sup>90</sup> Cf. Meissner 1991a, p. 389.

<sup>91</sup> Cf. Ilves 1990.

<sup>92</sup> Cf. Taagepera 1993, p. 178; see also Brettin 1996, p. 285 and Kolstoe 2000, p. 5.



which had built the unarmed "Home Defence" after the incident of 15 May, also began to build up a military organization. But these forces were not very strong, and thus both sides were prepared for violent confrontation only to a limited extent from the material point of view. Nevertheless, the escalation spiral continued to tighten in 1990, and at this point in time it was also uncertain how around 120,000 Soviet troops that were stationed in Estonia would act.<sup>93</sup> Violent outbursts involving Soviet troops eventually occurred in Lithuania and Latvia, but did not take place in Estonia.<sup>94</sup> Though the situation was tense in Tallinn when incidents occurred in Vilnius and Riga, and although threats were made by the Soviet military and local, pro-Soviet forces also in Estonia, the situation remained calm.<sup>95</sup> As a matter of fact, Estonia received important support from the Russian side in this situation: On 12 January 1991, Boris Yeltsin signed a "Treaty on the Bases of Inter-State Relations between the RSFSR and the Republic of Estonia", and traveled to Tallinn on the next day to appeal to Russian soldiers not to get involved in acts of violence.<sup>96</sup>

Although the conflict between pro-Soviet and pro-Estonian forces did not escalate in January 1991, the situation did temporarily reach a crisis level. On the Estonian side, the willingness and opportunity to use violence was limited despite half-hearted mobilization attempts.<sup>97</sup> The radical pro-Soviet side, however, appeared to be psychologically - supported by Soviet forces - as well as materially ready in January 1991. The pro-Baltic stance of the Russian government managed to weaken the propaganda of the radicals, and consequentially also their opportunity to attain broader support from the non-Estonian population - practically pulling the ground from under their feet.<sup>98</sup> A similar limited outcome was the result when the non-Estonians called for the formation of a paramilitary force on 17 January, and also when the *OSTK* and the Intermovement organized a strike. As the Soviet leadership began to send out stronger de-escalation signals,<sup>99</sup> the conflict deescalated further in the beginning of 1991.

Independence was, however, pushed for even harder by the Estonian side. On 3 March 1991, the Estonian parliament decided to hold a referendum on the reinstatement of independence on 17 March, before a Soviet referendum that was to be held on a new union treaty. With an election participation rate of 82.9 per cent, 77.8 per cent voted in favour of reinstating Estonian independence. This means that around 25-30 per cent of non-Estonians also voted in favour of and 35-40 per cent of non-Estonians voted against independence. Around a third of those entitled to vote declined to participate.<sup>100</sup> Several polls support the result of the referendum on independence of 3 March.<sup>101</sup> Support for pro-Soviet forces and their leadership barely reached 30 per cent even amongst the non-Estonian voters, and the Intermovement lost most of their support to the *OSTK* and the pro-Union part of the Communist Party.<sup>102</sup>

In the end, the putsch of conservative, pro-Soviet forces on 19 August 1991 in Moscow forced the Estonian leadership to negotiate. While the Intermovement called for demonstrations to support the crisis committee,<sup>103</sup> and tanks rolled through Tallinn, the Estonian parliament decided to make public a statement on the evening of 20 August. The statement:

- (1) confirms the independence of the Republic of Estonia and proclaims the end of the transition period;
- (2) calls for the creation of a Constitutional Assembly, the members of which will be chosen together by the Supreme Council and the Congress, and which will carry out a referendum on a reformulated constitution;

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<sup>93</sup> Cf. Kionka 1990a, p. 23.

<sup>94</sup> Cf. Brettin 1996, p. 317, 325.

<sup>95</sup> Cf. Kionka 1991a.

<sup>96</sup> Cf. Brettin 1996, pp. 318-320.

<sup>97</sup> Cf. Kionka 1991a, p. 5f.

<sup>98</sup> Cf. Linz/Stepan 1996b, p. 409; see also Dunlop 1993, p. 60.

<sup>99</sup> Cf. Brettin 1996, pp. 326-328.

<sup>100</sup> Cf. Taagepera 1993, p. 194; see also Kolstoe 1995, p. 118; and Kionka 1991b.

<sup>101</sup> Cf. Semjonov 2000, p. 5-7.

<sup>102</sup> Cf. Taagepera 1993, p. 195, 198f; see also Kionka 1991c, p. 61; and Semjonov 2000, p. 7f.

<sup>103</sup> Cf. Kionka 1991c, p. 60.

- (3) determines that parliamentary elections will be held after the new constitution has been passed in the following year.<sup>104</sup>

After the failure of the putsch attempt, the Estonian leadership took concrete steps to secure independence. Estonian border troops took over the control of external borders. The city councils of Narva, Sillamäe and Kohtla-Järve, which had supported the putsch, were disbanded. The Communist Party, the *OSTK* and the Intermovement were prohibited.<sup>105</sup> Furthermore, Estonia received important support from Moscow: Already on 24 August, Russia recognized the independence of the Baltic states, and the Soviet Union followed on 6 September. Also within Estonia, the pro-Soviet forces that were to a great extent isolated by late-summer 1991 were discredited and lacked an organizational basis.<sup>106</sup> 55 per cent of non-Estonians now supported Estonian independence.<sup>107</sup>

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<sup>104</sup> Cf. Kionka 1991c, p. 59; see also Taagepera 1994, p. 215.

<sup>105</sup> Cf. Taagepera 1993, p. 202; see also Kionka 1991c, p. 60f.

<sup>106</sup> Cf. Lieven 1994, p. 200.

<sup>107</sup> Cf. Semjonov 2000, p. 6f.

## Chapter 3. Estonia after Independence: The Radicalized Period from 1991 to 1994

### 3.1 *From Privileges to Statelessness: The Citizenship Issue in Estonia in 1992*

After Estonia regained independence on 20 August 1991, an Estonian Constitutional Assembly was formed to decide on the new democratic institutions for Estonia.<sup>108</sup> The Constitutional Assembly was not only set up to work out a new constitution for Estonia, but was also to be in charge of articulating the citizenship law. It was formed jointly by the Supreme Council and the Congress of Estonia.<sup>109</sup> Both parliamentary bodies claimed to be legitimate representatives of the Estonian people and, therefore, entitled to model the new democratic institution for the republic. As a compromise, they decided to share the responsibility, and both of the representative assemblies were thus included in the constitution-making process.

Four main groupings in the Constitutional Assembly can be identified: 20 members of the Estonian Popular Front; 20 nationalist radicals, mostly from the Estonian National Independence Party; 13 moderates and reform communists; and seven Russian deputies.<sup>110</sup> Members of the Constitutional Assembly were thus mainly ethnic Estonians. Although some non-Estonians were also included in the decision-making body, these were not proportionally represented to their number in the overall population. This disproportion was due to the fact that the Congress of Estonia was elected only by citizens of the first Estonian Republic, and by their descendants. Also the composition of the Congress was therefore overwhelmingly Estonian. All seven Russian representatives in the Constitutional Assembly were elected into office by the Supreme Council.<sup>111</sup> To make matters worse for Russian-speakers, their representatives in the Constitutional Assembly were partly discredited following their anti-independence attitude in 1990 and 1991.<sup>112</sup> The resulting balance of forces became essential for the ultimate outcome of the Citizenship Law. The draft laws on citizenship, which had been elaborated before independence by the responsible commission of the Supreme Council, had been quite accommodative for the Russian-speakers. However, as the influence of those forces favouring a more exclusionist approach grew continuously in the second half of 1991, the subsequent drafts turned out to be much less convenient.<sup>113</sup>

Ethnic questions played a significant role in the negotiations on the new institutions and their legal basis, but the underlying force still seemed to be political competition. The power advantage over the Russian-speaking minority played a decisive role, as the political marginalization of the ethnic minorities could increase the chance of success of ethnic Estonian parties in the upcoming parliamentary elections. However, the competition between Estonian parties can also explain the institutional path that was adopted. At the time of the bargaining process on the constitution and citizenship, political parties were rather fragmented and the possible outcome of the first elections was highly uncertain with regard to all parties.

Clear cleavages existed both between the moderate and radical forces, as well as within their own camps. The main party in the radical wing was the National Independence Party, which had some small allies such as the Christian Democrats. These forces stressed the legal continuity of independence, appealing to the experience of the first Republic of Estonia during the inter-war period.<sup>114</sup>

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<sup>108</sup> Alternatively, the term Constituent Assembly is sometimes used.

<sup>109</sup> See chapter 2.

<sup>110</sup> Cf. Frye 1997, pp. 523-552.

<sup>111</sup> The share of seven Russians among the thirty representatives in the Supreme Council was proportionate to the ethnic composition of Estonian society.

<sup>112</sup> Cf. Kask 1994, pp. 379-390, 383.

<sup>113</sup> Cf. Kionka 1991d, pp. 21-26, 24; see also Kionka 1991e, pp. 21-24, 23.

<sup>114</sup> Cf. Taagepera 1993, pp. 196-197.

The moderate forces also supported the notion of a legal continuity, but wanted to adapt it to the existing situation. Hoping to gain extra votes from Russian-speakers, the moderates, most notably the Popular Front, which had enjoyed a rather large support of the non-Estonians in the past, supported a more inclusive version of the citizenship legislation. They initially favoured a version of the so-called "zero-option" as the basis of citizenship. The zero-option envisaged that all people living on Estonian territory at the time when independence was declared would automatically be considered as citizens of Estonia. However, the flow of immigrants from other parts of the Soviet Union to Estonia had inflated in the eighties to the extent that Estonians faced the danger of becoming a minority in their own country. Moreover, many of these settlers resided in Estonia only for a short period of time, emigrating to other parts of the Soviet Union soon after entering the country. These settlers were therefore hardly attached to Estonia, and were not integrated into Estonian society culturally or linguistically. Consequentially, many decision-makers supported at least some sort of residency requirement as a precondition for granting Estonian citizenship to people who had settled into the country during the Soviet era.

In the view of the conservatives, however, it did not matter how long a person had lived in Estonia. Automatic citizenship could not be granted, as citizenship was a personal choice. Thus granting automatic citizenship to all or some Soviet settlers would be 'forceful' naturalization, which the Estonian citizenship legislation did not foresee. Citizenship could therefore only be granted to those people who had not been citizens of the inter-war republic on a voluntary basis, i.e. it had to be requested.<sup>115</sup> However, when the Supreme Council proposed the possibility that during a certain period, Soviet settlers could express their wish for citizenship without having to fulfill the residence and language requirement, the conservatives considered this a hidden zero-option.<sup>116</sup>

Discussions also revolved around the question of what to do with those Soviet era settlers who had actively supported Estonian independence. Approximately 30,000 non-Estonians had applied for Estonian citizenship through the Estonian Committee (the founding body of the Congress of Estonia) in 1990, and one third of the 'non-natives' had supported Estonia's independent statehood in the 1991 referendum. Moreover, in the case that only citizens of the first republic would be granted citizenship, some members of the Constitutional Assembly and the Supreme Council themselves would have been excluded. A large number of people who had participated in drafting the citizenship legislation and the Constitution, and who had consented to the basic principles of the new Estonian society, would then find themselves as being excluded from the state, the basis of which they had participated in forming. All such people were considered as having contributed to Estonian independence, and they were therefore to be granted citizenship without regard to residency or language requirements. At the time, Estonian decision-makers, whether moderate or nationalist, were united in this point to a large extent. To conclude, all non-Estonian representatives who had participated in the work of the Estonian Congress and Constitutional Assembly, or who had applied for Estonian citizenship before March 1990 were eventually given an advantaged position in the actual process of acquiring citizenship. This advantage was granted to them in return for their support in state-building. Why this advantage was only granted eventually and not immediately will be explained at a further point in this chapter. Keeping the later developments in mind, the claims of the non-Estonian deputies in the assembly could have been in accordance with the Estonian majority, but they were not representing the interests of their constituency. By agreeing to the preferential treatment of those non-Estonians who had contributed to Estonian independence in terms of naturalization, the Russian deputies secured their own privileged right to citizenship, but not that of their constituents.

The argument of international opinion was a part of the discussion on the citizenship issue. Russian deputies sent an appeal to the United Nations that claimed that international rights of non-Estonians were being abridged. UN principles were referred to also by some Estonian deputies, who argued in favour of

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<sup>115</sup> Cf. Päevaleht, 4 September 1991, Vabariigi kodakondsuse seaduse taastõustamisest [On re-establishment of Citizenship Law of Republic of Estonia].

<sup>116</sup> Cf. Päevaleht, 18 September 1991, Varjatud nullvariandi ohud [Threats of the hidden zero-option].

the *ius soli* rule, by which all persons born in Estonia would be entitled to Estonian citizenship.<sup>117</sup> The moderates also tried to stress that the West would neither understand nor support Estonia's exclusive citizenship policies. US State Secretary James Baker, for example, had affirmed that economic support of the West to the Baltics was dependent on them respecting both human and minority rights. Moreover, a report on human rights in Estonia, commissioned by the Parliamentary Assembly of the Council of Europe, pointed out that the democratic character of the country could be affected if substantial parts of the population were "denied the right to become citizens, and thereby are also denied for instance the right to vote in parliamentary elections."<sup>118</sup> However, the supporters of the strict citizenship rules downplayed the Western threats, saying that in sight of material gains Estonia should not give in to its principles.<sup>119</sup>

Over time, the zero-option became increasingly unpopular among the Estonian public. Radicals publicly questioned the national feelings and loyalty to Estonia of moderates, and claimed that they were working against national interests. In fear of losing the support of Estonian voters in the first free elections, the moderates abandoned their position in favour of the radical and exclusive viewpoint. Initially, Marju Lauristin, the leader of the Social Democrats, proposed the zero-option to the Supreme Soviet's Citizenship Commission. With Edgar Savisaar as Prime Minister and many Russian deputies in parliament, at the time a fair chance existed that the necessary support for the plan could have been attained in the Supreme Soviet.<sup>120</sup> However, growing inner disagreements undermined the Popular Front faction. This faction was composed of several parties, which had been more or less unified in confronting Moscow and in steps towards independence, but in the process of institution-building their leaders and agendas had drifted apart. This process led to inner tensions and finally to the split of the Popular Front.<sup>121</sup> Moreover, support for the Popular Front had declined because of the government's policies and alliances with Russian deputies. In January 1992, the government of Edgar Savisaar, leader of the Popular Front, "won a parliamentary vote giving it emergency economic powers, but only with the support of Russian deputies, with a majority of Estonian deputies against the move."<sup>122</sup> As this became public, Savisaar was forced to leave office and much of his personal as well as the party's popularity was eroded. Due to political calculations according to which the votes of the Estonian constituency had a higher value than those of non-Estonians, the Social Democrats and other moderates changed their position on the citizenship question. They gave into the radicals and agreed to the re-enactment of the Law on Citizenship dating from 1938 and to a limited and exclusionist definition of citizenry.

On 26 February 1992 the Supreme Council decided, in accordance with the recommendations of the Constitutional Assembly, to re-enact the Law on Citizenship of 1938 from Estonia's pre-war republic. The version that had been valid on 16 June 1940 was adopted.<sup>123</sup> According to this decision, citizens of the inter-war Republic of Estonia, as well as their descendants in the paternal line were to be considered as Estonian citizens.

This decision followed the notion of legal continuity. This was based on the assumption that the legal framework of the Estonian Republic was still in force, and that the Constitutional Assembly had to derive its decision in the following manner: If Soviet occupation in Estonia was illegal, the independent Republic of Estonia had never ceased to exist. And if the Republic had continued to exist, so had the citizenry of the Republic. In the case that Estonia would change its notion of citizenry and would widen its definition to

<sup>117</sup> Cf. Päevaleht, 28 September 1991, Valikuvaevad teel Euroopasse [Painful choices on the road to Europe].

<sup>118</sup> CoE/PA, Doc. AS/Ad hoc Bur-EE (43) 2, Report on Human Rights in the Republic of Estonia, reprinted in: Birckenbach 1997a, pp. 139-160, 148.

<sup>119</sup> Päevaleht, 22 September 1991, Riigi organiseerimiseks on vaja määratlada kodanikkond [In order to organize the state, we need to define the citizenry].

<sup>120</sup> Cf. Päevaleht, 13 September 1991, ÜN kodakondsuskomisjoni ettepanekud võivad olla Eesti ühiskonnale traagilised [The proposals of Supreme Council's Citizenship Commission could be tragic for Estonian society].

<sup>121</sup> Cf. Linz/Stepan 1996b, p. 409.

<sup>122</sup> Lieven 1994, p. 75.

<sup>123</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992. The Estonian Supreme Council, which had declared Estonia's independence, stayed in office until the first free elections in the newly formed Republic of Estonia.

include the people who had moved to Estonia during the Soviet period, Estonia would deny the illegitimacy of the occupation. According to this point of view, if all persons living in the territory of Estonia during the time of the declaration of independence would be considered as citizens, the current Estonian state would by definition be the second Republic of Estonia, and the first one had ceased to exist.<sup>124</sup>

This line of argumentation was not, however, the only possible one, as the Lithuanian case illustrates. Lithuania granted automatic citizenship to all its residents when it regained independence. Russia was more than willing to point out Lithuania's approach to the other two Baltic states. It also claimed that the 1920 Tartu peace treaty was not the last valid document that established relations between the two states. According to Russia, the Union Treaty of 1946 and the agreement between Estonia and Russia in 1990 were also still in force, and committed Estonia to grant citizenship to all its residents. In the end, the legal continuity argument was used as the 'holy cow' to justify the adoption of the 1938 Law on Citizenship. However, the application of the legal continuity principle was rather selective. Several changes and additions were made to the Law on Citizenship, including the introduction of the maternal hereditary line for acquiring Estonian citizenship. This modification was introduced in 1993 after pressure exercised by the Council of Europe, which made Estonia's accession to this body dependent on this question.<sup>125</sup> This type of adaptation to the current situation was, however, ruled out in view of granting citizenship to Soviet era immigrants.

Moreover, it should be noted that the new constitution was adopted on the basis of the 1922 constitution, when Estonia was still a democratic country, and not on the basis of the authoritarian constitutions of 1933 or 1937. The latter constitutions were ruled out as supportive of a non-democratic (semi-authoritarian) regime, and thus not suitable. In addition, further provisions were made to strengthen parliamentarianism, in order to avoid fragmentation and other problems that led to the establishment of authoritarian rule in the inter-war republic.<sup>126</sup> The adoption of the 1938 Citizenship Law was not seen as undemocratic vis-à-vis the universal suffrage requirement.<sup>127</sup>

In any case, due to the strict application of the principle of legal continuity, only about 80,000 of the approximately 600,000 non-Estonians living in Estonia automatically acquired Estonian nationality in 1992.<sup>128</sup> Residents of Estonia who had settled into the country during the Soviet period were considered as immigrants. They could acquire citizenship only upon request, provided that they also fulfilled specific prerequisites. Applicants had to be 18 years of age or older, or had to produce the accord of their parents or guardian. They were also required to master the Estonian language and had to have been permanently resident in Estonia for at least two years before and one year after the application.<sup>129</sup> Persons without legal income, criminals, former members of the Soviet security services and active members of foreign armed forces were excluded from the naturalization process altogether.<sup>130</sup> A decree of the Estonian government from 6 April 1992 regulated the procedures for naturalization.<sup>131</sup> However, the law stipulating the exact requirements concerning the required knowledge of the Estonian language and the decree on the procedure of the language examination followed only in February and April 1993.<sup>132</sup> Thus for more than one year the required level of Estonian-language proficiency remained unclear. Even more problematic

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<sup>124</sup> Cf. Päevaleht, 4 September 1991, Eesti Vabariigi kodakondsuse seaduse taasjärestamisest [On re-establishment of Citizenship Law of Republic of Estonia].

<sup>125</sup> Cf. Kodakondsus seadus [Law on Citizenship], 1938, para. 3.3. Kodakondsuse seaduse muutmise seadus [Law amending the Law on Citizenship], 23 March 1993, para. 1.1.

<sup>126</sup> The new constitution granted more powers to the Prime Minister in order to guarantee the government's stability. It also set a five per cent threshold for parties running for parliament in order to avoid too many factions. The President was granted only a representative role with few real political powers.

<sup>127</sup> As required for example in the polygarchy notion of Dahl 1998.

<sup>128</sup> Cf. Thiele 1999b, p. 14.

<sup>129</sup> Cf. Kodakondsus seadus [Law on Citizenship], 1938, para. 6; Thiele 1999b, p. 14.

<sup>130</sup> The naturalization process will be discussed in more detail in chapter 3. 3.

<sup>131</sup> Määrus No. 113 [Regulation No. 113], Naturalisatsioonikorra Eestis Vabariigi kodakondsusesse astumise korraldamise kohta [On the order of acquiring citizenship of the Republic of Estonia by naturalization], 6 April 1992.

<sup>132</sup> Cf. Geistlinger 1995, p. 101.

was the provision in the decree on the re-enactment of the 1938 Law on Citizenship, which stipulated that the required two years of permanent residency were to be calculated only from 30 March 1990 onwards.<sup>133</sup> Consequentially, no one could be naturalized before 30 March 1993, regardless how long the applicant had actually been resident in Estonia, and independent of whether he or she spoke Estonian. All Soviet time settlers were thus effectively disfranchised at least from the constitutional referendum of June 1992 and from the first elections of independent Estonia in September 1992. This also held true for those non-Estonians who had registered as applicants for Estonian citizenship before the Congress of Estonia elections in 1990. These persons were exempted from the residency requirement and language exams only on 18 February 1993.<sup>134</sup> As a result, not a single Russian-speaker was among the 101 deputies elected to the new parliament, the *Riigikogu*, in the September 1992 elections.

Consequentially, the 1992 citizenship legislation not only failed to grant citizenship to the vast majority of Estonia's Russian-speaking population, but also prevented those non-Estonians who were qualified and ready to acquire Estonian citizenship from doing so immediately. Thereby, most Russian-speakers were effectively excluded from national politics in the early phase of Estonia's regained independence, during which important decisions concerning the future of the country were made. In fact, this was exactly what the Estonian legislators had intended. The citizenship legislation was adopted before the first free parliamentary elections in newly independent Estonia, in order to define who would have the right to participate in the elections (both as candidates and as voters). And one of the main reasons behind the exclusionary citizenship principle was clearly to bar the vast majority of non-Estonian settlers from participating in the first free parliamentary elections. It was feared that they could have potentially undermined the development of an independent and democratic Estonia. The decision-makers were suspicious whether the newcomers would not use their right to vote to succumb Estonia to Russia's sphere of influence.

Whereas ethnic Estonians were certain about their commitment to the newly independent Republic of Estonia, other ethnic groups in Estonia were more perplexed over the issue of the legacy of the disappearing Soviet Union vis-à-vis the emerging polities of Russia, Estonia and other post-Soviet republics. Non-Estonians were unsure which state they belonged to, or aspired to belong to. Whereas most ethnic Estonians came to uphold the independent Republic of Estonia, other Estonian ethnicities, such as Estonian Russians and Estonian Ukrainians, were greatly divided and confused over their identifications. Some of them maintained a Soviet identification, while others adopted a new identity according to their ethnic origin, supporting several of the Soviet successor states, such as Russia, the Ukraine or Belarus. By witnessing these developments, Estonian authorities doubted the minorities' conviction towards the newly born Estonian state. As Linz and Stepan note:

The key questions for a democratic multinational state are whether the minorities are or are not open to multiple and complementary political identities and loyalties and, if so, whether they will be given citizenship. If minorities' cultural and political freedoms are guarantees, might they indeed become loyal citizens, or would their primary loyalty remain to the 'homeland' state?<sup>135</sup>

The argument ran that Russian-speakers were not devoting their primary allegiance to Estonia and, by having ambiguous loyalties, could potentially undermine the existence of the Estonian state as such. In other words, those who did not support the common state could not belong to the Estonian political community, and could therefore not automatically be admitted as citizens. The fears about disloyalty can be understood if these are viewed in the particular historical context. The greatest source of distrust in this respect was caused by the non-Estonians' resentment of Estonian independence.<sup>136</sup> In the light of the strikes and demonstrations conducted by Russian-speakers in the late 1980s and early 1990s against

<sup>133</sup> Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 5.

<sup>134</sup> Cf. Vetik 2000, p. 100.

<sup>135</sup> Cf. Linz/Stepan 1996b, p. 410.

<sup>136</sup> See chapter 2.

Estonian independence, many Estonian politicians and parts of the general public were convinced that if all Russian-speakers were given the freedom and equal rights to take part in the decision-making process of the newly independent Estonia, they would use it to destroy the state and possibly reunite it with the Soviet Union. In less stark colours, granting citizenship to non-Estonians was seen as a destabilizing factor for the state, and would result in 'unbalanced compromising'.<sup>137</sup>

The granting of citizenship to those who had settled into the country during the forty years of Soviet rule was thus designed gradually. The slowdown in solving the citizenship issue of Soviet settlers was caused by the underlying idea that over time, the loyalty of non-Estonians towards the Estonian state would grow. Eventually, they would therefore depict less of a threat to Estonian independence. By gradually including non-Estonians into the political community, the Estonian state hoped and continues to hope to influence the value judgments of Russian-speakers. By testing, for example, the language skills of a person applying for citizenship, Estonian authorities pressure members of the Russian minority to become more Estonia-oriented.

Several surveys from the early 1990s give an idea of the actual interests of the people in Estonia. A survey dating from 1990 shows that over half of the Russian-speaking minority in Estonia identified themselves with Estonia. To the question "What is your primary territorial identity?" 37 per cent of non-Estonians answered "the Republic of Estonia" and 32 per cent "the locality where I live". Only 21 per cent of people identified themselves primarily with the Soviet Union.<sup>138</sup> However, the Russian-speakers in Estonia continued to identify themselves with the Soviet Republic of Estonia, i.e. with Estonia as a part of the Soviet Union. In a survey on the future of the Republic, 77 per cent of non-Estonians believed Estonia's future lay within the USSR, and only 11 per cent were in favour of Estonia's independence. Respective figures for ethnic Estonians were 12 and 87 per cent.<sup>139</sup> The survey shows how significantly different the perceptions on the republic's future between Estonians and non-Estonians were. In this light, it is not surprising that the Russian-speakers' anti-independence attitude was seen as a threat to Estonia's future as an independent and democratic state.

However, very different results emerged from a survey in which Russian-speaking respondents in independent Estonia were presented with the citizenship question. In yet another survey that was conducted in 1990, the proportion of people who preferred Estonian citizenship to any other one was 49 per cent. Even if they would be compelled to relinquish their citizenship of another country, 78 per cent still preferred the Estonian citizenship.<sup>140</sup> In a survey conducted in 1991, 38 per cent of Russian-speakers preferred Russian citizenship, while 49 per cent would choose to become citizens of Estonia. 66 per cent of non-Estonians preferred a solution through which permanent residents of Estonia would have the option to become Estonian citizens while maintaining their Soviet or respective Russian citizenship.<sup>141</sup> In another survey conducted in 1991, only every twentieth non-Estonian stated that they would refuse Estonian citizenship under any condition.<sup>142</sup>

These results could be interpreted either way, and can be used to support opposing points of views by using different figures. Some commentators justify the harsh citizenship policy using these numbers, pointing out that the majority of non-Estonians wanted Estonia to remain a part of the Soviet Union. The counter-argument runs that over half of non-Estonians primarily identified themselves with Estonia, on either the national or the local level, and were interested in acquiring Estonian citizenship. Thus, by conducting the right policies, their commitment and trust in the Estonian state could have been increased and consolidated. However, the exclusive approach threatened to exclude even those non-Estonians who

<sup>137</sup> Cf. Päevaleht, 5 September 1991, Kodakondsuse kaks varianti [Citizenship's two options].

<sup>138</sup> Cf. Linz/Stepan 1996b, p. 411.

<sup>139</sup> 35 per cent of non-Estonians favoured the 'confederation option' of the USSR (more autonomy to the republics within the context of the Union) and 42 per cent favoured the existing situation at that time. See Linz/Stepan 1996b, p. 413.

<sup>140</sup> Cf. Ott et al. 1996, pp. 21-46, 33.

<sup>141</sup> Cf. Taagepera 1992, pp. 121-132, 128.

<sup>142</sup> Cf. Päevaleht, 28 September 1991, Valikuvaevad teel Euroopasse [Painful choices on the road to Europe].



originally supported Estonian independence. What can be said with certainty is that the threats of possible disloyalty were greatly exaggerated and over-politicised.

As result of this over-politicisation of the loyalty issue, a Law on Citizenship was adopted that inaugurated a particular situation in Estonia, in which only two thirds of Estonian residents were actually Estonian citizens who were entitled to vote, while the remaining third were stapled as aliens, having no political representation. The distinction between citizens and immigrants is valid to some extent, but the polity consisting of thirty per cent non-citizens is abnormal and extremely dysfunctional. Therefore, "the transition to democracy requires social and political institutions to integrate these large immigrant populations",<sup>143</sup> and that these are accepted as citizens. Otherwise the democratic claim is not a sufficient one. In fact, the Estonian polity is considered an "ethnic democracy"<sup>144</sup> by most scholars who study the country. In other words, Estonia is a democratic state, but one with ethnic elements which skew towards the ethnic Estonian majority and place the Russian-speaking minority in disadvantaged position.<sup>145</sup> Discrimination did of course not formally exist on the basis of ethnicity in the new citizenship legislation: Those who had been citizens of the inter-war republic, including also their descendants, received citizenship, independent of their ethnic belonging. But although the wording of the law has no ethnic connotation, its hidden purpose (Estonia for Estonians) is obvious, and consequently the legal problem of the naturalization of Soviet-time immigrants appears to be one of ethnic minority.<sup>146</sup>

As one should have expected, the adoption of the Law on Citizenship and its connotations did not go down well with Russian-speakers, who suddenly found themselves as being alien in a "foreign" country, without having moved abroad. In March 1992 a big protest meeting in Tallinn denounced Estonian independence and called for the establishment of 'Baltic Russia'. In April the energy workers in Narva carried out a warning strike, demanding automatic citizenship for all Russians in Estonia.<sup>147</sup> However, ethnic relations in Estonia did not turn violent after 1992, and also the Estonian expectation that Soviet-time settlers would have to leave the country did not materialize. Around 65,000 non-Estonians did permanently leave Estonia between 1991 and 1993. However, the rate of migration slowed down already in summer 1992 when Estonia adopted its own currency. And as the living standard gap between Estonia and Russia continued to grow in the following years, migration reached a nearly insignificant level in the mid-1990s.<sup>148</sup> Some Estonian radicals have actually claimed that the monetary reform undermined the migration of Russians-speakers. They argue that it would have been preferable if the Estonian currency had adopted later, as Estonia would now have to deal with a much smaller number of Russian-speakers. However, the early adoption of its own currency geared Estonia off to sharp and rapid economic growth.

A short while later, the economic argument in relation to the Russian minority was used in a very different context. The Russian-speaking minority is considered to be better off in Estonia than in their country of origin. Because the economic situation in Russia is significantly worse than in Estonia, "there is willingness on the part of Estonians and Russians to discuss 'bread and butter issues'".<sup>149</sup> As Taagepera assumes, the better economic situation of Russians in Estonia in comparison to the situation of those in Russia is a good basis for integration. The reasoning behind this is that ethnic unrest or any substantial instability would negatively affect the economic situation in Estonia and the two ethnic communities therefore prefer reasonable co-existence, or more correctly stated, parallel existence. Thus, the kind of pragmatism of inter-ethnic relations in Estonia is driven by economic reasoning. In most of the analyses on ethnic relations in Estonia, authors stress the pragmatism of Estonian politics.<sup>150</sup> Analysts are mostly

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<sup>143</sup> Johnston 1992, pp. 95-104, 99.

<sup>144</sup> Linz/Stepan 1996b; Pettai 1998; Smith 1996, pp. 199-216; and more recently Järve 2000. For a diverging point of view, see Smooha 2001.

<sup>145</sup> Cf. Pettai 1998, p. 18.

<sup>146</sup> Cf. Kirch et al. 1997, p. 26.

<sup>147</sup> Cf. *The Baltic Independent*, 8 January 1993, Estonia 1992.

<sup>148</sup> Cf. ESA 1998, p. 79f.

<sup>149</sup> Taagepera 1992, p. 122.

<sup>150</sup> See for example Johnston 1992, Rose 1997 or Taagepera 1991.

surprised that the Estonian and the non-Estonian communities have not engaged in violent confrontation. Despite the injustice that Russian-speakers have to bear in face of Estonian-centred policies, as well as the mutual distrust between Russian-speakers and Estonians in general, ethnic violence has not erupted in Estonia.

In addition to economic reasoning, another explanation why ethnic tensions have not amounted to threatening levels in Estonia lies in the fragmentation of the Russian-speaking population. Already the term 'Russian-speaking population' indicates that we are not talking about a distinct group, but about people with different ethnic and political identities, united through one language. Russian-speakers include also Jewish people, Belarusians, Ukrainians and others who migrated to Estonia during the Soviet period, and who thus faced the same citizenship and residency issues as Russians did. Nevertheless, Russians are the largest group among the new settlers (almost 80 per cent), and are the most organized group in representing their interests. On the other hand, Russians and other non-Estonians who had lived in Estonia prior to 1940, and who had been citizens of Estonia at that time, were considered Estonian citizens also after 1992. These persons used to be more integrated into Estonian society, and belonged to a different social strata than the industrial workers and party officials who settled into Estonia during Soviet times.<sup>151</sup> As Estonian citizens, they also held a different legal status and were able to participate in the political process. Moreover, Russian-speakers were divided between moderate democrats, who had supported Estonian independence, and pro-Soviet hardliners.

A majority of [the democratic leaders] favoured Estonia's independence or, at least, did not oppose it [...]. So they expected, not unfoundedly, that they would participate in future nation building, and within the framework of a civic project. Therefore, leaders of the Russian Democratic Movement (established in August 1991) and the Representative Assembly (1993) consistently avoided an ethnic mobilisation approach for the Russians and tried to find contacts with moderate Estonian political forces instead.<sup>152</sup>

Thus the Russian-speakers in Estonia remained politically divided and, consequently, two rather opposing bodies were formed. First, the Russian Assembly was created with the goal to represent the interests of non-citizens. Its organizers were moderately disposed and aimed to represent the whole Russian-speaking non-citizen population. The Russian Assembly appealed to the Estonian parliament to recognize the existence of the problems of Russian-speakers, and called for re-enacting the citizenship law. Their leaders argued that:

Russians who settled in the Estonia during the Soviet regime had no idea the country was occupied and cannot thus be treated as illegal immigrants the way Estonia has been regarding them, [in addition] Russian settlers should be given Estonian citizenship as many of them have lived in the country for a long time.<sup>153</sup>

More radical Russian leaders regarded the assembly as 'too subservient' to Estonians and distanced themselves from it. They formed an alternative body called the Russian Community, which was a hardliner nationalist organization, uniting only Russians and identifying itself with Vladimir Zhirinovski's Liberal Democratic Party in Russia.<sup>154</sup> The organization called for unconditional Estonian citizenship to be offered to all Russians, as well as for the legalization of dual citizenship.<sup>155</sup>

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<sup>151</sup> Cf. Kolstoe 1995, p. 109, 119.

<sup>152</sup> Semjonov 2000, p. 43f.

<sup>153</sup> Cf. The Baltic Independent, 16 April 1993, ... while assembly demands more rights.

<sup>154</sup> Cf. The Baltic Independent, 23 April 1993, Russians launch hardline group. The organization's name in Russian is *Russkii Sobor*, which has been translated into English as both the Russian Community or Russian Council.

<sup>155</sup> Cf. The Baltic Independent, 23 April 1993, Russians launch hardline group.

### 3.2 *Estonia's Law on Citizenship and International Reactions*

The citizenship legislation provoked dissatisfaction also in Russia proper. The Russian government, and in particular the Russian parliament started to make frequent statements about alleged human rights abuses in Estonia. According to Russia, Estonia employed legal and political means to hound out the Russian population. In fact, the Law on Citizenship marked an important turn in the Russian-Estonian relations. In the early 1990s, President Yeltsin had been a strong proponent of Estonia's independence. At the time, Russian and Baltic leaders were united in their opposition to the Soviet leadership and the pro-Soviet forces in the Baltic Republics. When OMON troops of the Soviet Interior Ministry wreaked bloodshed in Vilnius and Riga in January 1991, Yeltsin travelled to Tallinn in order to back the Baltic leaders. The friendly approach taken by the liberal Russian government towards the Baltic states initially prevailed also in 1991, as the official Russian foreign policy makers, President Boris Yeltsin and Foreign Minister Andrei Kozyrev, were mainly interested in the economic aspects of foreign policy, and thus in good relations with the West.<sup>156</sup> The problems of the Russian diaspora were not high on the government's agenda at the time.<sup>157</sup> The Estonian-Russian Agreement from 12 January 1991 stipulated that any person living on the territory of either Estonia or the RSFSR had the right to receive or retain the citizenship of the RSFSR or the Republic of Estonia, in accordance with the free expression of his or her will.<sup>158</sup> Thus, from the Russian point of view, the settlers were supposed to receive the Estonian citizenship. As the Estonian side then disregarded this agreement by deciding to re-enact the 1938 Law on Citizenship, Estonian-Russian relations became more strained. The tension tightened as the liberal foreign policy of Andrei Kozyrev increasingly came under fire in Russia, and the influence of so-called national democrats grew. In order to maintain his popularity in Russia and to fight back the increasing criticism of hardliners, Yeltsin had to radicalise his foreign policy position. This resulted in the development of a new foreign policy concept that tended towards the so-called near-abroad concept, through which the protection of the Russian diaspora became a priority in Russian foreign policy.<sup>159</sup> The Russian Foreign Ministry had started to prepare this new doctrine based on a foreign policy strategy seminar organized by the Moscow International Relations Institute. Among other, the seminar concluded that Russia could use economic sanctions and use force to protect the human and minority rights in the territories of the former Soviet Union. Also, Russia should encourage Russian-speakers to remain in the newly independent states, in order to allow Russia to assert political influence on these countries.<sup>160</sup> Consequently, Russia's stance *vis-à-vis* Estonia became much tougher. Although Kozyrev still used the framework of international agreements and organizations, such as the OSCE, to protect Russian minorities in the 'near abroad',<sup>161</sup> unilateral measures increasingly came to the fore. Russia temporarily cut off its gas supply to Estonia and in October 1992, President Yeltsin, linking the issue of Russian troops in Estonia with the fate of the Russian diaspora, announced the suspension of the troops' withdrawal.<sup>162</sup>

Another issue that outraged Russia and caused tension between the two states was Estonia's territorial claims on Russia. The territories east to the Narva River and Lake Peipsi, which had become part of Estonia as result of the Tartu Peace Treaty of 1920, had been transferred from the Estonian SSR to the Russian Socialist Federative Soviet Republic (RSFSR) in 1946. The territorial claim was part of Estonia's legal continuity argument: If Soviet occupation in Estonia had been illegal, so had all territorial changes that had been made during the occupation. The territorial claim was of course too much for Russia to

<sup>156</sup> Cf. Melvin 1995, p. 1 and Järve 1997, p. 233.

<sup>157</sup> Cf. Jurado 1998, p. 8.

<sup>158</sup> Cf. Kolstoe 1995, p. 116.

<sup>159</sup> Cf. Jurado 1998, p. 9 and Melvin 1995, pp. 32-35.

<sup>160</sup> Cf. *The Baltic Independent*, 5 March 1993, Human rights: Russia's new justification for interference.

<sup>161</sup> Cf. Melvin 1995, p. 14.

<sup>162</sup> Cf. Smith et al. 1996, p. 187f. Estonian-Russian talks on the troops' withdrawal started in April 1992, and continued for the next two years. The negotiations were often stalled and witnessed little progress. The presence of Russian troops on Estonian territory was perceived by Estonians as a serious source of instability. Therefore Estonia in return regularly reacted with protests to statements of Russian officials concerning Russia's policies and attitudes. Also, Estonia's minority policies became even more defensive in order to simply oppose Russia. When international observers began making comments and recommendations on the Estonian inter-ethnic situation, they were often perceived as voicing Russian interests.

swallow, and it was bluntly refused. The claim resulted in the hardening of Russia's other policies towards Estonia, as the 'arrogant' Estonians had to be taught a lesson. The issue stalled border negotiations between the two states, as well as the troop withdrawal issue. By the end of 1994 Estonia dropped the territorial claim, but until today the border treaty between Estonia and Russia has not been signed.<sup>163</sup>

To defend itself against Russian allegations, Estonia turned especially to Western countries and international organizations. Shortly after independence, Estonia had not only established a multitude of bilateral relations, but also joined several international organizations. In 1991 Estonia became a member of UN and the OSCE. In 1992 Estonia participated in the founding of the Council of Baltic Sea States (CBSS). And in 1993 Estonia was accepted as a member in the Council of Europe (CoE). Membership in these organizations was an important symbol for the re-establishment of Estonia's existence as an independent state in the international scene. Moreover, these international organizations as well as influential states such as the USA or Nordic countries supported Estonia's independence. However, they also called for Estonia to respect minority rights. The Clinton administration's main goal was to keep Yeltsin in power, and this demanded for a more critical stance on the Baltics' minority policies. Even though the "US policy of non-recognition of the Soviet annexation is entirely consistent with the Baltic requirement that post-war immigrants and their descendants should not all gain citizenship automatically",<sup>164</sup> US officials did call for the relaxation of naturalization rules to be adopted, as well as for promotion of new immigrants' acquisition of Estonian citizenship.

Western states were especially concerned with Estonian citizenship legislation, as they feared that the exclusion of a large part of Estonia's population from political participation would trigger internal disputes that could escalate into violent conflict. This could in turn destabilize the Baltic region.<sup>165</sup> Seeing a possibility to fend off Russian allegations with the help of the international community, Estonia was ready not only to accept, but also even to invite international organizations to study the situation of minorities in Estonia. Thus, driven by their own concerns, Russian demands and Estonia's readiness, the Council of Europe, the OSCE, the European Bank for Reconstruction and Development (EBRD), the UN, as well as several non-governmental organizations dispatched fact-finding missions to Estonia.<sup>166</sup> The missions visiting Estonia between autumn 1991 and spring 1993 of course particularly focussed on the citizenship legislation. These missions "did not agree among themselves as whether the denial of citizenship was a violation of human rights, as Russia stated."<sup>167</sup> Whereas Asbjørn Eide, rapporteur of the EBRD, came to the conclusion that "the denial of citizenship to substantial parts of the resident population is [...] likely to generate serious human rights problems",<sup>168</sup> the rapporteur of the Parliamentary Assembly of the Council of Europe stated that:

the exclusion of the major part of the non-Estonian minority from the referendum on the constitution and from the first parliamentary and presidential elections, although in itself a flaw from the democratic point of view, is not a sufficient reason for denying Estonia membership of the Council of Europe.<sup>169</sup>

Based on the acceptance of the Estonian argumentation that a distinction has to be drawn between long-standing minorities and immigrants,<sup>170</sup> the Council of Europe, on 14 May 1993, invited Estonia to become a member.<sup>171</sup> However, some member states found it discriminatory that the Russian-speaking population, which amounted to 40 per cent of the entire population, had been ineligible to vote. The report of the

<sup>163</sup> Estonia demands that Russia recognize the Tartu Peace Treaty, which was signed between Estonia and Russia in 1920. Only through this act would it be clear that Russia firstly recognizes Estonia as an independent state that was occupied by the Soviet Union, and secondly admits to the illegitimacy of the Soviet occupation.

<sup>164</sup> The Baltic Independent, 19 March 1993, Wind from the West wavers, for now.

<sup>165</sup> Cf. Birckenbach 1997a, p. 11.

<sup>166</sup> See Birckenbach 1997a, pp. 96-421 for a selection of international reports on Estonia.

<sup>167</sup> Birckenbach 1997b, p. 12.

<sup>168</sup> EBRD Progress Report, 11 March 1992, para. 7.

<sup>169</sup> CoE/PA, Doc. 6810, 14 April 1993, para. 40, p. 14.

<sup>170</sup> Cf. CoE/PA, Doc. 6810, 14 April 1993, para. 36, p. 13; and Doc. 6824, 5 May 1993, p. 1.

<sup>171</sup> Cf. CoE/PA, Doc. 6841, 14 May 1993.

rapporteur was also critical on this issue. The Parliamentary Assembly of the Council of Europe therefore introduced a monitoring procedure, in order to assess how Estonia (and other new member states) honour their commitments as members of the Council of Europe. It continuously assesses the situation with respect to the rule of law, human rights and fundamental freedoms in Estonia.<sup>172</sup>

The Baltic Sea Council also became engaged in similar monitoring, and created, partly as a result of Russia's pressure, the post of High Commissioner for Human Rights and Minorities. This idea was originally opposed by most member states, as the responsibilities of the new position overlapped with the High Commissioner on National Minorities of the OSCE.

The United Nations also sent a fact-finding mission to Estonia in early 1993,<sup>173</sup> but did not carry out follow-ups on this issue. In contrast to the UN, the OSCE was involved in Estonia on a regular basis. First, a fact-finding mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) visited Estonia in December 1992, after receiving an invitation from the Estonian government and based on Rule Four of the so-called Moscow Mechanism of the OSCE.<sup>174</sup> In addition, this mission was concerned with the situation of a large number of stateless residents,<sup>175</sup> and provided a number of recommendations. Moreover, a Personal Representative of the Chairman-in-Office visited Estonia in late 1992, and reported to the Committee of Senior Officials (CSO). Based on this report, the CSO decided on 13 December 1992 "to establish a small CSCE Mission in Estonia for a period of six months,[...] in order to further promote integration and better understanding between the communities in Estonia."<sup>176</sup>

The terms of reference for this long-term mission were fixed by the CSO on 3 February 1993,<sup>177</sup> and the mission started its work in April 1993. Until its termination on 31 December 2001, it acted also as the "eyes and ears"<sup>178</sup> of the OSCE High Commissioner on National Minorities. The HCNM became the main instrument of the OSCE for conflict prevention in Estonia, and the following chapters will therefore concentrate on the activities of Max van der Stoep, who had accepted the post of High Commissioner on National Minorities in December 1992, and who served in this position until 30 June 2001. One of the first things he undertook in his new role was to visit the Baltic states, after being invited by the Baltic governments.

### 3.3 *HCNM Recommendations on the Law on Citizenship of 1992*

During his first visits to Estonia on 12-13 January and 30-31 March 1993, the HCNM met with political, cultural and religious leaders of both Estonian and Russian communities, and informed himself on their points of views on citizenship questions. He also met with the Russian ambassador to Estonia, Aleksandr Trofimov, who claimed that the HCNM had characterized the situation for foreigners in Estonia as "bad."<sup>179</sup> The High Commissioner also visited Russia and met with Deputy Prime Minister Sergei Shakhrai. Even though he refrained from making public statements about his visits to the Baltics at that point, the Russian account of his views was widely reported.<sup>180</sup> Russia continued to make complaints to the OSCE about the position of Russian-speakers in the Baltics, whereas in the Estonian press the High

<sup>172</sup> Cf. CoE/PA, Order No. 485 (1993), Order No. 488 (1993), Order 508 (1995) and Resolution 1031 (1994).

<sup>173</sup> Cf. UN Fact-Finding Mission to Estonia, 31 March 1993.

<sup>174</sup> Cf. CSCE Moscow Meeting, 3 October 1991: "A participating State may invite the assistance of CSCE mission, consisting of up to three experts, to address or contribute to the resolution of questions in its territory relating to the human dimension of the CSCE. In such case, the State will select the person or persons concerned from the resource list. The mission of experts will not include the participating State's own nationals or residents or any of the persons it appointed to the resource list or more than one national or resident of any particular State."

<sup>175</sup> Cf. CSCE/ODIHR Report on the Study of Estonian Legislation, December 1992, para. 70.

<sup>176</sup> CSCE 18-CSO/Journal, No. 3 Annex 2, 13 December 1992.

<sup>177</sup> Cf. CSCE 19-CSO/Journal No. 2, Annex 1, 3 February 1993.

<sup>178</sup> Ugglas 1994, p. 26.

<sup>179</sup> The Baltic Independent, 29 January 1993, UN team invited to Estonia.

<sup>180</sup> Ibid.

Commissioner was quoted as denying the existence of any 'serious' inter-ethnic conflict. He was 'slightly optimistic' about the Baltics' future, and did not see any insoluble problems: "Both sides are aware of the importance of a good solution. But only when they are not getting too emotional."<sup>181</sup>

The High Commissioner's visits were shortly followed by his first letter of recommendation to Estonian Foreign Minister Trivimi Velliste. In this letter, the HCNM mainly addressed issues relating to citizenship acquisition, and elaborated more general recommendations on dialogue and the exchange of information. By the time Van der Stoel took up his office and made his first recommendations to the Estonian government, the Law on Citizenship had already been in force for a year, and the first batch of applicants were becoming citizens. Thus, it was already rather fixed that if a Soviet immigrant wished to become an Estonian citizen, he or she would have to go through the application procedures defined in the law. Estonia's admission to the Council of Europe was seen as an acceptance of the existing citizenship law, and also as a positive acknowledgement of Estonia's domestic policies. Once the original division between citizens and non-citizens had been made, and especially after this division had been accepted in principle by the international community, everyone's attention turned to how the Soviet-time settlers could obtain Estonian citizenship according to the rules set out in the Law on Citizenship. The High Commissioner therefore concentrated the focus of his first letter on how to make the naturalization conditions simpler and smoother for Russian-speakers.<sup>182</sup> His original goal was to promote naturalization among Soviet settlers, to avoid statelessness and, thus, to avoid any serious inter-ethnic tensions from arising. As one could read in a Tallinn-based Russian daily, also Russians themselves came to believe that the Law on Citizenship was there to stay, and that they should act accordingly:

It would be naïve to expect any relaxation in the citizenship requirements. Let's admit it – the citizenship law is not so severe as it has often been depicted in the press. Only three years for residence, after all. [...] The essence of the problem seems to be in the negative attitude [of local Russians] towards the language of the small Estonian nation, something we have inherited from the times of the big empire. [...] We already missed the chance of voting in the 1992 parliamentary elections. Now, after Estonia's admission to Council of Europe, there is no sense in continuing this lost battle. After becoming citizens we can protect our interests and rights ourselves through the existing bodies of power.<sup>183</sup>

However, the newly implemented law had its flaws, loopholes, and a more reactionary than thoroughly deliberated policy behind it. When the re-enacted Law on Citizenship came into force in February 1992, the text of the law was not published in its completeness. Only a Supreme Council decision on implementing the law was published in the official law gazette *Riigi Teataja*.<sup>184</sup> This decision specified, *inter alia*, which paragraphs of the pre-war law would not be implemented, but it did not list those paragraphs that would be. Some additional paragraphs had also been added to the Law on Citizenship. However, the Supreme Council decision on the Law constantly referred to paragraphs in the old law without fully articulating them anew. This created a confusing situation, in which the exact content and wording of the version of the Law of Citizenship was difficult to determine. Several aspects that appeared to be included in the newly established legislation, but that were not meant to be there, were overlooked. Also, as mentioned above, some archaic constructions, e.g. citizenship being passed on only by paternal line, were left intact in the beginning. These were excluded from the law by amendments only in the following years, as these out-of-date tensions that had initially been overlooked became obvious only later. When the complete law was finally made public, exaggerated fears and suspicions about the actual content of the law arose in those who were not automatically granted citizenship. Consequently, the HCNM criticized, *inter alia*, the lack of information provided by the Estonian government, and urged it to inform "the non-Estonian population about the legislation, regulations and practical questions which concern citizenship, language requirements etcetera."<sup>185</sup>

<sup>181</sup> The Baltic Independent, 9 April 1993, Europe's man speaks softly.

<sup>182</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>183</sup> Authors translation, *Estonia*, 20 May 1993, Strasburg i grazhdanstvo [Strasbourg and citizenship].

<sup>184</sup> *Riigi Teataja* is a state publication on new legislation.

<sup>185</sup> HCNM Letter to Velliste, 6 April 1993, para. 11.

The basic procedures for the citizenship application were laid out by the 1992 Law on Citizenship, which also listed several conditions that the applicant was required to fulfil or needed to take into account. First, the Estonian citizenship legislation does not, in general, allow for multiple citizenship. Thus people who apply for naturalization in Estonia would have to give up any other citizenship they held.<sup>186</sup> As already mentioned, persons wishing to apply for Estonian citizenship were also required to have resided permanently in Estonia for at least two years prior to, and one year after applying.<sup>187</sup> Permanent residency was counted from 30 March 1990 onwards.<sup>188</sup> Most Russian-speakers who had lived in Estonia since that date were thus eligible to apply for naturalization two months after the Citizenship Law came into force, and could receive Estonian citizenship by 1 April 1993. However, in its decision on the re-enactment of the 1938 Law on Citizenship, the Supreme Council had stipulated that applications from persons who were working, or who had worked in foreign armies or in security and intelligence bodies of Soviet Union would not be processed for naturalization. Applications would also not be accepted from persons who had committed serious criminal offences, or who had been repeatedly punished under criminal procedure for intentionally committed criminal offences. Moreover, every applicant had to sign an oath of loyalty for the Estonian state which reads: "In applying for Estonian citizenship, I swear to be loyal to the constitutional order of Estonia."<sup>189</sup>

Persons applying for citizenship were also required to prove that they received a steady legal income in order for their application to be taken to consideration.<sup>190</sup> This requirement was a slightly worrisome issue for the HCNM, as he feared that unemployed people would not be able to apply for citizenship, especially as unemployment had been a great worry among Russian-speakers.<sup>191</sup> Although the Estonian government's interpretation included unemployment benefits as legal income, it did not address the High Commissioner's concerns in this respect directly. Thus, the High Commissioner recommended "it should be made explicit that the requirement that applicants have a steady legal income in order to qualify for citizenship will not apply for unemployed people."<sup>192</sup> However, no further specification was made in additional legislation on what was meant by 'steady legal income' in order to avoid varying readings of the income requirement. Only in the new Citizenship Law of 1995 was the steady legal income requirement explicitly pronounced to include also unemployment benefits, social benefits and support of another family member with a steady legal income. Through steady legal income, the applicant has to guarantee to maintain him/herself and his/her dependants. The enumeration includes a legally earned wage, profit, pension, stipend, allowance, social benefits (including unemployment benefits and child support), or maintenance by a person with a steady legal income.<sup>193</sup>

The most important and difficult condition stated in the law was, however, the language requirement: The applicant was required to demonstrate his or her knowledge of the Estonian language by taking a language test.<sup>194</sup> This was the real cornerstone of naturalization, whereas the requirement of the above-mentioned loyalty oath could be seen as being void. The oath in itself was not seen as a sufficient proof of loyalty, as

<sup>186</sup> Kodakondsus seadus [Law on Citizenship], 1938, para. 1 p. 2. 'In general' is used, because exceptions were made for those Estonian citizens who already held several citizenships, bearing in mind primarily those Estonian immigrants who had settled and had been naturalized in other countries after World War II. Their political and also potentially economic support was needed by the young Estonian state. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 4.

<sup>187</sup> Cf. Kodakondsus seadus [Law on Citizenship], 1938, para. 6 p. 2.

<sup>188</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 5.

<sup>189</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 15. On this day, Estonia adopted a new, more autonomous Immigration Law, setting limitations on immigration to the Estonian Soviet Republic from other parts of the Soviet Union.

<sup>190</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 16.

<sup>191</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>192</sup> The issue was first mentioned by the ODIHR mission to Estonia in 1992. The High Commissioner addressed his concern for the right of unemployed people to apply for citizenship in his letters to the Estonian Foreign Minister in April and July 1993.

<sup>193</sup> Cf. Kodakondsus seadus [Law on Citizenship], 1938, para. 7; Kodakondsus seadus [Law on Citizenship], 19 January 1995.

<sup>194</sup> Cf. Kodakondsus seadus [Law on Citizenship], 1938, para. 6, p. 3.

the "*homo sovieticus* is used to change[sic.] allegiances without painful reconsiderations and to sign documents without reading them."<sup>195</sup> Accordingly, exemptions from the language test, as well as other special conditions for naturalization, were granted to persons who had applied for Estonian citizenship prior to the creation of the Estonian Congress in February 1990.<sup>196</sup> Exemptions were also granted to those persons who were of special merit to the Estonian state and society.<sup>197</sup> These persons were viewed as having proven their loyalty to the Estonian state in practice. For humanitarian reasons, disabled and elderly people and pensioners were also exempted from some parts of the language test.<sup>198</sup> However, the language test, as required from most applicants, seemed to be demanding and appeared to be the main stumbling block in the naturalization process. Therefore, most criticism on the citizenship legislation was directed against the language requirements, which were laid out in more detail in February 1993 in a separate Law on Estonian Language Requirements for Applicants for Citizenship.<sup>199</sup> The regulations laid down in this law, as well as those made by the High Commissioner in this regard will be discussed in more detail below.

The language exam, as regulated in the Law on Estonian Language Requirements for Applicants for Citizenship, aimed at testing the applicant's comprehension, speaking, reading and writing skills. All parts of the exam were limited to specific formats and topics. For example, comprehension and reading tests could include, for example, an announcement or a news item. The discussion part included ten proposed topics concerning mainly the applicant's everyday life or issues related to Estonia (e.g. towns, holidays). Finally, in the written part of the exam, applicants could, for example, choose whether to fill out a form, write a CV or write an address on an envelope.<sup>200</sup> It is important to note that not the applicant's knowledge of the topic was relevant for the evaluation, but rather the capability to understand or express him/herself.

As with some other issues, the HCNM by and large accepted the general framework of the existing language and citizenship legislation. He thus recognized the right of the Estonian state to require a basic knowledge of the state language as a precondition for citizenship acquisition, and did not call for the abolition of the language requirement as such. However, already at an early date the HCNM pointed out that fears existed among Russian-speakers that the language requirements could prove to be an insuperable obstacle for their naturalization.<sup>201</sup> Summing up his recommendations, one can state that the HCNM's underlying message was that the language tests should be made easier to some extent, but not in a way that this would undermine the overall naturalization process.

Taking the existing legal framework into account, the High Commissioner recommended in particular to simplify the naturalization process by lowering the language requirement level. In relation to the early versions of the language requirements, the HCNM was especially discontented with the minimum amount of 2,500 words that the Estonian language law set as a vocabulary requirement. The HCNM recommended that the ability to conduct a simple conversation would be considered sufficient, and recalled that usually knowledge of 1,500 words is enough to make oneself understood.<sup>202</sup> The ability to conduct a simple conversation as the sufficient level for acquiring citizenship was stressed again in Van der Stoel's communication to the Estonian President, as well as in a public statement that was made later in the year.<sup>203</sup> These recommendations were, however, ignored and the Law on Language Requirements

<sup>195</sup> Päevaleht, 5 September 1991, Kodakondsuse kaks varianti [Citizenship's two options].

<sup>196</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 6.

<sup>197</sup> Cf. Kodakondsus seadus [Law on Citizenship], 1938, para. 7, p. 2.

<sup>198</sup> See below.

<sup>199</sup> Cf. Kodakondsuse taotlejatele esitatavate eesti keele tundmise nõuete seadus [Law on Estonian Language Requirements for Application for Citizenship], 10 February 1993.

<sup>200</sup> Cf. Kodakondsuse taotlejatele esitatavate eesti keele tundmise nõuete seadus [Law on Estonian Language Requirements for Application for Citizenship], 10 February 1993.

<sup>201</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>202</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>203</sup> Cf. HCNM Letter to Meri, 1 July 1993; and HCNM Statement, 12 July 1993. This communication was related to the tensions that had risen from the enforcement of the Law on Aliens by the Estonian government, and the organizing of



remained basically unchanged until the introduction of the new Law on Citizenship in 1995, which will be discussed in chapter 4.2.

Another particular point of concern for the High Commissioner with regard to the language exam was the language requirement for elderly and disabled persons: Van der Stoel recommended that persons born before 1 January 1930, as well as disabled persons, should be exempted from the language requirement altogether. At the time when the Law on Citizenship was under discussion in 1992, some voices indeed advocated the exemption of pensioners from the language test,<sup>204</sup> but in the end all specifications and exemptions were left out of the Law on Citizenship and the decision on its implementation. However, the newly elected parliament included the special conditions on granting citizenship in a separate law on language requirements in February 1993. In this law, *possible* exemptions were also to be granted to elderly people.<sup>205</sup> The HCNM was glad and hopeful to see that the given law on language requirements opened a possibility for exemptions, or at least that it simplified the procedures for elderly and disabled persons.<sup>206</sup>

In fact, the resolution on language requirements for applicants for Estonian citizenship was passed under close scrutiny of the international community,<sup>207</sup> and the Estonian government partly took Van der Stoel's recommendation into account when it drafted the regulation on the language test's content and evaluation. At this point, however, it should also be noted that the relaxation of the language requirements was also affected by Estonia's wish to ease the country's entrance into the Council of Europe, which had recommended to base the protection of minorities on the policies of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>208</sup> As a result of these combined efforts, the new regulation established that persons born before 1930 would be exempted from the written test and from three discussion topics out of ten.<sup>209</sup> Exemptions also applied to invalids, depending on their disability. For example, people with sight deficiencies would not have to fulfil the reading and writing part of the exam. The language knowledge of those people with hearing and speaking defects would only be tested through a written exam.<sup>210</sup>

However, these regulations still fell short of what the HCNM had recommended. Consequently, Van der Stoel expressed his dissatisfaction with the fact that elderly people (persons over 60 years) and disabled persons were not *completely* exempted from the language requirements, as he had hoped for and as had been recommended already by the ODIHR mission in 1992.<sup>211</sup> Van der Stoel continued to voice his recommendation to waive the above-mentioned population groups from all language requirements. However, he did so without much success.

As the High Commissioner was not only worried about the legal side of the language issue, but even more so about the fair and transparent implementation of language testing, he also pointed out that the language

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referenda on the autonomy by the mainly Russian-populated municipalities of Narva and Sillamäe. This crisis and the role of the HCNM in de-escalating these tensions will be discussed in chapter 3.7.

<sup>204</sup> Cf. Päevaleht, 4 September 1991, Eesti Vabariigi kodakondsuse seaduse taasjäustamisest [On re-establishment of Citizenship Law of Republic of Estonia].

<sup>205</sup> Cf. Kodakondsuse taotlejatele esitatavate eesti keele tundmise nõuete seadus [Law on Estonian Language Requirements for Application for Citizenship], para. 3, p. 2.1. The paragraph states that the government *may* establish simplified language test regulations for elderly people and invalids.

<sup>206</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>207</sup> Määrus No. 118 [Regulation No. 118], Kodakondsuse taotleja eesti keele tundmise hindamise kohta [Evaluation of a citizenship applicant's language knowledge], 23 April 1993.

<sup>208</sup> Cf. The Baltic Independent, 14 May 1993, Estonia pleases Eurocrats; Wilkens 2001.

<sup>209</sup> These discussion topics were: Estonian cultural institutions (theatres, museums, universities), Estonian cultural figures, as well as the Republic's state holidays. Määrus No. 118 [Regulation No. 118], Kodakondsuse taotleja eesti keele tundmise hindamise kohta [Evaluation of a citizenship applicant's language knowledge], 23 April 1993.

<sup>210</sup> Cf. Määrus No. 118 [Regulation No. 118], Kodakondsuse taotleja eesti keele tundmise hindamise kohta [Evaluation of a citizenship applicant's language knowledge], 23 April 1993. The new resolution simplified citizenship acquisition also for young school leavers. The final high school exam of the Estonian language was seen as equivalent to the language test for applying for citizenship.

<sup>211</sup> ODIHR, Report on the Study of Estonian Legislation, December 1992.

test should be the same for all applicants, and should not be bound to subjective evaluation or varying conditions.<sup>212</sup> The High Commissioner was especially concerned whether the Law on Language Requirements could be open to various interpretations, and whether the uniformity of language testing was guaranteed, as the exams were to be carried out locally. He therefore expressed his hope that this problem would be remedied by a subsequent point in the legal act, according to which the Estonian government would establish more concrete procedures for the language examination.<sup>213</sup> Such procedures trying to guarantee transparency and uniformity on a national level were established still in the same year.<sup>214</sup> Exam commissions were to be composed of three persons, who were to be appointed by the Ministry of Culture and Education. The Estonian Language Department would appoint chairpersons for the commissions. The attestation and appointment of examiners on the national level would guarantee a certain degree of uniformity in their actions. The local language centres had to report to the Language Department on exam results once a month. In addition, persons from the language centre held the right to observe exam procedures and could question the commission's decisions. Such supervision would add to the transparency of exam procedures.<sup>215</sup>

Somewhat complicated, in any case, was the complaint procedure in the case of unfair treatment. The plaintiff was required to pass three instances before a final decision could be made. If the examined person was not satisfied with the commission's decision, he or she could turn to the local government for review. If the city or county council's ruling was seen to be dissatisfactory as well, the complaint would be forwarded to the Ministry of Culture and Education, and only thereafter would the matter be taken up in court.<sup>216</sup> Following up on a corresponding remark by the HCNM, the Estonian Foreign Ministry claimed that an opportunity to re-take the language test existed if the applicant were to fail the first exam, and that no limitations were planned. Since the adoption of these procedures, the High Commissioner no longer address his concerns on the transparency of the language testing process, which indicates that he viewed the adopted legislation as satisfactory.

At this point, it should also be noted that the High Commissioner further recommended to the Estonian government that persons who had failed to receive Estonian citizenship due to lacking language or residency requirements should be allowed to re-apply. As already mentioned above, the language exam could be re-taken in case of failure before the final decision of granting citizenship. However, the procedure following actual rejection of naturalization due to the above-mentioned reasons was not specified. This means that persons who had been rejected citizenship could potentially apply again, because among the conditions under which Estonian citizenship were to be denied to applicants, failure of the language test or failure to meet residency requirements were not mentioned.<sup>217</sup>

Moreover, the HCNM stressed the need for Estonian officials to pay extensive attention to language training, so that people could acquire the necessary language knowledge to pass the test. He also recommended greater publicity about the requirements, so that potential citizenship candidates would not be scared away in advance. Another concern of the HCNM was also the high costs for language training and the language exam. In his letter to the Estonian Foreign Minister in July 1993, Van der Stoel hoped that Estonian authorities would ensure that the costs of the language exam would not "constitute a prohibitive financial burden for potential applicants."<sup>218</sup> In fact, the cost of the language exam as such composed only a minor part of this concern. In 1993, the regulation on exam procedures set the price of

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<sup>212</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>213</sup> Cf. *ibid.*

<sup>214</sup> Cf. Kultuuri- ja Haridusministeerium [Ministry of Culture and Education], Määrus No. 10 [Regulation No. 10], Riigikeele eksami läbiviimise kord [Regulation of the procedures of state language exam], 9 July 1993.

<sup>215</sup> *Ibid.*

<sup>216</sup> Cf. Kultuuri- ja Haridusministeerium [Ministry of Culture and Education], Määrus No. 10 [Regulation No. 10], Riigikeele eksami läbiviimise kord [Regulation of the procedures of state language exam], 9 July 1993.

<sup>217</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 16. Kodakondsus seadus [Law on Citizenship], 19 January 1995, para. 21.

<sup>218</sup> HCNM Letter to Velliste, 6 April 1993.

the language test to fifteen per cent of the minimum wage, which cannot be considered as being too high.<sup>219</sup> In addition, students, school pupils, pensioners, disabled persons and the unemployed were waived from the fees.<sup>220</sup> More excessive were the preparation costs for the actual language training and for the preparatory materials. The state had to guarantee only ten hours of language consultations free of charge, which was in most cases insufficient for passing the language exam.<sup>221</sup> As state language courses were offered not only by the State Language Teaching Centre, but also by private language schools, the prices for language course were formed in market conditions, and became a profitable business.<sup>222</sup> In addition, waiving the costs of a repetition of the exam could be decided only individually for each case. In order to fill this gap, international organizations such as UNDP and the EU, as well as single countries such as the Nordic states, the United Kingdom or Germany, assisted in sharing the costs of language training, both in terms of demand and supply.<sup>223</sup>

### 3.4 *Language Training - the Double Responsibility Towards Naturalization and Integration*

While other issues related to the Estonian language exam have faded, language training has been and continues to grow into an increasingly demanding task. On the one hand, the success rate with regard to the language exams is high. On the other hand, it is difficult to determine how many people are not applying for naturalization out of fear that they would fail the language test. The number of those who have not received appropriate or sufficient language training in order to pass the citizenship exam could be quite high.

One aspect of the naturalization process relates to the Estonian language requirements that are demanded in order to become a citizen. However, the language question is a much broader issue, and reaches far beyond concerns about naturalization. The HCNM has expressed his consideration for language problems not only with regard to the naturalization process, but also in respect to the Estonian language as the prerequisite to overall integration.<sup>224</sup> Van der Stoep's recommendations concerning the knowledge of Estonian language have often been viewed as being contradictory. However, they could also be seen as the opposite sides of the same coin. While calling for the simplification of the language test, the HCNM has, at the same time, always stressed the importance of Estonian-language acquisition and teaching among Russian-speakers as the basis of inter-ethnic integration and dialogue. The language requirements for citizenship cannot be isolated from the general problem of the low Estonian-language knowledge among non-Estonians. Moreover, sociological studies indicate that only few Russians-speakers learn Estonian for the purpose of acquiring Estonian citizenship. Reasons that were identified as being much more common were that Estonian happens to be the language of the country where they live, and that it is a means of communication in their multi-ethnic working environment.<sup>225</sup> This subchapter combines these two language-related issues - Estonian language knowledge as a prerequisite for naturalization and social integration will be discussed respectively.

<sup>219</sup> Cf. Kultuuri- ja Haridusministeerium [Ministry of Culture and Education], Määrus No. 10 [Regulation No. 10], Riigikeele eksami läbiviimise kord [Regulation of the procedures of state language exam], 9 July 1993. In 1995 the exam fee was raised to 20 per cent of the minimum wage. Määrus No. 250 [Regulation No. 250], Eesti keele oskuse eksami ning Eesti Vabariigi põhiseaduse ja kodakondsuse seaduse tundmise eksami läbiviimise kord [Estonian language and constitution exams], 20 June 1995, para. 2. In 1999 the fees for the citizenship application exam was 169 Estonian crowns (approximately 11 USD), which is twenty per cent of the minimum wage. Estonia Today: Foreign Ministry's information and fact sheet series: Citizenship and Integration Policy.

<sup>220</sup> Cf. Määrus No. 118 [Regulation No. 118], Naturalisatsiooni korras kodakondsuse taotleja eesti keele eksami tingimused ja sisu eelistused [Evaluation of citizenship applicant's language knowledge], 23 April 1993.

<sup>221</sup> Cf. Kultuuri- ja Haridusministeerium [Ministry of Culture and Education], Määrus No. 10 [Regulation No. 10], Riigikeele eksami läbiviimise kord [Regulation of the procedures of state language exam], 9 July 1993.

<sup>222</sup> In 2001 the minimum course price was more than 1000 crowns per package, which is comparable to the minimum wage level in Estonia.

<sup>223</sup> See for example EU/PHARE 1999, 2001; or UNDP et al. 1999.

<sup>224</sup> The question of integration will be discussed in more detail in chapter 5.1.

<sup>225</sup> Cf. Rose/Maley 1994, p. 52.

Some statements made by the HCNM related to particular legislative acts, while others touched upon wider aspects of the implementation of the law, including also policy options in general. In terms of the latter, language training is an important aspect that relates beyond the naturalization process and sets the basis for the overall integration project. Even though the HCNM disagreed with the wording and goals of the Language Law, he nevertheless recognized the knowledge of Estonian as a central point of the integration process. Thus, he on several occasions stressed the need to improve the knowledge of Estonian among non-Estonians, and considered Estonian as the focal means of communication in inter-ethnic relations. Van der Stoel often stressed that integration is a two-way process, where both the government and minorities have rights and responsibilities. One of the main responsibilities of the minorities is to learn the state language, and through this knowledge participate actively and equally in society. In his letter to the Estonian Foreign Minister, the High Commissioner stated the following:

I am fully aware that the policy I advocate does not only require an effort on the part of the Estonian government, but equally a contribution on the part of the non-Estonian population. Adaptation to the reality of the re-emergence of Estonia as an independent state requires that at any rate those who have not yet retired from work and who do not yet speak the Estonian language make a determined effort to master that language to such a degree that they are able to conduct a simple conversation in Estonian.<sup>226</sup>

Language training and improving the knowledge of Estonian among non-Estonians was an issue where the High Commissioner and the Estonian government seemed to reach more agreement on than concerning other fields. The HCNM on several occasions stressed the importance of language training, in response to which the Estonian government supported the High Commissioner's concerns.<sup>227</sup> Such excitement to develop the language-training system from the side of the Estonian government has often been viewed by the non-Estonians as if the Estonian government has misinterpreted and taken advantage of the High Commissioner's recommendations in the government's own interest. Through this perception, the High Commissioner's recommendations justify a dominant status of the Estonian language and exclude the possibility of (official) bilingualism in the country. This common interest of the HCNM and the Estonian government in the language question has undermined trust in the High Commissioner among Russian-speakers in Estonia.

Language training was mentioned in one way or another in practically every letter that the High Commissioner sent to Estonian authorities. In 1993, Van der Stoel recommended that mass media, in particular television, should be used more for teaching purposes. The High Commissioner referred to the education system of Kohtla-Järve as a positive example in this sphere.<sup>228</sup> In its response, the Estonian Foreign Ministry assured that the government was doing all that lay in its power to develop "an effectual system of language instruction with qualified instructors, effective teaching materials and methods",<sup>229</sup> using a greater variety of resources, including also mass media.

The Ministry also requested assistance for finding financial support from abroad for its efforts. Estonian government officials introduced, for example, two documents that the Ministry of Culture and Education had prepared, and which requested foreign funding assistance. In return, the HCNM mentioned the interest of other governments in supporting Estonia's language teaching efforts, and recommended "to take full use of these possibilities."<sup>230</sup> One could therefore conclude that the High Commissioner's recommendations were directed to draw attention to the new opportunities that had risen from other governments' interest in assisting Estonia in this field. The HCNM also appeared to be inviting the

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<sup>226</sup> HCNM Letter to Velliste, 6 April 1993.

<sup>227</sup> Estonian officials sound overly enthusiastic about the language concerns in comparison to the otherwise rather cold tone in official communication with the HCNM. With regard to the issue of language training, the Estonian Foreign Minister writes that, just as the HCNM in his letter "saved the best for last", he has "the pleasure to do likewise". The Minister greets that the HCNM also considers language issues to be a priority concern. Luik Letter to the HCNM, 4 April 1994.

<sup>228</sup> HCNM Letter to Velliste, 6 April 1993.

<sup>229</sup> Comments by the Ministry of Foreign Affairs of Estonia, 6 April 1993.

<sup>230</sup> HCNM Letter to Luik, 9 March 1994.

concerned governments to co-ordinate their activities, possibly in the light of greater effectiveness and to avoid unnecessary copying and duplication.

In making an attempt to list some preliminary conclusions with regard to the question of language, one has to recognize that the influence of the HCNM in matters of language is rather difficult to assess independent of other internal and external factors. Van der Stoel, as most of the Western community, did not reprove of Estonian being the sole state language in the country. Also, having a language test as part of the citizenship application is quite a widespread practice elsewhere as well, as the High Commissioner pointed out.<sup>231</sup> Therefore, the High Commissioner's recommendations did not question the language policy in Estonia as such, but only its harshness. The OSCE Mission to Estonia commented that the Estonian Language Law was created at a time when Estonian was considered to be a minority language in comparison to the Russian language's position in the Soviet Union. However, when Estonia gained independence, the law should have been changed to correspond to the current context, in which Estonian again reached the status of being the majority language. This kind of criticism cannot, however, be found in the High Commissioner's communication with Estonian officials.

In relation to language training, the High Commissioner's influence in triggering the process itself is doubtful, as the Estonian government had always been very interested in improving the knowledge of Estonian among non-native speakers. In terms of the language exam and requirements, the High Commissioner probably played some role. However, the exact formulations were worked out under the auspices of several European organizations. The Council of Europe provided expertise on the implementation of language requirements in 1993. The standards of language tests for the 1995 Citizenship Law were worked out in co-operation with linguistic experts from a range of European universities.<sup>232</sup>

### 3.5 *New Restrictions, Higher Tensions: The 1993 Law on Aliens*

The adoption of the Law on Citizenship in February 1992 left a large number of Estonia's residents not only without any citizenship, but also without clarity concerning their legal status in Estonia. There was thus a need for new legislation in order to determine the position of non-citizens in Estonia, including also their rights and responsibilities. Also the representatives of the Russian-speakers recognized that a law regulating the status of foreigners had to be adopted immediately. The law was also important in order to accurately determine the size of Estonia's population, as Soviet-time data was unreliable in this respect. Moreover, since 1991, a rather large number of people had migrated out of the country, which was by any means enough to change the ethnic distribution of the population considerably. In fact, the drafting of the Law on Aliens was started immediately after the adoption of the Law on Citizenship. However, the process of drafting and ratifying the new law became a painful and lengthy process.

The main parties in the coalition government that initiated the aliens' law had called for de-colonization in their election campaign, but since in power had started advocating the integration of all immigrants. For the right-wing parties it was unacceptable that the planned Law on Aliens would give a legal basis for all Russians to stay. In their opinion, such a law would justify Soviet reoccupation, and could lead to Estonians becoming an ethnic minority in their own country. Thus, they proposed the Law on Aliens be adopted only after a nation-wide referendum had been held.<sup>233</sup> This path was not chosen in the end, but the law was nevertheless restrictive enough to cause the most serious (ethnic) conflict situation in the existence of newly independent Estonia. The non-citizens, whom the law would concern, were very weary of its connotation and consequences. Moreover, with the adoption of the Law on Aliens, it finally became

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<sup>231</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>232</sup> Cf. Kallas Letter to the HCNM, 7 February 1996.

<sup>233</sup> Cf. The Baltic Independent, 12 February 1993, Estonian group opposes blanket citizenship for Russians.

evident that the existing citizenship policy would continue. Until then, some hope had still existed that the citizenship policy could be changed so that Soviet-time settlers would also be considered as Estonian citizens, following Russian and international pressure. With regard to the connotation linked to the law, Russians took it as an offence that they had to re-establish their status in Estonia, and that they were suddenly considered foreigners.<sup>234</sup>

In terms of consequences, the non-citizen population was afraid that this new legislation would strip them of the rights they had enjoyed so far. An even greater fear was that they would be forced to leave Estonia in large numbers. The draft Law on Aliens aroused strong opposition, and Russian organizations in Estonia threatened with mass public unrest, including even armed opposition, if major changes were not made to the draft. The Russian Assembly's address to Estonian parliament read as follows:

Thousands of people could be deported from Estonia under the law, which is an act of state revenge. The law is aimed at edging Russian-speakers out of the country by creating unbearable living conditions for them.<sup>235</sup>

The most radical response to the developments in 1993 came from the Union of Russian Citizens, which is especially active in the Northeastern parts of Estonia. The Union appealed to the Russian Prime Minister not to pull out the Russian troops from Estonia, but to use them as a peacekeeping force. The Union also organized a great rally in Narva, where unprecedented strong attacks against Estonia's independence were made and Russia was called for to help. During the demonstration, Russian groups threatened to "close down power stations, block roads and take up arms if the parliament passed the law on aliens." Moderate and radical Russian organizations joined their forces in Tallinn in a similar protest:

The passing of the law on aliens mean there would be a flow of refugees [...] as well as both covert and overt armed resistance, which seriously question the existence of Estonia as an independent country.<sup>236</sup>

The section of the draft law which regulated that all former Soviet citizens in Estonia who had not applied for the citizenship of Russia or Estonia would have to apply for a residence permit within a year from the date the law was passed caused the most unrest among Russian-speakers. Those who would not apply for a residence permit during this period would have to leave the country or face deportation. Residence permits would be denied, among other categories, to:

- former and present employees of foreign secret and security services;
- people serving in the armed forces of foreign countries;
- and retired or reserve army officers, as well as members of their family, if they had been posted to serve in Estonia.

In previous months, other controversial legislation had been adopted that had already put the Russian population onto their toes. For example, the law on privatization of flats denied former KGB and communist officials privatization vouchers. According to the law, these officials would have to pay if they wanted to buy their flats, while the rest of the population could privatize their living quarters using vouchers. However, after President Meri vetoed the law, MPs agreed to change this questionable clause. The legislators agreed that a law of purely economic content should not include any political aspects.

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<sup>234</sup> A point should be made about the name of the law. The English translation of the law is Law on Aliens, which has a very negative connotation. As some people have noted, it seems as if one were talking of little green men instead of non-citizen residents. (See for example Miller, 8 October 1999). The actual title of the law in Estonian itself is not as offensive: *Välismaalaste Seadus* can be translated more exactly as Law on Foreigners. Also the ODIHR mission report in 1992 referred to foreigners and not aliens. The word 'alien' is an international legal term used in English, but in Estonian the word is more commonly understood as 'foreigner'. For this reason, the two words will be used interchangeably in this study. However, when references to the legislation are made, the term 'alien' will stay unchanged.

<sup>235</sup> The Baltic Independent, 18 June 1993, Draft law on aliens rouses strong opposition.

<sup>236</sup> The Baltic Independent, 25 June 1993, Russia slams Estonia's aggressive nationalism.

Another law that President Meri refused to promulgate for its consequences on the Russian-speaking population concerned the language of instruction in secondary schools. The bill foresaw that Russian-language schools (some 17 per cent of all schools) would adopt Estonian as their language of instruction within two to three years, with the exception of schools that were situated in localities predominantly inhabited by Russian-speakers (i.e. Northeastern Estonia).<sup>237</sup> The HCNM welcomed the President's move.<sup>238</sup> The law was later adopted with a similar intent to implement Estonian as the language of instruction in Russian secondary schools, but granting a longer transition period until the year 2000. For practical reasons, the law was unlikely to be implemented in Northeastern Estonia, and municipal and private schools were free to choose their language of instruction. Despite these factors, the Russian representatives expressed their dissatisfaction with the law and its general tone, as for example leader of the Representative Assembly of Russian Speakers, Hanon Barabaner, stated:

The Estonian leaders have always stressed that Russians living here should integrate into the Estonian state, and we in the assembly agree with this. But we now see, in the education law for example, that the demand for integration is being mixed up with a demand for assimilation, for sacrifice of cultural and linguistic identity. This is a very different thing, and we protest against it. In the end, it will only hinder integration by creating confrontation.<sup>239</sup>

Also the Law on Local Elections roused dissatisfaction among the Russian-speaking population. According to the law, non-citizens could vote in local elections, but could not stand as candidates. The Russian Assembly appealed to the President not to promulgate the law because of its 'discriminatory nature', and demanded that non-citizens have the right to become elected at least in the first upcoming local elections.

Also the Russian military felt threatened by local decisions. For example, the Tartu town council had decided to start deporting Russian military and their family members whose residence permits had expired from the locality. The decision would have concerned some six or seven hundred persons.<sup>240</sup> A similar decision to revoke registration of Russian army officers and their families was passed in the Tallinn city council.

As in 1992, when Russia reacted strongly to the Estonian Law on Citizenship, the Law on Aliens and other decisions taken by Estonia in early 1993 provoked strong reactions from Moscow, as the "defence of the settler communities had become a basic tenet of Russia's external and domestic politics."<sup>241</sup> During the drafting of the Law on Aliens, Russia had already stepped up its propaganda campaign, and accused Estonia of aggressive nationalism. In spring 1993, a Russian delegation had tried to convince the UN General Assembly to condemn the Baltics' policy towards the Russian-speaking population.<sup>242</sup> Russia also tried to deter Estonia's accession to the Council of Europe, claiming that Estonia's membership in the Council would legitimise the oppression of Russians.<sup>243</sup> Similar to 1992, Russia also used the continuing presence of Russian troops in order to exert influence: On several occasions it withdrew its promise to pull out its forces, openly declaring that its military presence was essential for asserting pressure on Estonian minority politics.<sup>244</sup>

These statements and strategies were important for Yeltsin's moderate team for domestic policy reasons, as they needed to satisfy the continuously growing nationalist constituencies at home. In spring 1993,

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<sup>237</sup> Cf. *The Baltic Independent*, 11 June 1993, School bill sparks language row.

<sup>238</sup> Cf. HCNM Public Statement, 12 July 1993.

<sup>239</sup> Lieven 1994, p. xxv.

<sup>240</sup> Cf. *The Baltic Independent*, 23 April 1993, Troop Watch.

<sup>241</sup> Melvin 1995, p. 14.

<sup>242</sup> Cf. *The Baltic Independent*, 5 March 1993, Rumbles from Russia increase Baltic anxiety.

<sup>243</sup> Cf. *The Baltic Independent*, 14 March 1993, Council of Europe opens doors to Balts.

<sup>244</sup> Cf. *The Baltic Independent*, 5 March 1993, Human rights: Russia's new justification for interference; *The Baltic Independent*, 19 March 1993, Baltic Council caves in to Russian demand.

President Yeltsin introduced direct presidential rule and ran the country by decree until the referendum on the new constitution and presidential powers was to be held in Russia. As a result of this move, the hard-line parliament of Russia considered impeaching the President. Despite the low-point of Baltic-Russian relations, the Baltic states supported Yeltsin's actions. According to Baltic officials, no one else in Russia would support them, and that without Yeltsin, relations with Russia would have turned to the worse.<sup>245</sup> Also Russian Foreign Minister Kozyrev had been under heavy fire from hard-line deputies in Moscow for allegedly taking a too conciliatory position towards the Baltic states.<sup>246</sup> Similarly, statements made by Russian Defence Minister Pavel Grachev on halting the army pullout can be linked to the need to keep the army friendly, or at least neutral, in the power struggle in Moscow.<sup>247</sup>

The Estonian government failed to grasp the seriousness of the situation. Prime Minister Mart Laar hoped that "Russia would not stage provocations in Estonia, destroying the peaceful and constructive atmosphere which exists in the country."<sup>248</sup> In the opinion of the Prime Minister, the local Russians were co-operative and supportive of government actions, while Russia was the one stirring up tensions and dissatisfaction among its diaspora in Estonia. In fact, however, the main threat of unrest originated from the local Russians. On 19 June 1993, up to 10,000 people protested against the draft Law on Aliens in Narva and threatened, *inter alia*, to block the railway track to Tallinn and the energy delivery from the Baltic Power Plant in Narva.<sup>249</sup> Despite the great opposition and protests of the Russians, the Estonian parliament passed the Law on Aliens on 21 June 1993. In the following months, the problems relating to the new Law on Aliens became very acute, escalating to the decisions of the town councils of Narva and Sillamäe on 28 June 1993 to hold referenda on the autonomy of these towns. The government considered such referenda illegal and as a threat to Estonia's territorial integrity. It was even under discussion to stop the carrying out of the referenda by force if necessary. Other organizations representing the Russian-speaking population called for civil disobedience and unrest in other parts of Estonia.

In this context of heightened inter-ethnic tensions, President Lennart Meri refused to promulgate the Law on Aliens, and extended his final decision until international organizations, more precisely the Council of Europe and the OSCE, had assessed the compatibility of the law with international standards. Just a month earlier, in May 1993, Estonia had been accepted to the Council of Europe. The OSCE Mission to Estonia had begun its work in Estonia in April, and the HCNM had visited the country in January and March. Thus, the country was under close international scrutiny. As Estonia depended on these organizations for its international credibility, and also appreciated their evaluations of the inter-ethnic situation as a fair counterbalance to Russia's accusations, the active involvement of these organizations in the internal affairs of Estonia opened the way for President Meri to ask the Council of Europe and the OSCE on 25 June to comment on the Law on Aliens. In fact, the decision to take this step was the result of consultations between the Estonian government and the High Commissioner.<sup>250</sup> Only on the basis of comments provided by the HCNM and the Council of Europe, as well as in the light of the continuing lobbying by the OSCE and the CoE, did the parliament later consider changing the bill. The President further tried to prevent the looming crisis by establishing a Presidential Roundtable for Ethnic Minorities as forum for an institutionalised dialogue - a move that also had been suggested also by the OSCE Mission and the HCNM.<sup>251</sup>

<sup>245</sup> Cf. The Baltic Independent, 26 March 1993, Balts back Yeltsin - cautiously.

<sup>246</sup> Cf. The Baltic Independent, 19 March 1993, Kremlin defends its troops on Baltic.

<sup>247</sup> Cf. The Baltic Independent, 2 April 1993, Kremlin halts pullout - again.

<sup>248</sup> The Baltic Independent, 25 June 1993, Russia slams Estonia's aggressive nationalism.

<sup>249</sup> Cf. Aklaev 1999, p. 162.

<sup>250</sup> Zaagman 1999, p. 27; Kemp 2001, p. 143.

<sup>251</sup> Cf. Törnudd 1994, p. 84; Lahelma 1999, p. 30. Reference to the roundtable will be made on several occasions in this study, especially in chapter 5.4 on the ombudsman institution.



### 3.6 HCNM Recommendations on the Draft Law

Backing the efforts already undertaken by the High Commissioner, the Committee of Senior Officials of the OSCE undertook a rather unusual step by passing a resolution on 30 June 1993 in which it:

invites the High Commissioner on National Minorities to respond promptly, on behalf of the CSCE, to the request by the President of Estonia for an expert opinion from the CSCE on the law on the status of aliens. The CSO supports the continued involvement of the High Commissioner in Estonia. It invites the government of Estonia to take appropriate action in response to the recommendations of the High Commissioner on National Minorities contained in CSCE Communication No. 124.<sup>252</sup>

As a matter of fact, the HCNM travelled to Estonia already on 29 June 1993 for talks, and answered the President in an official letter already two days later. His recommendations were further reinforced by a letter from the CiO of the OSCE to President Meri, in which the Swedish Minister of Foreign Affairs, Margaretha af Ugglas, supported the High Commissioner's point of view.<sup>253</sup> In his letter to President Meri, the HCNM notes, *inter alia*, that the Law on Aliens will affect hundreds of thousands of Estonian residents. He thus called to take into account the psychological effects of the law, which could lead to serious destabilization. The HCNM made several propositions on how to change the law in order to make it compatible with the general tone of European legislation on these matters. He also suggested how to clarify the law in a way that would abolish the fears of the non-citizen population. All of his recommendations will be discussed in detail below.

Most of the clauses the HCNM criticized and called to be amended in one way or another concerned the ambiguity of the law's text. Several passages of the law could be interpreted in contradictory ways, and were thus open to varying implementation and subjectivity in decision-making. The HCNM proposed an alternative wording in order to increase the transparency and uniformity of the law, and also to avoid discrimination in its consequent implementation.

For one, the High Commissioner was worried that the draft law did not guarantee the opportunity to appeal in case the issuing of a residence permit was refused.<sup>254</sup> Surely enough, the paragraph the HCNM was referring to only states the right to go to court if the residence (or work) permit was prematurely terminated or not extended.<sup>255</sup> However, a separate article that guarantees special rights to persons who permanently settled in Estonia prior to 1990 also mentions the right to dispute the decision in court if the issuing of a residence (or work) permit was refused in the first place.<sup>256</sup> Thus, the HCNM's worries were in fact unfounded.

The HCNM was also concerned about the fact that local governments would be in charge of implementing the law. In his opinion, this could lead to varying practices and understandings of the law amongst different localities. He therefore recommended to include in the law specific measures that would guarantee uniform interpretation.<sup>257</sup> However, what the HCNM interpreted as a "key role" of the local governments in implementing the law is actually a rather minor responsibility. The law states that the local government is in charge of keeping track of residence permit applications, and must inform the relevant institutions in the case that applications are not submitted in time, i.e. within the two years following the adoption of the law. This means that the local government does not have any actual decision-making power in the process of implementing the Law on Aliens.<sup>258</sup> The HCNM had been barking at the wrong tree.

<sup>252</sup> CSCE 22-CSO/Journal No. 2, Annex 2, 30 June 1993.

<sup>253</sup> Cf. Zaagman 1999, p. 27.

<sup>254</sup> Cf. HCNM Letter to Meri, 1 July 1993.

<sup>255</sup> Cf. Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 9, para. 5.

<sup>256</sup> Cf. *ibid.*, art. 20, para. 3.

<sup>257</sup> Cf. HCNM Letter to Meri, 1 July 1993.

<sup>258</sup> Cf. Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 22.

The High Commissioner did, however, have more validated concerns in relation to some other articles in the law - some of which were later changed, possibly due to the HCNM's pressure. In the draft Law on Aliens, several paragraphs listed reasons why residence permits would not be issued. Among them, a residence permit would be denied to a foreigner "who does not respect the constitutional system and does not observe Estonia's legal acts," and/or "who with his or her actions has compromised Estonia's national interests or international reputation."<sup>259</sup> First of all, the High Commissioner criticized that in these denials, no reference was made to the Penal Code or any other legislation, according to which such actions could be determined. No criteria were mentioned on how to evaluate whether a person had compromised Estonia's national interests or its international reputation. Moreover, it was not clear from the draft law who would decide on whether the above-mentioned offences had been committed. In the HCNM's opinion, only a court could decide on such issues, and thus the refusal to issue a residence permit would have to be backed by a court decision. As no reference was made to a court's involvement, the HCNM was concerned that decision-making could be open to severe arbitrariness by bureaucrats, and recommended that either these two paragraphs be left out of the law or, alternatively, that these be amended thoroughly. Furthermore, he pointed out that a separate provision on criminal offences already existed. According to this provision, a residence permit would not be issued to a person who had committed a crime for which he or she was sentenced to imprisonment for longer than one year, on the condition that the sentence had not yet expired. The offence of treason would thus be punishable according to other relevant legislation that had been decided upon by the court, and would therefore already be covered in the Law on Aliens by the provision on criminal offences.

In the actual Law on Aliens, the first paragraph, which mentions respect for the Estonian constitutional and legal system, was still included in the same wording as in the draft version of the law. However, the second controversial paragraph was amended.<sup>260</sup> Compromising Estonia's national interests and international reputation as a reason for not receiving residence permit was omitted. The newly worded paragraph states that a residence permit will not be issued to an alien whose actions are directed against the Estonian state and its security.<sup>261</sup> In the end, no reference was made to Penal Code or to a court order, but the wording was amended to be less vulnerable to subjective decision-making. The criteria in determining whether someone's actions are directed against Estonian sovereignty and security are clearer than those that determine whether Estonian interests or international reputation have been compromised. Moreover, the decision on these two points is not left to the Migration Office alone - it has to be made in co-operation with the Ministry of Internal Affairs.<sup>262</sup> Nevertheless, one could, based on these two paragraphs, argue that the law is still open to arbitrary decision-making. Consequently, one could conclude that the recommendations of the High Commissioner were not followed up entirely in this respect.

Another set of questions addressed by the HCNM related to the legal income requirement and the consequential fear of expulsion. Similar to the conditions required for citizenship applicants, person applying for residence permits had to fulfil the legal income requirement. According to the Law on Aliens, a residence permit can be issued only if the applicant has a legal income that covers his or her living costs. The High Commissioner admitted that the requirement of legal income was necessary for new immigrants, but hoped that the same condition could be omitted for persons who had settled in Estonia before 1990.<sup>263</sup> Russian residents in Estonia had expressed their concern to the HCNM whether unemployment benefits would be considered as legal income. An even more serious fear among the Russian population was that of expulsion, as the pure text of the law seemed to indicate such a possibility. Even if unemployment benefits were to be considered as legal income, these benefits are paid to unemployed people in Estonia

<sup>259</sup> HCNM Letter to Meri, 1 July 1993.

<sup>260</sup> Cf. Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 12, para. 4, subp. 2.

<sup>261</sup> Cf. Välismaalaste seadus [Law on Aliens], consolidated text 12 July 2001, art. 12, para. 4, subp. 3.

<sup>262</sup> Cf. Määrus No. 288 [Regulation No. 288], Välismaalastele elamis- ja töölubade andmise ja pikendamise kord [Conditions and order of issuing residence and work permits], 21 September 1993, para. 32.2.

<sup>263</sup> Cf. HCNM Letter to Meri, 1 of July 1993.

only for a limited period of time (six months). The law could therefore be interpreted in such a manner that those who were unemployed, but who no longer received unemployment benefits, could be expelled from the country. Consequently, the HCNM expressed in his letter to Meri the hope that "the law will be amended in such a form that these fears are laid to rest."<sup>264</sup>

Estonian officials tried to accomplish exactly this: First, by spelling out different forms of income that were considered as legal and sufficient for subsistence; and second, by making public statements that the Estonian government would not pursue the policy of expulsion. The amended Law on Aliens contains an enlisting of what is regarded as legal income. Included among other are unemployment benefits, child support benefits, other social benefits guaranteed by the state, alimony payments and sustenance by other members of the family.<sup>265</sup> Unemployment benefits were thus only one type of legal income. Moreover, several other forms of subsistence were also considered as income, which meant that unemployed people who no longer received unemployment benefits could still apply for residence permits. The parliament did not apply a distinction between new immigrants and those who had settled into the country before 1990, but the Estonian government did, in a public statement made together with the HCNM, assure "categorically that it does not intend to start a policy of expulsion from Estonia of Russian residents."<sup>266</sup> This also applied to unemployed people.

Another point of concern for the HCNM related to the issuing of aliens' passports. The draft law included a paragraph according to which foreigners applying for an alien's passport would have to prove that they could not obtain the passport of their country of origin. In the HCNM's opinion, such a formulation was questionable, as it did not make clear whether and how applicants were required to prove that no other passport was obtainable. The process of proving this could turn out to be lengthy or even impossible. Thus, the High Commissioner recommended the reformulation of the passage to state that "any resident [...] who is not a citizen of another state can receive an alien's passport."<sup>267</sup> In the subsequent law that was adopted, the paragraph appears in a slightly amended form. It now states that a foreigner who cannot obtain any other passport has the right to an alien's passport.<sup>268</sup> According to a public statement that the HCNM issued shortly after the adoption of the Law on Aliens, the Estonian government had also assured him that the procedures for obtaining an alien's passport would be kept simple.<sup>269</sup> In legislation complementary to the Law on Aliens, the feared contradictions have been abolished to a certain extent: The Regulation on the Conditions and Order of Issuing Alien's Passport starts with an article which differentiates foreign citizens from stateless persons. The act does not require an applicant to prove that no other passport could be obtained – this fact has to be certified only by the applicant's signature. However, stateless people are still required to provide a document attesting their statelessness.<sup>270</sup>

The reason behind the muddled conditions of issuing aliens' passports can be explained by the general Estonian policy of not considering former Soviet Union citizens as stateless. In the line of the argument of the Estonian government, persons who were citizens of the former Soviet Union have the right to apply for citizenship in any of the Soviet successor states, and are thus not really stateless. In the government's opinion, issuing aliens' passports to all these people would arbitrarily increase the number of stateless persons.<sup>271</sup> The Estonian government preferred a procedure by which most people would define their own citizenship, be it Estonian, Russian, Ukrainian or any other successor state. As the Estonian Foreign Minister stated in his letter to the HCNM, by not making aliens' passports a widespread document, the

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<sup>264</sup> Ibid.

<sup>265</sup> Cf. Välismaalaste seadus [Law on Aliens], consolidated text 12 July 2001, art. 12, para. 1, subp. 4.

<sup>266</sup> HCNM Statement, 12 July 1993.

<sup>267</sup> HCNM Letter to Meri, 1 July 1993.

<sup>268</sup> Cf. Välismaalaste seadus [Law on Aliens], consolidated text 12 July 2001, art. 8 para. 4.

<sup>269</sup> Cf. HCNM Statement, 12 July 1993.

<sup>270</sup> Cf. Määrus No. 225 [Regulation No. 225], Välismaalase passi andmise tingimused ja kord [Conditions and order of issuing alien's passport], 17 June 1994, art. 8 para. 1, 5.

<sup>271</sup> Cf. Luik Letter to the HCNM, 4 April 1994.

government was actually promoting the acquisition of Estonian citizenship.<sup>272</sup> The Head of the OSCE Mission, however, argued that most non-citizens "do not want Russian citizenship and therefore can not travel abroad, a situation if allowed to continue, would be a violation of Estonia's obligation under international law."<sup>273</sup>

For Estonian officials, the alien's passport was more an exceptional document than a general identity document. For purposes of internal identification of foreigners (i.e. those Estonian residents who were not Estonian citizens) in Estonia, the old Soviet passports were to remain valid for another three years after the adoption of the aliens' law, i.e. until July 1996.<sup>274</sup> In order to travel abroad, non-citizens could apply for temporary travel documents that guaranteed their right to return to Estonia after travelling.<sup>275</sup> Thus, the Estonian government did not see a reason to make aliens' passports available to all non-citizen residents in Estonia. At the same time, the HCNM foresaw the aliens' passports as the main identity documents for non-citizens, valid also as travel documents.<sup>276</sup> He argued in favour of a prevalent use of these passports also in the future. In the course of time, this is exactly what happened, and we will return to this issue in the following chapters. It became evident that a large number of people failed to obtain any citizenship, and therefore required alternative documentation. Because of the poor quality of old Soviet passports, which were also easy to forge, the validity of these documents could no longer be prolonged. Moreover, the Council of Europe had offered to help in printing aliens' passports, of which a hundred thousand were made.<sup>277</sup> Estonian officials therefore had no other choice but to succumb to this path of events. At present, over hundred sixty thousand aliens' passports have been issued to residents of Estonia.<sup>278</sup>

### 3.7 *HCNM Mediation in the Crisis of Summer 1993: Referenda for Autonomy in Narva and Sillamäe*

Some amendments were made to the Law on Aliens, which was promulgated in a revised version only a few weeks after the President's intervention. The parliament was in a hurry to adopt the law so that the collection of voters' lists for local elections, set to be held in autumn, could be begun. According to Estonian law, also resident non-citizens can vote in local elections. The Law on Aliens was the basis according to which non-citizen residents were to be registered.

As discussed above, the HCNM managed to influence the Estonian legislators on some points, but only to a limited extent. The Estonian parliament "had to perform a rather two-faced balancing act, insisting to the West that the changes were substantive, while assuring [Estonians] that they were cosmetic."<sup>279</sup> In general, the amendments made in the Law on Aliens satisfied international observers and Estonians, but not the local Russian population. The towns of Narva and Sillamäe therefore decided to go ahead with the referenda for autonomy that were scheduled for 16 and 17 July 1993 respectively.<sup>280</sup>

The dissatisfaction among Russian-speakers was not only caused by the Law on Aliens. Just a few months earlier, the Ministry of Culture had cancelled the broadcasting licences of two Russian television channels (St Petersburg TV and Russian TV), as these had not renewed their licence applications and had not paid

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<sup>272</sup> Ibid.

<sup>273</sup> Cf. Lahelma 1994, p. 97.

<sup>274</sup> Cf. Määrus No. 218 [Regulation No. 218], Endise NSV Liidu passi kehtivusest Eesti Vabariigis [On the validity of former Soviet passports in Estonia], 13 July 1993.

<sup>275</sup> Ajutise reisidokumendi seadus [Law on Temporary Travel Documents], 18 May 1994.

<sup>276</sup> Cf. HCNM Letter to Luik, 9 March 1994.

<sup>277</sup> Cf. Luik Letter to the HCNM, 4 April 1994.

<sup>278</sup> The total number of valid aliens' passports is, as of 1 November 2000, 164,785. Estonia Today: Foreign Ministry's information and fact sheet series, 14 November 2000.

<sup>279</sup> Cf. Lieven 1994, p. xxiv.

<sup>280</sup> Cf. Sheehy 1993 and Hanson 1993 for a detailed discussion on the referenda, as well as on the aliens' law and other causes behind it.

transmission fees. Russians in Estonia were left with only one television channel broadcasting from Russia, the Ostankino TV.<sup>281</sup> It is clear that the economic and administrative arguments for cancelling the broadcasting rights of the two channels were reasonable, but the situation was viewed differently by the general public, who saw the act as yet another violation by the Estonian government against Russian-speakers.

The HCNM was requested to assist in this conflict over the autonomy referenda, in order to solve the political standoff between the Estonian government and the political leaders of the Russian-speaking population, which continued despite the changes in the Law on Aliens.

The worst-case scenario did not occur, as the HCNM managed to convince both sides to withhold from drastic action. The HCNM came to visit Estonia on several occasions during this period, and met with all relevant parties. He mediated between government officials, the representatives of Narva and Sillamäe city councils and the Russian Representative Assembly, which resulted in compromises on both sides. In a public statement made on 12 July 1993, the HCNM passed on the assurances he had received from the Estonian government and from the representatives of the Russian community.<sup>282</sup> This statement was published in both Estonian- and Russian-language newspapers in Estonia. A great deal of the opposition to the Law on Aliens among the Russian-speaking population was due to poor second-hand information, creating exaggerated fears. By then, this fact had also been understood by the Estonian government. In this context, the assurances that were made in the High Commissioner's public statement brought clarity to the situation and put to rest some of the anxieties. With his mediation, the High Commissioner committed both Estonian officials and representatives of the Russian community to intensify and continue their dialogue, as he continued to insist upon throughout his involvement in Estonia. In the future, the exchange of standpoints of the government and Russian community members can therefore hopefully take place in the absence of third party intervention and mediation.

What is now required is a more detailed analysis on the assurances given to the High Commissioner by the two parties. The Estonian government guaranteed, among other things, that the procedures of applying for residence permits and aliens' passports would be made simple and would run smoothly. It once again stated that expulsions would not be carried out, and that this would apply also to the unemployed. The HCNM and the Estonian government also explained that those people applying for residence permits would still retain the possibility to apply for Estonian citizenship in the future. Moreover, the government promised that in the future, application for Estonian citizenship would be easier: Naturalization requirements would be simplified, and particularly the language test would require a level of simple conversation and be even easier for elderly and handicapped persons. In addition to these more general promises related to the legislation on citizenship and aliens, assurances of moderation were made on the inflammatory situation concerning the autonomy referenda. The Estonian government promised not to use force to prevent the autonomy referenda in Narva and Sillamäe from taking place, even though it considered these referenda as illegal. The government also committed itself to the improvement of the economic situation in the Northeastern region, where the share of Russian-speakers is overwhelming and which, due to its structure and scale of industry, was hit harder by the economic restructuring process than other parts of the country.<sup>283</sup> In return, the representatives of the Russian community assured that they would abide to the ruling of the National Court on the legality of the referenda. Despite carrying on with referenda plans, the leaders of Russian-speakers pledged to respect Estonian constitutional order and territorial integrity.<sup>284</sup>

Initially, the Russian representatives had proposed to the government that persons who had presented their candidacy for the upcoming local elections and who were not Estonian citizens could acquire citizenship

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<sup>281</sup> Cf. *The Baltic Independent*, 23 April 1993, TV companies compete for Russian air-time.

<sup>282</sup> Cf. HCNM Statement, 12 July 1993.

<sup>283</sup> For more details, see van Meurs 1999.

<sup>284</sup> Cf. HCNM Statement, 12 July 1993.

in a facilitated mode in order to be able to run for office. As already mentioned, according to Estonian legislation, non-citizen residents could vote in the local elections, but not stand as candidates for local office - this right was limited to Estonian citizens only. However, in the Northeastern area of Estonia, the share of citizenry among the population was very limited. The number of local candidates was consequentially also extremely low. There were fears that due to poor and unrepresentative choice, those elected would start considering themselves irreplaceable and would succumb to undemocratic modes of governing. Therefore, the government promised to the HCNM to also consider the possibilities of facilitating citizenship acquisition for non-citizens who had presented themselves as candidates for the upcoming local elections.<sup>285</sup> Estonian representatives had made a similar promise prior to Estonia's accession to the Council of Europe. This pledge caused a row in the parliament. As the law on local elections was adopted only in May 1993, the legislators were not ready to amend it already at such an early date. Thus, the plan was carried out later and only in a very restricted and selective mode.

In epilogue, the referenda in Narva and Sillamäe did take place,<sup>286</sup> and over 95 per cent of participants supported the autonomy for the towns.<sup>287</sup> However, according to different estimates, only about half of the entitled voters actually went to the polls. As agreed, the town councils waited for the Estonian Supreme Court's ruling and, as expected, the court decided that both referenda were illegal and thus their results were declared null and void. By that time local elections had taken place in Estonia, as a result of which the membership of the Narva and Sillamäe town councils had changed dramatically. As most members of the old town councils did not qualify for Estonian citizenship, they were barred from running again. And as far as the Estonian government decided to grant citizenship to Russian-speaking candidates in the run-up of the elections, it restricted this gratitude to moderate candidates.<sup>288</sup> Thus, the new local representatives in the town councils were moderate Russians who were more co-operative with the central authorities and did not object to the ruling of the Supreme Court.<sup>289</sup> As a result, the situation in Narva became more relaxed after the 1993 Local Elections. Calls for autonomy also faded: In March 1996 only 17 per cent of respondents supported autonomy or some other kind of special status for Narva, whereas 80 per cent stated that Narva should remain a regular city in Estonia.<sup>290</sup>

The government's guarantee not to interfere by force in the referenda is even more important in the light of another chain of events that took place around the same time. In the Estonian-language media, the so-called "Pullapää crisis" received much more attention than the tensions surrounding the adoption of the Law on Aliens. One small section of the Estonian defence forces decided to resign from the army, because they did not agree to the firing of their leader. In turn, the government decided to dissolve the voluntary defence unit. Its members resisted orders from the army headquarters and the government for three days, barricading themselves in the garrison. Luckily, on the fourth day the crisis was resolved peacefully and the rebel soldiers left the garrison, leaving their arms behind.

The possible connection between these two crises has not been studied, but it is more than plausible that the resistance at Pullapää was intended to coincide with the referenda and with possible demonstrations after the adoption of the Law on Aliens. Several politicians of the time, for example Tunne Kelam, have stated that they suspect that the resistance was at least partially co-ordinated from abroad, i.e. by Russian intelligence. The émigré politicians in the Estonian government and army leadership, Minister of Defence Hain Rebas and Commander-in-Chief of the Estonian Defence Forces Aleksander Einseln, wanted to use force to solve the situation. However, other members of the cabinet could not foresee that one Estonian would have to fight against or kill another Estonian. Moreover, the media portrayed the rebels as heroes. Breaking their resistance by force and causing possible bloodshed would have portrayed the government

<sup>285</sup> Cf. HCNM Statement, 12 July 1993.

<sup>286</sup> See Sheehy 1993 and Hanson 1993 for a detailed discussion on the referenda and the causes behind it.

<sup>287</sup> Cf. Sheehy 1993, p. 10.

<sup>288</sup> Cf. Lahelma 1994, p. 90.

<sup>289</sup> Cf. Lieven 1994, p. xxxvi.

<sup>290</sup> Cf. Gorohhov 1997, p. 138.

and the army in a very unpopular light. In the worst-case scenario, the situation could have evolved into a civil war due to tensions among Estonians themselves. Therefore, if both crises had erupted into violent confrontation, the situation would have definitely escaped the government's control. In that case, Moscow could have used the rhetoric of the necessity of peacekeeping by Russian troops, as it did in many other former Soviet republics.<sup>291</sup> Estonia would have once again been subordinated to Russian influence.

Perhaps the situation was more ready to explode due to the coinciding of the two crises than anyone has so far suspected. In this current study, it is impossible to determine whether these events were just a pure coincidence and wholly unrelated to each other, or whether a conspiracy plot to destabilize the country existed. In any case, the Pullapää rebellion should not be disregarded altogether in the analysis of ethnic tensions in summer 1993 in Estonia.

### 3.8 *HCNM Recommendations on the Implementation of the Law on Aliens: Application Procedures*

As a result of international mediation, the much-contested Law on Aliens had come into force under circumstances in which the Russian community had accepted it to the extent that it would not instigate more public unrest and further tensions. The practical regulation on the procedures of applying and issuing residence permits had also been adopted. Thereafter, in the course of implementing the law, the same old problems that had been expressed during the adoption of the law surfaced again, and new additional shortcomings also became apparent. There were still some ambiguities in the law that had been used in the implementation regulation to the disadvantage of the non-citizen population. For example, at first it was not evident that all non-citizens would initially be issued only temporary residence permits. A more practical problem became clear when Estonian officials realized that all procedures were much more time- and resource-consuming than had originally been expected. Thus, the one-year deadline set in the law, as well as subsequent regulations for the applicant to file his or her application for a residence permit, turned out to be unrealistic. In addition, fears surfaced among the non-citizens that the application procedures would be complicated, expensive and generally discriminatory. The HCNM learned of all of these issues while visiting Estonia in February 1994, and consequently wrote about them to the Estonian Foreign Minister.<sup>292</sup>

In his letter, the HCNM pointed out that "in order to avoid perhaps unnecessary concerns" the Estonian government should provide "non-citizens with information about Governmental policies concerning them, and especially about the way the Law on Aliens will be implemented."<sup>293</sup> Thus the HCNM was mainly inviting the government to distribute more information and explanations concerning the residence permits in order to show that many of the fears of the Russian population were groundless. Other recommendations that the HCNM made concerned the practicalities of implementation that the government had already been considering as well.

#### 3.8.1 *Temporary or Permanent Residence Permits?*

The most alarming issue in relation to the new residence permits lay in the fact that all applicants were at first to be issued only temporary residence permits with a validity of five years. Moreover, an application for a permanent residence permit could only be made if a person had lived in Estonia for at least three out

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<sup>291</sup> Russia used the argument of peacekeeping on several occasions to avoid the withdrawal of its troops from the Baltics. For example in 1993, President Yeltsin called for a mandate "to act as a guarantor of peace and stability" on the territories of the former Soviet Union. See *The Baltic Independent*, 5 March 1993, Rumbles from Russia increase Baltic anxiety.

<sup>292</sup> Cf. HCNM Letter to Luik, 9 March 1994.

<sup>293</sup> Ibid.

of the last five years with such a temporary permit.<sup>294</sup> The High Commissioner was alarmed because it had been his:

firm understanding that the Law on Aliens [...] provides for the possibility of permanent residence permits for persons who settled in Estonia prior to July 1, 1990, and who continue to sojourn in Estonia on the basis of permanent registration in the former Estonian SSR.<sup>295</sup>

Members of the Russian-speaking population were afraid that such 'temporary residents' would be stripped of the same rights as 'permanent residents'. Even though the government and the HCNM had stated that these fears were groundless, Van der Stoep did recommend to include a legal provision to guarantee the same rights during the interim period.

At first, the government's reply to this recommendation was that an article in the Law on Aliens already offered such a guarantee. The article states that persons who settled in Estonia prior to 1990 will retain the same rights and duties as set for them in earlier legal acts. Thus, their right to work, to pensions, to participate in the privatization process, etc. would not be affected.<sup>296</sup> However, at this point it should be noted that in relation to work, an important difference exists between temporary and permanent residence permits, and that none of the involved parties pointed this out. Namely, persons with permanent residence permits do not need a separate permit to work, whereas temporary residents do. Thus, even though temporary residents kept their right to work, they had to apply for work permits to exercise this right. Applications for work permits could be submitted simultaneously with residence permit applications, but some additional papers had to be provided, such as a letter from the employer. However, shortly afterwards the government adopted an amending regulation concerning the issuance of temporary and permanent residence permits to persons who settled in Estonia during the Soviet period. First, the regulation stated that these persons could submit applications for permanent residence already when applying for temporary residence permits, thus saving them from some procedural hassles in the future. Second, those who chose to submit the two applications together would be issued a certificate proving that they had already applied for a permanent residence permit. The certificate would also include a text stating that persons who settled in Estonia prior to 1990 would be guaranteed the same rights and duties as those held by Estonian citizens.<sup>297</sup> It is difficult to determine whether these certificates were just part of the governmental campaign to better inform the persons concerned, or whether the government accepted the High Commissioner's recommendation that this issue should be legally provisioned. It is also possible that the role of these certificates was to calm the propaganda campaign from Moscow that non-citizens in Estonia were being deprived of their social and economic rights. By this time, with each day Moscow was declaring more vehemently that it refused to withdraw its troops from Estonia until the rights of Russian residents in Estonia were respected. Thus, the regulation that all non-citizens first needed to apply for temporary residence permits and that a permanent residence permit could be issued only after the applicant had been in the possession of a temporary residence permit for at least three out of the past five years remained intact. The main reasoning behind this differentiation between temporary and permanent residence permits was not to undermine the process of repatriation, and to avoid granting people with weak ties to Estonia a big incentive to stay. Finally however, the great majority of Russian-speakers received a permanent residence: A total of 277,253 residence permits were issued between 1993 and 1995,<sup>298</sup> and 261,2600 permanent residence permits were issued by 2000,<sup>299</sup> leaving just members of certain groups, such as members of former militaries, without a permanent residence permit.

<sup>294</sup> Cf. Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 12 para. 3.

<sup>295</sup> HCNM Letter to Luik, 9 March 1994.

<sup>296</sup> Cf. Luik Letter to the HCNM, 4 April 1994; Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 20 para. 1.

<sup>297</sup> Cf. Määrus No. 177 [Regulation No. 177], Vabariigi Valitsuse 21. septembri 1993. a. määruse No. 288 osaline muutmine [Partial changing of the governmental regulation No. 288 of 21 September 1993], 20 May 1994.

<sup>298</sup> Cf. Poleshchuk 2001b, p. 44.

<sup>299</sup> Cf. Statistics of the Citizenship and Migration Board, at [http://www.mig.ee/eng\\_index.html](http://www.mig.ee/eng_index.html), (23 April 2002).



### 3.8.2 Application Procedures

Although the question of residence permits was downscaled from a mass to a minority problem by 2001, the application process as such was problem-ridden. Government decrees that regulated the application procedures and the issuance of residence permits differentiated the process between those settled in Estonia prior to 1990 and all others. For the first group, the procedures were greatly simplified, a fact that the High Commissioner recognized. Nevertheless, he recommended to further simplify the procedures as much as possible. In his opinion, an exchange of the previous permanent registration for the new residence permit, requiring no further additional certificates or fees, would have been appropriate.<sup>300</sup> In total, there were three main aspects in the process that the HCNM pointed out as excessive and unnecessary: The requirement to submit different certificates, the fact that only Estonian language would be used in the process and the requirement to pay application fees.

As to the first point, the government tried to convince the HCNM that the number of documents required to apply for a residence permit remained limited.<sup>301</sup> Indeed, this was true: In addition to the old Soviet passport with an Estonian SSR residence permit inside, the applicants had to provide only the application form, the receipt of having paid the application fee and two photographs. Applicants also had to provide a certificate about their family status, but this was usually mentioned in the Soviet passport anyway. For the work permit, applicants also had to submit a letter from their employer.<sup>302</sup> Thus, although the Estonian government did not follow the recommendations in a strict sense, it chose a way according to which no additional certificates to the existing identity document were actually required. As for the application fee, it amounted to a total of 50 Estonian Crowns (EEK), which cannot be considered excessive in the light of an average income of 1,200 EEK.<sup>303</sup> The same holds true for the costs of an alien's passport, which amounted to 100 EEK at the time. Moreover, pensioners and minors did not have to pay anything.<sup>304</sup>

Another recommendation the HCNM made on how to simplify the application procedure concerned the question of language. The application forms were in Estonian and also had to be filled out in Estonian. Van der Stoep remarked in this regard that a high number of applicants did not understand the official state language, and that Russian translation forms would be helpful.<sup>305</sup> The Estonian government reacted to this comment by again assuring that the language issue would not be an obstacle in the application process, as Russian translations of the registration forms were available at all registration points. Also, they claimed that the entire staff of the Migration Office dealing with residence permit applications was fluent in both Estonian and Russian, and could thus assist applicants.<sup>306</sup> Again, it seems that Estonian officials had already independently implemented what the HCNM was recommending. However, the OSCE Mission to Estonia reported that its office in Narva was overburdened with the task of helping applicants to fill out their forms.<sup>307</sup> Russian and English were sanctioned as languages to be used in the application process only on 11 December 1999.<sup>308</sup> However, the concerns of the Russian-speaking population, as well as the practical problems in filling out the forms correctly, derived not only from the language question, but also more from the poor information about the application procedures. The government admitted this and

<sup>300</sup> Cf. HCNM Letter to Luik, 9 March 1994.

<sup>301</sup> Cf. Luik Letter to the HCNM, 4 April 1994.

<sup>302</sup> Cf. Määrus No. 288 [Regulation No. 288], Välismaalastele elamis- ja töölubade andmise ja pikendamise kord [Conditions and order of issuing residence and work permits], 21 September 1993, para. 23; amended by: määrus No. 177 [Regulation No. 177], Vabariigi Valitsuse 21. septembri 1993. a. määruse No. 288 osaline muutmine [Partial Changing of the governmental regulation No. 288 of 21 September 1993], 20 May 1994; määrus No. 202 [Regulation No. 202], Vabariigi Valitsuse 21. septembri 1993. a. määruse No. 288 osaline muutmine [Partial Changing of the governmental regulation No. 288 of 21 September 1993], 7 June 1994.

<sup>303</sup> Cf. Luik Letter to the HCNM, 4 April 1994.

<sup>304</sup> Cf. Eesti Vabariigi riigilõivuseaduse muutmise seadus [Law amending the State Fee Law], 9 February 1994, art. 8 para. 11.

<sup>305</sup> Cf. HCNM Letter to Luik, 9 March 1994.

<sup>306</sup> Cf. Luik Letter to the HCNM, 4 April 1994.

<sup>307</sup> Cf. CSCE Mission to Estonia, Activity Report No. 57, 28 March 1994; Flottau 1994.

<sup>308</sup> Cf. Poleshchuk 2001b, p. 46.

promised to co-operate closer with representatives of non-Estonians, among other in order to provide accurate and sufficient information about the registration procedure.

### 3.8.3 *Postponement of Application Deadlines*

The Law on Aliens had determined that all non-citizens had to submit an application for residence and work permits in the course of one year starting from the adoption of the law - a clause that appeared to be quite unrealistic. The preparations for the application procedures had taken considerably longer than expected, and the full-scale reception of applications did not start until spring 1994. At this time, only a few months remained until the original deadline that was set for July. With around 400,000 applications in sight, the HCNM recommended to the Estonian government that the application deadlines should be postponed, for example by another six months. Consequently, all other related deadlines would also have to be postponed accordingly, such as the validity period of old Soviet residence permits and documents. The OSCE warned Estonian officials that "if the registration were to be made impossible by the lack of the necessary administrative machinery, this would constitute a denial of rights."<sup>309</sup> A motion to postpone the deadline had also been put forward by the Presidential Roundtable for Ethnic Minorities in Estonia.<sup>310</sup> In his response to the HCNM, Foreign Minister Jüri Luik wrote that the Estonian government was also planning the postponement of deadlines, and that it considered this unavoidable. However, government officials stressed the importance of timing such a postponement.<sup>311</sup> The legislators were planning to make changes to the regulations at the last possible moment, in order to collect as many applications as possible in time and in order to signal to people that abiding by the law is important. This is exactly what was done: The application deadlines and validity dates of Soviet resident permits and documents were postponed in May 1994, a little over one month before the initial deadline expired. Given the continued problems in the bureaucratic application process, the new deadline had to be prolonged by another full year. Thus, people could submit their residence and work permit applications until 12 July 1995, and the new permits had to be issued in two years time, by July 1996. Consequently, the old Soviet residence permits were also going to remain valid for another two years, until 1996. Old Soviet passports were to be recognized as internal identification documents until this same date.<sup>312</sup> In assessing the question of the application deadlines, one could conclude that the Estonian government not only implemented the recommendations of the HCNM, but also extended the deadlines even in a way more favourable for the applicants than the High Commissioner himself had proposed it. However, the fact that the decisions on the prolongation of the deadline had been issued deliberately at the 'last moment' caused continuous anxieties among the Russian-speakers.

### 3.8.4 *Russian Army Pensioners and their Families*

The main fears of most of those people whom the aliens' law concerned were put more or less to ease by the amended Law on Aliens and by the information campaign that followed. The Estonian government had again assured that expulsions would not take place, that unemployed people could also apply for residence permits and that application procedures would be kept simple. At the same time, the situation of retired army officials remained unclear. In the draft Law on Aliens, it was stated that residence permits

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<sup>309</sup> Lieven 1994, p. xxv.

<sup>310</sup> Cf. HCNM Letter to Luik, 9 March 1994.

<sup>311</sup> Cf. Luik Letter to the HCNM, 4 April 1994.

<sup>312</sup> Cf. Ajutise reisidokumendi seadus [Law on Temporary Travel Documents], 18 May 1994, and määrus No. 202 [Regulation No. 202] Vabariigi Valitsuse 21. septembri 1993. a. määruse No. 288 osaline muutmine [Partial changing of the governmental regulation No. 288 of 21 September 1993, 7 June 1994. The validity of Soviet internal passports was prolonged once more, until May 1997, because the distribution of aliens' passports had not been completed. See HCNM Letter to Kallas, 28 October 1996. Määrus No. 33 [Regulation No. 33], Endise NSV Liidu sisepassi Eesti Vabariigis isikut tõendava dokumendina kehtetuks tunnistamine [Cancellation of former USSR internal passport as an identification document in Republic of Estonia], 11 February 1997.

would not be granted to "any alien who has served in a career position in the armed forces of a foreign state or has entered the reserve forces or retired from a career position in the armed forces of a foreign state, nor to his or her family members, who have entered Estonia in conjunction with the service or retirement of a member of such armed forces."<sup>313</sup> The HCNM expressed his concern that this clause could affect a large number of Russians and lead to their expulsion from Estonia.<sup>314</sup> Estonian legislators kept their original position on this point in the new, amended version of the law, but the government promised in the High Commissioner's public statement that 'humanitarian considerations' would determine its attitude towards army pensioners and their family members.<sup>315</sup>

The position of Estonian legislators on this point can easily be understood, as a considerable number of Russian troops remained stationed in Estonia at the time of the drafting and the adoption of the Law on Aliens. The Russian troops were supposed to leave Estonia by August 1993, but the negotiations between Estonian and Russian officials over the withdrawal were constantly stalled. And during spring 1993, Russia's position on troop retreat had significantly hardened as a result of the internal crisis in Russia. Most alarmingly, the number of Russian troops in Tallinn had risen, even though their presence in other parts of Estonia was diminishing.<sup>316</sup> Thus, the Estonian side was not eager to make concessions to the members of an army that it considered as an occupation force that was unwilling to leave. In this respect, the Russian strategy to exert pressure on Estonia was counter-productive, as it resulted in a hardening of the Estonian position regarding Russian-speakers in general and former and active militaries in particular.

Moreover, while it could still be expected that active army representatives would eventually leave Estonia, the same could not be hoped for from retired army officials. Many Soviet army officials retired at a rather young age. It is believed that some were not more than thirty-five years old. A similar situation applied to reserve officers. Thus, one can not think of Soviet army pensioners as one does of a largely elderly population. Among Estonians there was a widespread fear of the so-called "fifth column" - former Soviet or Russian military officials, men in their prime age, who could work for Russian intelligence, trigger a provocation to cause instability in Estonia, or, in the gloomiest scenarios, give support in the case that another invasion was planned.<sup>317</sup> The Estonian defence plan considered "the retired Russian officers as one of the main internal threats to the country's security."<sup>318</sup> According to Estonia's Defence Minister Hain Rebas, over 70 per cent of the retired Russian army officers residing in Estonia held weapons in their possession.<sup>319</sup> It was also believed that the Russian army purposefully discharged a certain number of army officials from active duty during the transition period, prior and after the declaration of Estonia's independence, in order to keep them in Estonia even when the rest of the army would have to leave.

The High Commissioner tried to take this last concern into account when making his recommendation on how to change the particular paragraph. He proposed that the restriction of not granting residence permits could be limited to those army officials who had been demobilized after 1991. However, such a restriction would have applied only to a small minority of army officials residing in Estonia, leaving most of the army contingent free to apply for residence permits. The overall numbers of army officials, whether retired or in reserve, was not known. As Russia refused to provide such information, Estonian officials were even more cautious of their presence. To be certain, a considerably large group of people, whom

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<sup>313</sup> Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 12 para. 4.6. and para. 4.7.

<sup>314</sup> Cf. HCNM Letter to Meri, 1 July 1993.

<sup>315</sup> Cf. HCNM Statement, 12 July 1993.

<sup>316</sup> Cf. The Baltic Independent, 12 February 1993, Balts resist troop influx. In early 1993, Russian army leaders had asked Estonian officials for permission to actually increase the number of Russian troops and to carry out large-scale military exercises in Estonia. In April 1993, the Russian military carried out exercise maneuvers aimed at "capturing and keeping strategically important targets in the Baltic States until the arrival of main forces", see The Baltic Independent, 20 April 1993, Russian officers practice recapturing Baltics.

<sup>317</sup> For example, in spring 1993 Russia had adopted a new law guaranteeing additional privileges to Russian servicemen in the Baltics to defend the constitutional rights of citizens in these countries, see The Baltic Independent, 19 March 1993, Troop Watch.

<sup>318</sup> The Baltic Independent, 19 March 1993, Troop Watch.

<sup>319</sup> Cf. *ibid.*

Estonia could only consider a threat to the statehood and national security, would remain behind. Moreover, had Estonian legislators granted all (or most) former Soviet army officials the right to apply for Estonian residence permits, they would have accepted the presence of the occupation forces on Estonian territory as legitimate and, thus, also given legitimacy to the Soviet occupation of Estonia in general.

Therefore, the questioned clause remained intact in the amended and promulgated Law on Aliens. The following paragraph in the law does, however, give some leeway to army officials, according to which the Estonian government can make exceptions and grant residence permits to retired officers of a foreign army. While the rest of the decision-making on residence permits was left to the Migration Office, the applications by former Soviet army officials were to be reviewed and decided upon by the government.<sup>320</sup> The question was thus left relatively open and to be determined by a separate act of government. However, following the crisis of summer 1993, the Prime Minister mentioned the members of the Soviet armed forces and their families in relation to Estonia's commitment to the non-expulsion policy. It was added that humanitarian considerations would be the basis of the Estonian government's attitude towards Soviet army servicemen.<sup>321</sup> A further reassurance was made that only cadre (or professional) army servicemen were to be considered as former members of the Soviet armed forces. This excluded those who had gone through the compulsory military service in their youth.

In December 1993 the Estonian government adopted a decree regulating the issuance of residence permits to retired career officers of foreign armed forces and their family members.<sup>322</sup> The regulation applies only to those officers who retired from the army prior to 20 August 1991, i.e. before the declaration of Estonian independence. In addition, the regulation foresaw that residence permits could be issued only to those retired servicemen who were born before 1930, i.e. who were 63 years of age or older at the time when the regulation came into force. The servicemen could also continue to reside in Estonia if their spouses or minor children were Estonian citizens or legal residents of Estonia. A special government commission was established to deal with the foreign army servicemen. The commission included the Minister of Ethnic Affairs, the head of the Migration Office and representatives from the Ministries of Defence, Interior Affairs, Social Affairs and Foreign Affairs. Other experts could also be invited to participate in the work of the commission. Since November 1994, due to pressure from the Russian Federation, an OSCE representative,<sup>323</sup> holding the right to make comments and suggestions, was included in the commission.<sup>324</sup> For the residence permit application, the army servicemen had to provide more documents than those required from other people. In addition to what was demanded from others, the army servicemen had to produce a medical certificate and proof of legal income and residence. Those married or with minor children also had to show a marriage certificate and their children's birth certificates. Finally, servicemen applying for residence permits had to confirm with their signatures that they would respect Estonia's constitutional system and legislation; that their actions would not threaten the Estonian state and its security; that they had not worked in the intelligence or security forces of any foreign state; that they do not participate in any (illegal) armed formations abroad or in Estonia; that they had not been convicted for criminal offence to imprisonment for longer than one year; and that they did not and would not obtain a gun.<sup>325</sup>

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<sup>320</sup> Cf. Välismaalaste seadus [Law on Aliens], 8 July 1993, art. 12 para. 5.

<sup>321</sup> Cf. HCNM Statement, 12 July 1993.

<sup>322</sup> Cf. Määrus No. 379 [Regulation No. 379], Välisriigi relvajõududest erru arvatud kaadrisõjaväelastele ja nende perekonnaliikmetele elamislubade andmise kord [Issuance of residence permits to career officers retired from foreign armed forces and their family members], 1 December 1993.

<sup>323</sup> Captain Uwe Mahrenholtz was appointed by the CSO on 4 November 1994 (see CSCE 28-CSO/Journal No. 3).

<sup>324</sup> Cf. Määrus No. 416 [Regulation No. 416], Välisriigi erukaadrisõjaväelastele ja nende perekonnaliikmetele elamislubade andmist korraldava valitsuskomisjoni põhimäärus [Ratification of governmental commission organizing issuance of residence permits to retired servicemen of foreign army and their family members], 7 November 1994.

<sup>325</sup> Cf. Määrus No. 379 [Regulation No. 379], Välisriigi relvajõududest erru arvatud kaadrisõjaväelastele ja nende perekonnaliikmetele elamislubade andmise kord [Issuance of residence permits to career officers retired from foreign armed forces and their family members], 1 December 1993.

Thus, the option of applying for residence permits was available to some of the former Soviet army servicemen: To those who had retired prior to Estonia's independence, who were 63 years of age or older, or whose family members were Estonian citizens or legal residents of Estonia. Estonian legislators feared that instability could result from all servicemen being granted residence permits without special clauses. However, it seems that the limitations of the regulation actually increased the threat of instability. Several organizations representing the Russian population called for civil unrest and armed resistance in order to voice the Russian population's dissatisfaction with the decree. Nor was Russia satisfied with these limitations, and made the issue of retired servicemen the main stumbling block in the Estonian-Russian troop withdrawal agreement.

### *3.9 July Agreements and Russian Troop Withdrawal from Estonia*

Prior to the regulation of the Estonian government on army pensioners, Russia had tried to halt the withdrawal of its troops by complaining about the human rights situation in Estonia. However, as over ten different missions had visited Estonia and found no human rights violations, Russia's accusations in this respect were unfounded.<sup>326</sup> In the light of continuing Russian accusations concerning human rights violations in Estonia, and the renewed linkage between these violations and the withdrawal of Russian troops,<sup>327</sup> the OSCE Mission to Estonia reiterated its point of view that there was currently no evidence for gross human rights violations in Estonia, and urged that Russia respect the 31 August deadline for withdrawing its troops.<sup>328</sup> In this context, Russia realized that it would be easier and more viable to make the troops withdrawal agreement dependent on some more concrete issue, such as the legal guarantees for army pensioners. Russia pursued similar tactics in negotiations with Latvia and Lithuania, namely by attaching additional self-interested conditions to the troop-withdrawal deals. With Lithuania, Russia managed to make a favourable deal concerning the transit between the Kaliningrad enclave and Russia proper through Lithuanian territory. As a result of negotiations with Latvia, Russia remained in control of the Skrunda radar plant for a further five years, and Russian army retirees were guaranteed residence and social rights in Latvia. The other Baltic states succumbed to these concessions simply in order to get rid of the Russian troops on their territories. The Russian army left Lithuania already by the end of 1993. Latvia and Russia signed their agreement in spring 1994, and Russia promised publicly to withdraw its troops from Latvia by August 1994. Estonia was the last of the Baltics to demand for unconditional withdrawal of Russian troops. The Lithuanian and Latvian agreements undermined the Estonians' uncompromising position. Estonia was also running out of time: The Russian troops were supposed to leave Estonia by 31 August 1994, but Russia had stopped the withdrawals already during the spring, and even in July continued to state that Russian troops would not leave until human rights were respected in Estonia and the rights of army retirees were guaranteed.<sup>329</sup>

There was also international pressure, especially from the US, for Estonia to accept concessions regarding the retired army officers. Already a year earlier, Presidents Clinton and Yeltsin had made a joint communiqué, in which they referred to the critical importance of full protection of Russian minorities, and President Clinton had indirectly accepted that this affects the timely pullout of Russian troops. Even though Estonia objected to these allusions and accused the US of an obsession to keep Yeltsin in power, Estonian politicians ultimately had to succumb to a compromise deal.<sup>330</sup>

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<sup>326</sup> Lieven 1994, p. xxiii.

<sup>327</sup> Cf. *The Baltic Independent*, 21 January 1994, Russia declares 'vital interests' in the Baltics. Troops to stay? And *The Baltic Independent*, 11 February 1994, First Kozyrev, now the others and *The Baltic Observer*, 17 February 1994, Luik remains optimistic despite Kozyrev statements.

<sup>328</sup> Cf. CSCE Mission to Estonia, Activity Report No. 49 (31 January 1994) and No. 63 (23 May 1994).

<sup>329</sup> Cf. *The Baltic Independent*, 15 July 1994, Yeltsin says 'nyet' to pullout from Estonia.

<sup>330</sup> Cf. *The Baltic Independent*, 9 April 1993, Meri slates Clinton over Yeltsin 'lies'.

Also the OSCE recommended for some concessions to be made, but did so primarily through the Chairman-in-Office and the OSCE Mission to Estonia.<sup>331</sup> The High Commissioner's involvement in the agreements on troops' withdrawal and the army pensioners' social guarantees was minimal, as the issue was not directly related to his mandate. However, he did publicly support the withdrawal of the troops and brought the issue up during his meetings in Moscow. In one interview the High Commissioner commented the situation in the following way:

There exists not only the problem of minorities, but also of the troop withdrawal. Because of my mandate I have nothing to do with it, but this is of course an element that also determines the nature of the relations. [...] In Moscow I have been assured constantly that they are sincerely willing to withdraw their troops from the Baltics, and that the fear the army will stay is absolutely unfounded.<sup>332</sup>

At the same time, Russian officials tried to obtain the High Commissioner's support to keep the army pensioners in Estonia. During his visit to Moscow, Russian Deputy Prime Minister Trofimov told Van der Stoel that Western countries should invest in the Baltic states and employ retired Russian troops and their family members in these enterprises.<sup>333</sup> The High Commissioner's credibility in Estonia suffered during this period. The local OSCE Mission had supported linking the troops' withdrawal to social guarantees of army pensioners, and as a result relations between the Estonian public and OSCE became strained. Even though the HCNM was not directly involved, the unpopularity of the mission also affected his position.

On the Estonian political scene, some government officials began to carefully state that some concessions might be necessary in order to finalize the agreement, thus indicating that the government was considering a compromise. However, the opposition vigorously attacked these statements both from left and right. The government was therefore in a difficult situation. The compromise agreement in Estonia could cause an internal crisis in the country, and could decrease the popularity of the government coalition. Even if some compromise agreement could be signed, it would probably not be ratified in parliament.

Several rounds of negotiations throughout spring and early summer between Estonian and Russian officials had produced no positive results. Even meetings between higher-level politicians, such as the Foreign Ministers of the two countries, did not appear to have any effect. Finally, on 26 July 1994 Estonian President Lennart Meri travelled in person to Moscow to meet his counterpart Boris Yeltsin. US President Bill Clinton had pushed for such a meeting to take place. As Yeltsin mentioned to the press, he was meeting President Meri as a favour to President Clinton, and did not hope for any solutions to be born out of the meeting. Surprisingly, however, the two Presidents did come to an agreement concerning the Russian troop withdrawal from Estonia and the social guarantees of the Russian army pensioners in Estonia. Lennart Meri and Boris Yeltsin signed a deal on the social guarantees of the Russian army retirees on the same day, on 26 July 1994. In return, Russia promised to withdraw its troops from Estonia by to the previously agreed date of 31 August 1994.

A lot of criticism was raised against these agreements on the Estonian political scene. However, as the Agreement was signed by the heads of state, it took effect immediately and could be overturned only after it failed ratification in parliament.<sup>334</sup> The latter process would, however, take a while. So the fact that the agreement was signed by the Presidents turned out to be the best way to manage swift and timely liberation of Estonia from the Russian troops. Russian officials stated that they realized that Estonian legislators could withdraw from the made promises by refusing to ratify the so-called July Agreements, but the withdrawal of Russian troops was going ahead and they were relying on a 'gentlemen's

<sup>331</sup> Cf. The Baltic Independent, 22 April 1994, CSCE urges Russia to complete troop withdrawal; Törnudd 1994, p. 78. As a result of this CSCE attitude, relations between Estonian officials and representatives of the CSCE were already becoming tense.

<sup>332</sup> The Baltic Independent, 9 April 1993, Europe's man speaks softly.

<sup>333</sup> Cf. The Baltic Independent, 29 January 1993, Retirement plan rejected.

<sup>334</sup> Cf. Agreement between Estonian Republic and Russia Federation on the social guarantees of Russian Federation's army pensioners on the territory of Estonian Republic, art. 15.

agreement' on behalf of the Estonians. Estonia did indeed keep its end of the bargain, as subsequent legislative acts and the ratification of the Estonian-Russian Agreement in the Estonian parliament indicate.

The most important provision of the Agreement stipulated that all former Soviet army servicemen (and their family members) were granted the right to apply for residence permits, irrespective of their age and when they retired. Thus, also those who were young or who had retired after Estonia became independent could legally stay in Estonia. This fact again raised Estonian fears of the so-called fifth column that had been expressed in previous years. Moreover, the July Agreements contained several points which were in contradiction to the existing legislation in Estonia. This point will be discussed further below. Public opposition to the ratification of the Agreement was therefore rather clear. However, the opposition against the ratification of the deal was finally undermined by the fact that according to the Estonian Constitution, international treaties take prevalence over domestic laws.

Alongside its contradictions to Estonian legislation, several other aspects of the Agreement can also be characterized as slightly strange: Some issues are mentioned in very general terms, while others are defined in ridiculous detail. In general, the Agreement illustrates the ignorance of the Russian negotiators about existing legislation in Estonia. The Agreement spells out some protective precautions for the army pensioners which are already guaranteed to all legal residents of Estonia by the Estonian Constitution, as well as by more specific legislation. Thus, the main concession made that all Russian army pensioners and their family members can apply for Estonian residence permits would have sufficed to guarantee their social and economic rights. Once legal residents of Estonia, they would enjoy the same rights as all other resident permit holders or citizens of the country. These rights included the right to private property, medical care, higher education and participation in the privatization process (receiving also privatization bonds). However, all these issues are nevertheless mentioned in the Estonian-Russian Agreement. As a very general point, the Agreement states that army pensioners and their family members will be guaranteed civil, political, social, economic and cultural rights according to international human rights norms.<sup>335</sup> Russia found it necessary to include this guarantee in the agreement even though many different international missions had already determined that Estonian legislation concerning aliens was by and large in accordance with the international standards (the question of who was to be considered as alien was still debatable). Some aspects of the above-mentioned rights are then further elaborated in the Agreement. For example, the Agreement states very specifically that army pensioners will have the right to possess, use and control their property, including houses, apartments, holiday houses and garages (sic!) on equal terms with Estonian citizens.<sup>336</sup> The Russian side also saw it necessary to include that army pensioners and their family members have the same right to higher education as Estonian citizens. This was not denied by any other law in Estonia. Another concern of Russian negotiators was pensioners' access to medical treatment in Estonian medical institutions. This point was specially noted in the Agreement, even though Estonian legislation guaranteed social rights to all legal residents of Estonia, and the Estonian government had repeatedly promised not to limit these rights in the future.<sup>337</sup>

Even though all the above-mentioned rights were guaranteed to all legal residents in Estonia anyway, the Estonian side agreed to include them in the Agreement in order to reassure Russia that these rights would be respected in the future as well. In any case, this was not the reason why Estonian politicians and the public criticized the deal. The critique was directed to several other articles in the Agreement that were clearly contradictory to existing Estonian legislation, as well as to the fact that the rights granted to Russian army pensioners exceeded those held by Estonian citizens. According to the Agreement, the former army servicemen could, for example, privatize their living quarters, independent of who actually owned the property.<sup>338</sup> This clause was considered to be in vile contradiction to the restitution law. This meant that persons who had a right to restitution could not reclaim their pre-war possession if a Russian

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<sup>335</sup> Cf. *ibid.*, art. 6.

<sup>336</sup> Cf. *ibid.*, art. 7.

<sup>337</sup> Cf. *ibid.*, art. 9.

<sup>338</sup> Cf. *ibid.*, art. 8.1.

army pensioner was living in it. Anger was aroused by the fact that Soviet army officials would still be able to live in the houses and apartments of people whom they had deported to Siberia. For Estonians, a clause in the Agreement that caused even more rage concerned other rules of privatization. Presidents Meri and Yeltsin had agreed that army pensioners' years served in the Soviet military would be considered as working years, and would thus be counted towards their privatization coupons.<sup>339</sup> Even Estonian citizens themselves could not do that! In the Estonian privatization system, the number of privatization coupons each person received was counted according to how many years the person had worked. Thus, people with longer employment service received more privatization coupons. But the years served in the Soviet army (even the compulsory service) were not taken into account, no matter whether the person was an Estonian citizen or not. The July Agreement, however, favoured Soviet army servicemen over Estonian citizens and other legal residents in Estonia by granting them the right to include years served in the army towards their privatization bonds.

While Estonia had agreed to guarantee the social and economic rights to army pensioners, the Russian Federation was to cover most of costs of the social benefits. The Russian Federation had agreed to pay out the monthly pensions, which could not be lower than the minimum pension rate established in Estonia.<sup>340</sup> Also the medical costs of army pensioners were to be covered from Russian sources, and Estonia simply had to guarantee their access to Estonian medical care.<sup>341</sup> This meant that even though Soviet army pensioners were to stay in Estonia, their subsistence would not burden the Estonian budget. The agreement on social guarantees of retired servicemen would have been much more difficult to swallow if the Estonian taxpayers would have had to cover the living costs of people they considered as occupiers.

Another important clause, which showed that Estonian negotiators had succeeded in including some guarantees for the Estonian state was included in the Agreement. Both in the introduction and the conclusion of the deal, there is a reassurance that none of the given guarantees and rights justify actions that could endanger either state's sovereignty, security or territorial integrity. In other words, the commission of the Estonian government retained a possibility to refuse the issuance of residence permits to individuals they considered dangerous to the Estonian state and independence.<sup>342</sup> However, in order to avoid abuse of this clause in practice, the parties agreed that the government commission in charge of issuing residence permits would include the above-mentioned OSCE representative.<sup>343</sup>

Russia committed itself to provide a list of all persons concerned within 30 days, and to update it each year.<sup>344</sup> The Agreement was estimated to affect around ten thousand people. There was still some confusion concerning the validity of the deal, as Yeltsin had not yet signed the Estonian version of the agreement. However, in the end most Russian troops withdrew from Estonia by 31 August 1994, as had been agreed. Those left behind to dismantle the nuclear reactors at Paldiski submarine port finished their job the next year. Thus by September 1995 Estonia was free from active foreign troops on its territory.

In Estonia, some legislative acts based upon the social guarantees agreement came into force in the following months. The government commission started its work in the end of 1994. The agreements were finally ratified in the Estonian parliament in December 1995, and in the subsequent year the government adopted a regulation concerning residence permits of Russian army pensioners, which was modified according to the Estonian-Russian treaty.<sup>345</sup>

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<sup>339</sup> Cf. *ibid.*, art. 8.1.

<sup>340</sup> Cf. *ibid.*, art. 3.

<sup>341</sup> Cf. *ibid.*, art. 9.

<sup>342</sup> Cf. *ibid.*, art. 2.1. and 14.

<sup>343</sup> Cf. *ibid.*, art. 2.2.

<sup>344</sup> Cf. *ibid.*, art. 2.3.

<sup>345</sup> Cf. Määrus No. 130 [Regulation No. 130], Välisriigi relvajõududes kaadrisõjaväelasena teeninud välismaalastele ja nende perekonnaliikmetele elamislubade andmise kord [Ratification of the order of issuing and prolonging residence permits to retired servicemen of foreign army and their family members], 14 May 1996.



### 3.10 *Summary*

Summing up, one can conclude that Estonia had managed to steer successfully through the crisis situations, which emerged after 1991 due to the radicalization in the citizenship and aliens' policies. The Russian troops, which were perceived as the main destabilizing and threat factor by Estonians, had finally withdrawn in 1994, and the danger of a "Transdnestrian" scenario in the Northeast had been successfully diverted. The danger of military escalation in Estonia, if it had ever been realistic at all, was certainly no longer an issue after 1994. However, the underlying conflict between Estonians and non-Estonians remained unresolved. The Estonians had succeeded in upholding their core principles in the citizenship and aliens' legislation, which in turn, led to continuous dissatisfaction and frustration among the Russian-speaking population.

Between 1991 and 1994, the High Commissioner was involved in Estonia in short- as well as in long-term conflict prevention. His intensive shuttle-diplomacy in June and July 1993, followed up by the public statement of 12 July 1993, was crucial for defusing the crisis surrounding the autonomy referenda in Narva and Sillamäe. His continuous involvement before as well as after the crisis, on the other hand, helped to start a sustainable conflict management process, which evolved around the interpretation and implementation of laws and norms. In his recommendations to the Estonian government in 1993 and 1994, the HCNM elaborated, however, not only on the consistency of the Estonian legislation with international norms, but stressed also the need to take the psychological effect into account that the new citizenship and aliens' legislation had on the Russian-speakers. Indeed, an important role that the HCNM played during the summer crisis in 1993 was to increase the subjective feeling of personal security among the Russian-speakers by (a) providing them with proper information and (b) in reassuring them that no mass deportations would take place and that they would have a future in Estonia. The public statement of 12 July 1993, in which the HCNM listed the assurance he had received from the Estonian government and the representatives of the Russian community, was crucial in this regard, as it was published also in the Estonian Russian-language press. The fact that these assurances had been given not only as such, but to an international representative, also reinforced their value.

As for the concrete recommendations the High Commissioner issued in 1993 and 1994, it is important to note that they have been implemented only partially. The High Commissioner had accepted the general framework of the existing language and citizenship legislation, and also accepted the core principles of the Law on Aliens. In his recommendations, he concentrated on increasing transparency and uniformity in the legislation affecting the Russian-speaking population, on easing the naturalization process by lowering the language requirements, as well as on simplifying the application process with regard to the residence permits. His recommendations directed at an increase of transparency and uniformity had been largely implemented. However, his calls for making the language test easier, a simple exchange of the old Soviet registration for a new Estonian residence permit and the issuance of aliens' passports to all non-citizens residing in Estonia, were, however, not followed up to the degree the HCNM had initially hoped for. The prevailing perception among Estonians during this time was that the Russian-speakers were disloyal to the Estonian state and should, therefore, leave the country. Consequently, the reluctance to provide them with a permanent residence permit or even to open them the way to Estonian citizenship was still strong, especially among voters and parliamentarians who were less exposed to international pressure than the government. The main success of the HCNM in the period of radicalization between 1991 and 1994 was thus to prevent a tense situation from escalating, and to lay, through his recommendations, the foundation for a sustainable conflict transformation.



## Chapter 4. The Stabilization Period from 1995 to 1997

The time around the year 1995 was the low point in Estonian minority politics. The restrictive legislation concerning non-Estonians had been implemented and had served its original purpose to defend the position of Estonian language and culture in the newly born state. However, continuing along the same lines would have led to a dead end. In 1995 only 49 per cent of Russians were empathic to the Estonian government, whereas the support among Estonians lay at 82 per cent. In early 1996, when asked how relations between Estonians and Russians in Estonia would develop, around 45 per cent of non-Estonian replied that relations would remain the same, and another 45 per cent estimated that relations would worsen. At the same time, an overwhelming majority of both Russians and Estonians replied that no or little ethnic tensions existed in the country.<sup>346</sup> As it became increasingly apparent that most Russian speakers would remain in Estonia, it was also recognized that Estonia required a new approach towards minorities. This approach was to aim at cohabitation and integration. Internal developments that resulted in the formation of a new majority in the *Riigikogu*, as well as the start of Estonia's accession process to the European Union, influenced Estonia's policy towards its non-Estonian residents positively. However, certain improvements notwithstanding, a real breakthrough was not attained in this period.

The following chapter will start with a brief discussion on the developments and shifts in Estonia's political system between 1995 and 1997. On this background, the following main changes in Estonia's legislation regarding non-citizens and minorities will be discussed: The new Law on Citizenship, the question of aliens' passports, the 1996 amendments to the Law on Aliens and Estonia's accession to the Framework Convention for the Protection of National Minorities. This will be followed by a short analysis on Estonia's relation to the EU, other international organizations and Russia. The chapter will close with a discussion on the Report on the HCNM's Recommendations, elaborated by the Estonian Ministry of Foreign Affairs in 1997.

### 4.1 *Internal Developments from 1995 to 1997*

At the beginning of 1995 a change of power occurred in Estonia. The more nationalistically minded coalition of the Pro Patria Union, the Estonian National Independence Party and the Moderates, which had formed the coalition governments since 1992 under the Prime Ministers Mart Laar (September 1992 - October 1994) and Andres Tarand (since October 1994), was ousted by more centre-oriented parties in the parliamentary elections of March 1995. The new government was formed by the Coalition Party, the Rural People's Party and the Centre Party. It had not been elected on the nationalist card, but on the basis of more economic- and social-oriented issues. Consequentially, it could pursue a more pragmatic policy towards the Russian-speaking population. Moreover, the election block "Our Home is Estonia", set up by two parties of the Russian-speaking electorate, the Estonian United People's Party and the Russian Party in Estonia, passed the 5 per cent barrier and sent six Russian-speaking parliamentarians to the new *Riigikogu*. Thus, in contrast to the first post-independence parliament, Russian-speakers were represented in the *Riigikogu* after 1995. And although not included in the new government, they were at least able to articulate the interests of the Russian-speaking population on a more official level than in previous years, when the Presidential Roundtable had been the only body that served this purpose.<sup>347</sup>

However, as in previous years, Estonian politics remained unstable and several coalition crises and government reshuffles followed. One of the coalition partners, the Centre Party, was forced to leave government after a few months as the result of an eavesdropping scandal. The secret police searched a private security service company and found tapes with conversations between leading politicians. One of

<sup>346</sup> Cf. Kirch et al. 1997, p. 46, 62, 64.

<sup>347</sup> Cf. Arter 1995, pp. 258-261.

the conversation partners on all recordings was the leader of the Centre Party, Minister of Interior Edgar Savisaar. Even though Savisaar's advisor Vilja Laanaru took the blame for recording the conversations, Edgar Savisaar himself was accused. As a result, he was asked to step down from the position of the Minister of Interior. In the end, the whole government stepped down. The new government was formed in November 1995 by the Coalition Party, the Rural People's Party and the Reform Party.

A year later, in autumn 1996, newly independent Estonia witnessed its second presidential elections. After five rounds, Lennart Meri was elected President for a second term. As the Coalition Party had not supported the candidate of the Rural People's Party, Arnold Rüütel, frictions appeared in the coalition government. Moreover, following the local elections of 1996, the Centre Party got into power in Tallinn and the coalition parties turned out to hold opposite positions in the power structures in the Tallinn city government. This affected their relations also in the central government, placing the coalition under even greater pressure. The relations between the Coalition Party and the Reform Party in particular turned sour after local elections in October 1996. Finally in 1997, the government had to resign once again, and a new minority government came into office under Prime Minister Tiit Vähi from the Coalition Party, who found replacements for all ministerial positions that the Reform Party had left empty. In order to guarantee the support of other parties in the parliament, particularly that of the Estonian Progressive Party faction, the position of the minister dealing with ethnic issues was granted to a member of that party, Andra Veidemann. Ms. Veidemann was characterised as a person with strong conviction and determination, and who helped to develop minority-related policies to a great extent.

#### 4.2 *The New Law on Citizenship of 1995*

As put forward in chapter 3.1, the Citizenship Law that came to force in 1992 was a copy-and-paste document of the law dating back to 1938. The entire text of that law was never fully published. Only the changes and cuts with regard to the old law were made public in the regular edition of Estonian legislation, *Riigi Teataja*. For this reason, the law remained quite ambiguous and contained many contradictions. Thus there was an acute need for a proper Law on Citizenship, which would reflect the current conditions of Estonia and, foremost, would be compiled in one whole text.

The new Law on Citizenship was supposed to liberalize the naturalization process, as pressured for by the international community. However, in general the content of the new law turned out to be the same as the earlier one had entailed. Moreover, there were new additional conditions introduced, which were not mentioned in the previous law. For one, the residence requirement was increased from two to five years. More importantly, the new law established that citizenship applicants were required to pass an exam on the Estonian Constitution and the Citizenship Law, and also the language requirements were revised.

With regard to the differentiated residence requirements, it should be recalled that the initial residence requirement for a person to apply for Estonian citizenship was two years before the application, as well as one year thereafter.<sup>348</sup> In the 1995 Law on Citizenship, this criterion was raised to five years of residence before an application for citizenship could be made. Already during the drafting of the law in 1994, the High Commissioner expressed his concern over how this change could affect the people who had settled in Estonia before the declaration of independence. Van der Stoel expressed his hope that the permanent registration in the Estonian SSR since 30 March 1990<sup>349</sup> would be considered as the starting point for calculations:

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<sup>348</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 6, pt. 2.

<sup>349</sup> This is the same date according to which residence permits are considered in the Law on Aliens, dating from 1993.

It is, in my view, especially important that the law will make clear, beyond any doubt, that the residence criteria of five (plus one) years of permanent residence counted from 30 March 1990 will be based on the time of actual residence in Estonia, and that the period spent in Estonia will be calculated both on the basis of permanent registration in the former Estonian SSR and on the basis of residence permits, permanent or temporary, under the new Law on Aliens. Thus non-citizens who have been residing in Estonia since at least 30 March 1990 would fulfil the residence requirement on 30 March 1995.<sup>350</sup>

The Estonian government actually assured at an early stage that residence would indeed be counted from 30 March 1990. In his response to the High Commissioner, Estonian Foreign Minister Luik specified that even though the new law required five years of prior residence in Estonia for the case of permanent residence permits, this clause would not be applied to people who had settled in Estonia before 1990.<sup>351</sup> The draft law presented to the High Commissioner foresaw that until 2005, those persons would have the right to apply for Estonian citizenship also with temporary residence permits, on the condition that they resided in Estonia permanently and legally according to the Law on Aliens.<sup>352</sup> In the final promulgated version of the Law on Citizenship, the special application conditions for residents prior to 1990 were non-expiring, i.e. even the time limit of 2005 was omitted.<sup>353</sup>

Another important modification of the citizenship legislation was the exam on the Constitution and the Law on Citizenship. The new Citizenship Law saw the introduction of an additional requirement for citizenship applicants. This exam was added to the already established language test. Lengthy public discussions had centred on the issue that citizenship applicants should know more about the country whose subjects they intended to become. More nationalist forces supported the inclusion of a wider range of topics in the exam, such as history and culture, as was the case in Latvia or the USA. However, the moderate voices got an upper hand in the discussion, and were able to limit the questions only to the basic legislation of Estonia. The legal test has many advantages over a more profound exam on history and culture. For one, the main clauses of the Constitution are a more objective matter for testing one's knowledge than history and culture, which are subject to various interpretations and are in general very broad topics. Secondly, the legislators wanted the exam to concentrate on issues that would be of direct benefit to the new citizens, primarily the citizen's constitutional rights, liberties and obligations.<sup>354</sup> The subject of the exam was therefore further limited to only a few chapters of the Constitution that concern citizen's fundamental rights, liberties and duties, as well as general provisions about the state and the people, the responsibilities of the parliament, government, President and courts.<sup>355</sup> Finally, the introduction of an additional exam lessened the burden of the language exam, which was often accused of being subjective, testing a person's knowledge of facts rather than his/her language skills.

However, the legislator's good intentions to make the constitutional exam focus on issues of direct relevance to new citizens were not carried out in reality. The time to prepare the questions for the exam was limited to a few months.<sup>356</sup> The bureaucratic staff of the Citizenship and Migration Office prepared the test and compiled rather mechanic reformulations of constitutional paragraphs into questions. Many questions are relevant, such as: 'Who holds the supreme power of the state?' (answer: the people); 'Is

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<sup>350</sup> HCNM Letter to Luik, 8 December 1994.

<sup>351</sup> Cf. Luik Letter to the HCNM, 23 December 1994.

<sup>352</sup> Permanent residency is defined by the 1995 Law on Citizenship as having been in Estonia at least 183 days in a year, and not having stayed abroad for more than 90 days in a row (Kodakondsus seadus [Law on Citizenship], 19 January 1995, para. 11). Residing in Estonia according to the conditions of the Law on Aliens includes residence permits, visas and other kinds of permission (Välismaalaste seadus [Law on Aliens], 8 July 1993, para. 9.1, amendend by: Väljasõidukohustuse ja sissesõidukeelu seadus [Law on the Obligation to Leave and the Prohibition on Entry], 21 October 1998.).

<sup>353</sup> Cf. Kodakondsus seadus [Law on Citizenship], 19 January 1995, para. 33.

<sup>354</sup> Cf. Ilves Letter to the HCNM, 4 June 1997.

<sup>355</sup> Cf. Kodakondsus seadus [Law on Citizenship], 19 January 1995, para. 9. The constitutional exam concerns chapters I, II, III, IV, V, VI, XIII.

<sup>356</sup> The new Law on Citizenship was adopted in January 1995 and Minister of Interior regulation No. 15 Eesti Vabariigi põhiseaduse ja kodakondsuse seaduse tundmise eksami küsimused [Questions of the exam on the Constitution and the Law on Citizenship of the Republic of Estonia] was enacted on 11 July 1995.

censorship allowed?'; 'Is the home inviolable?'; etc.<sup>357</sup> However, a multitude of questions can hardly be considered as beneficial for a new citizen in his or her every-day life. Such questions include: 'Who declares a state of emergency?'; 'Who declares a state of extraordinary situation?'; 'Will the government step down in case of a Prime Minister's death?'; etc.<sup>358</sup>

On the other hand, the test is quite simple, despite the fact that it concerns legal texts. Around half of the questions require just yes/no or single-word answers. All questions (and answers) are readily available for citizenship applicants, together with Russian translations and explications.<sup>359</sup> All applicants are also entitled to preparation classes. Finally, the texts of the Constitution and Citizenship Law can be used during the exam.

The High Commissioner stated clearly and strongly that the constitutional and language exams are in line with policies of many other countries, also within the OSCE community.<sup>360</sup> In his opinion, it could even be seen as desirable to guarantee that the new beneficiaries of citizenship will also know the basic principles of the state.<sup>361</sup> Thus, he did not disagree with the process in itself, but the HCNM did make repeated recommendations in relation to the exams' conditions and implementation. In general, he continuously called for the Estonian government to make the exam on the Constitution considerably easier. In the opinion of the High Commissioner, the level of difficulty of the questions was highly uneven: Whereas many of the questions were indeed quite simple, a number of them were difficult even for persons holding university degrees.<sup>362</sup> In addition, the fact that the exam had to be passed in Estonian made the test even more difficult for most citizenship applicants, who only had limited knowledge of the Estonian language.

In the opinion of the Estonian government, the High Commissioner had been influenced too much by the Russian press, which frequently stated that only persons with university degrees were able to answer the questions in the constitution exam. According to Estonian Foreign Minister Kallas, the exam was not as difficult as the High Commissioner had been made to believe. Considering that examinants could use the texts of the Constitution and of the Law on Citizenship during the exam, the only real requirement was sufficient language knowledge to locate the right passage in the legislation.<sup>363</sup> The percentage of persons passing the exam was very high, usually ranging above ninety per cent. In addition, also the OSCE Mission in Estonia recognized that passing both language and legal exam is possible for everybody with some preparation.<sup>364</sup>

At the time, the only point raised by the HCNM that the Estonian Foreign Minister considered worthy of attention and reviewing concerned the exemption of elderly people from the constitution exam.<sup>365</sup> However, neither the Estonian legislators nor the HCNM himself returned to this issue in later communication.

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<sup>357</sup> Cf. Siseministeerium [Minister of Interior], määrus No. 15 [Regulation No. 15], Eesti Vabariigi põhiseaduse ja kodakondsuse seaduse tundmise eksami küsimused [Questions of the exam on the Constitution and the Law on Citizenship of the Republic of Estonia], para. 1 p. 1, para. 2, p. 16, 23.

<sup>358</sup> Cf. ibis. para. 3, p. 20, 21, 32.

<sup>359</sup> The act listing the questions of the exam was published in the regular publication of Estonian legislation, *Riigi Teataja*. Additionally and more effectively, a bilingual booklet with all the questions, answers and short explanations was published by the Jaan Tõnisson Institute and with the help of the Foundation on Inter-Ethnic Relations. The latter booklet is distributed for free to all examinants, and these praise it highly. The High Commissioner himself had asked the Foundation on Inter-Ethnic Relations to fund the publication of this brochure.

<sup>360</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>361</sup> Cf. HCNM Letter to Kallas, 11 December 1995.

<sup>362</sup> Cf. HCNM Letter to Kallas, 11 December 1995.

<sup>363</sup> Cf. Kallas Letter to the HCNM, 7 February 1996.

<sup>364</sup> Cf. OSCE Mission in Estonia, Activity Report No. 93, 23 January 1996.

<sup>365</sup> Cf. Kallas Letter to the HCNM, 7 February 1996.

A year later in 1997, in an analysis of the High Commissioner's recommendations compiled by the Estonian Foreign Ministry, the responsibility for the changes in the constitution exam was shifted back to the High Commissioner. According to the report, Estonian legislators were not able to consider any amendments in the exam unless the High Commissioner did not identify more specifically which aspects or questions of the exam he considered as problematic. In his reply, Van der Stoel was quick to point out a few questions that he found to be too difficult, such as: 'Who decides the question of handing over a citizen of Estonia to a foreign state?'; 'Who has responsibility for securing (people's) rights and freedoms?'; and 'Name three basic obligations of each citizen established in the Constitution of the Estonian Republic?'. In his view, it made little sense to ask citizenship applicants questions that citizens of many European countries and also Estonian citizens would have had difficulties with. Despite the fact that citizenship applicants could use the texts of the Constitution and the Law on Citizenship, the High Commissioner was of the opinion that answering such questions is hard, because understanding and interpreting complicated legal texts requires training.<sup>366</sup> Nor did the HCNM find the argument convincing that over ninety per cent of examinants pass the constitution exam successfully. In his opinion, it would be better to ask how many of non-citizens were not applying because they considered the constitution test too difficult. In this connection, Van der Stoel referred to a study conducted by the International Organization for Migration (IOM) with the support of UNDP in 1996,<sup>367</sup> which demonstrated that seventy per cent of the non-citizens assessed stated that they would not be able to pass the constitution exam, and 95 per cent of them wanted the Law on Citizenship to be changed.<sup>368</sup>

The particular questions that the High Commissioner pointed out failed to indicate the difficulty of the whole test. Especially the two latter questions, which concern the protection of citizen's rights and freedoms, as well as naming citizen's basic obligations would be very beneficial knowledge for any citizen. Moreover, these are issues which are covered in the curriculum in civics class in Estonian high schools. Thus not only the 'new' citizens were expected to acquire such knowledge, as citizens 'by birth' also learned this at school. In his reply, Estonian Foreign Minister Toomas Hendrik Ilves upheld the opinion that the questions mentioned by the High Commissioner were relevant and that they had the new citizens' best interests in mind.<sup>369</sup> However, all three questions that the HCNM had pointed to, alongside a few others, were removed from the list of exam questions only some months after the High Commissioner's letter to the Minister of Internal Affairs.<sup>370</sup> Nevertheless, despite the Estonian Foreign Minister's repeated promises to simplify the constitutional exam, the content of the test has not been changed so far. Although the review and reformulation of the constitutional exam have been in process since 1999, this issue remains one of the very few that the High Commissioner and other international observers still criticise the Estonian government of.

Next to the new constitutional test, the language requirements for citizenship applicants were also an issue which related to the new Law on Citizenship. The HCNM brought up the issue again in 1994, when the parliament started drafting the new Citizenship Law, as this was also to include the language requirements for naturalization. The HCNM reminded the Estonian government in particular that he had received back in July 1993 the assurance that:

Directives will be issued to ensure that the language requirements will not exceed the ability to conduct a simple conversation in Estonian and the requirements will be even lower for persons over 60 and invalids.<sup>371</sup>

<sup>366</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>367</sup> Cf. IOM 1997.

<sup>368</sup> Cf. *ibid.*

<sup>369</sup> Cf. Ilves Letter to the HCNM, 4 June 1997.

<sup>370</sup> Cf. Siseministeerium [Minister of Interior], määrus No. 22 [Regulation no. 22], Siseministri 11. juuli 1995. a. määruse No. 15 Eesti Vabariigi põhiseaduse ja kodakondsuse seaduse tundmise eksami küsimused osaline kehtetuks tunnistamine [Partial invalidation of the Ministry of Interior Regulation No. 15 Questions of the Exam on the Constitution and the Law on Citizenship of the Republic of Estonia], 3 November 1997.

<sup>371</sup> HCNM Letter to Luik, 8 December 1994.

Following the adoption of the law, Van der Stoel again raised his concerns over the high number of words that the language test required, and expressed his hope that the test would be made easier. This time however, his recommendation mentioned knowledge of only 800 words as sufficient to conduct a simple conversation.<sup>372</sup> The High Commissioner's recommendation to make the language test easier and his criticism towards the requirement to know 2500 words had nevertheless already born fruit. In the new Law on Citizenship, the earlier requirement to know a certain number of words was replaced with a less mechanical testing of a person's language understanding and communication capabilities. Only a list of words, which had been approved by the Council of Europe, could be included in the language test. Since 1995 the language exams, although still organized on the basis of reading and listening comprehension, as well as speaking and writing capabilities, primarily test the applicant's ability to understand the content of the message. Less stress is placed on the 'art of expression'.<sup>373</sup> According to the Estonian Foreign Ministry, the language requirements in the 1995 Citizenship Act are at the minimum conversational level.<sup>374</sup> Also Van der Stoel concluded that, all in all, "after the various changes made to it, the language test could not reasonably be considered too high."<sup>375</sup>

In this regard it is important to note that the High Commissioner's reference to the minimum word knowledge requirement for passing the language test in his letter from December 1995 was a thorn in the Estonian perception of the HCNM for two reasons. Firstly, the minimum word amount that the HCNM proposed had fallen from 1500 words to 800 words, thus making his recommendations somewhat inconsistent.<sup>376</sup> Secondly, the High Commissioner's reference to word count as the basis of language requirements was in general out-of-date at the time: Standards based on a fixed number of words for evaluating language proficiency were a part of the Citizenship legislation of 1992, but were disregarded in 1995. Thus, by making this reference after the adoption of the law, the HCNM's competence was put under doubt.

As far as the question of language requirements for the elderly and disabled people is concerned, an issue re-addressed by the HCNM repeatedly in his letters to Estonian officials in 1993 and 1994, it has to be noted that the exemptions from language requirements remained by large the same as in the earlier law. However, the law of 1995 sets better standards for exempting some people born before 1930 and certain categories of invalids from the language exam, by including these clauses in the main text of the Law on Citizenship. Further concessions were made to category I invalids and some category II invalids, who were exempted from all language requirements.<sup>377</sup> Nevertheless, the HCNM's recommendation to exempt elderly people from all language requirements has not had any effect so far.<sup>378</sup>

Returning to the question what happens when an applicant fails the language test, it is interesting to note that in the 1995 Law on Citizenship no reference is made as to what will happen if a person fails the test, and what opportunities exist to repeat the language exam. According to the Estonian Foreign Ministry, everyone may take a pre-test.<sup>379</sup> In any case, the average success rate in the Estonian language exam has been very high,<sup>380</sup> which indicates that the Estonian government has been able to create favourable and fair conditions for the language test.

<sup>372</sup> Cf. HCNM Letter to Kallas, 11 December 1995.

<sup>373</sup> Kallas Letter to the HCNM, 7 February 1996.

<sup>374</sup> Estonia Today: Foreign Ministry's information and fact sheet series: Citizenship and Integration Policy, 7 January 1999.

<sup>375</sup> Zaagman 1999.

<sup>376</sup> First figure mentioned in 1993 and the second in 1995. HCNM Letters to Velliste, 6 April 1993, and to Kallas, 11 December 1995.

<sup>377</sup> Cf. Kodakondsus seadus [Law on Citizenship], 19 January 1995. Category II invalids who are exempted from language requirements include those who are permanent invalids and who are unable to complete an examination in accordance with the general requirements due to the state of their health. Persons with sight disabilities are exempted only from reading and writing requirements. Persons with hearing and speech defects do not have to fulfill the listening and speaking requirements. Estonia Today: Foreign Ministry's information and fact sheet series, January 1999, Citizenship and Integration Policy.

<sup>378</sup> Cf. This recommendation from 1993 was repeated again in 1997.

<sup>379</sup> Cf. Estonia Today: Foreign Ministry's information and fact sheet series, January 1999, Citizenship and Integration Policy.

<sup>380</sup> Cf. Järve/Wellmann 1999, p. 53. During the years from 1995 to 1999 over 80 per cent of applicants passed the test. Estonia Today: Foreign Ministry's information and fact sheet series, January 1999, Citizenship and Integration Policy.



In total however, the new Law on Citizenship, which was supposed to promote citizenship applications and speed up the process of naturalization in Estonia, did not reach its goal. Whereas the 1995 law was enacted in order to improve citizenship legislation, taking into account also the High Commissioner's recommendations, the new naturalization conditions were perceived to have become stricter than they had previously been. 35,041 persons had become naturalized after undertaking the full-scale regular procedures according to first Law on Citizenship,<sup>381</sup> but only 6,225 applicants became Estonian citizens according to the new law by 1 April 1997.<sup>382</sup> Moreover, out of this number, many applications during 1996-1997 were made on behalf of children, who under the new law could be registered as citizens without having to pass the exams.<sup>383</sup> Thus, there had been a serious fall in citizenship applications and accordingly also in naturalizations under the new provisions. This fall was mainly due to the fact that citizenship applicants perceived the new provisions as being more difficult, especially with regard to passing the tests. This assumption is backed by a content analysis of Russian-language newspapers that was conducted in Estonia during 1995-1996, which showed that two thirds of the articles on the citizenship issue were negatively oriented.<sup>384</sup>

#### 4.3 *The HCNM's Concern about Statelessness: Promotion of Naturalization and Reduction in the Number of Stateless People*

The issue of non-Estonians residing in Estonia without Estonian citizenship surfaced in 1992 and has been, certain improvements notwithstanding, an important issue ever since. When the 1938 Law on Citizenship was re-enacted in 1992, around 520,000 inhabitants in Estonia, almost 40 per cent of the population, became *de facto* stateless. According to estimations made by the High Commissioner, this number was reduced to about 210,000, or more than 14 per cent of the total population, by 1 April 1997.<sup>385</sup> This reduction is explained by the fact that approximately 125,000 people had successfully applied for Russian citizenship and 90,477 persons had received Estonian citizenship by 1 April 1997.<sup>386</sup> By 2001 the number of stateless persons was reduced further to around 178,000.<sup>387</sup> Of those persons who had received Estonian citizenship after 1992, 25,251 were ethnic Estonians and 23,326 non-Estonians who did not have to pass naturalization tests.<sup>388</sup> The latter were merited for their contribution to Estonia's independence, for example by having applied for Estonian citizenship prior to elections of the Estonian Congress in February 1990. This had indicated their support for Estonian independence.<sup>389</sup> For such persons, the requirement of Estonian language knowledge was waived by an amendment to the law in February 1993.<sup>390</sup> This special treatment was cancelled by another amendment on 22 November 1994.<sup>391</sup>

As the above-mentioned figures show, the number of people who had acquired Estonian citizenship since 1991 was still significantly smaller than the number of Estonian residents who were not citizens. As the High Commissioner's main concern in relation to minority issues in Estonia was from the beginning the

<sup>381</sup> In the new Law on Citizenship, the number of people who could be granted citizenship for their merits to the Estonian State was limited to five persons annually (Kodakondsus seadus [Law on Citizenship], 19 January 1995, para. 10 p. 3, amended by: Kodakondsuse seaduse § 10 muutmise seadus [Law amending the Law on Citizenship], 18 October 1995.), but shortly after this figure was increased to ten persons per year.

<sup>382</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>383</sup> The new law simplified citizenship acquisition for children with one parent that was an Estonian citizen, as well as for orphans and adopted children. This issue will be discussed in more detail under the subchapter on citizenship for children. Kodakondsus seadus [Law on Citizenship], 19 January 1995, para. 13-15.

<sup>384</sup> Cf. Kirch et al. 1997, pp. 101-102.

<sup>385</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>386</sup> See chapter 4.2.

<sup>387</sup> Cf. EU 2001, Progress Report, p. 23.

<sup>388</sup> Cf. HCNM Letter to Ilves, 21 May 1997; Pettai/Proos 1999.

<sup>389</sup> Cf. Raun 1997, p. 347.

<sup>390</sup> Cf. Eesti Vabariigi Ülemnõukogu otsuse "Kodakondsuse seaduse rakendamise kohta" muutmise seadus [Law amending the Supreme Council's decision 'On the implementation of Law on Citizenship'], 18 February 1993, para. 1.

<sup>391</sup> Cf. Kodakondsust käsitlevate õigusaktide osalise muutmise ja kehtetuks tunnistamise seadus [Law partially amending and invalidating the legislative acts concerning citizenship], 22 November 1994, para.2, p.1.

great number of non-citizens in comparison to citizens, he stressed on many occasions the inevitability that the great majority of non-Estonians would continue to live in Estonia, and that the Estonian legislation should reflect this:

On the one side, many Russians cannot be considered as a sort of migrant workers, since they have roots here and consider Estonia as their own country, and on the other side is their uncertainty about what the future will bring. The problem for many Russians is that they can't return to Russia. A small part of them does, but most won't be able to find housing and jobs if they do. So they say 'let's stay here. Let's try to give ourselves and our children a future here.' [...] The uncertainty makes them hesitate to choose their citizenship. [...] As far as Estonian citizenship is concerned, they have justified or unjustified doubts about whether it will be accepted or not and about what the rules are, how much they'll have to know the Estonian language.<sup>392</sup>

Many of the HCNM's recommendations aimed at promoting the process of naturalization, which is the obvious solution to reducing the number of stateless persons in Estonia. However, ever since the re-enactment of the 1938 Law on Citizenship, there have been crucial differences between the Estonian government and the OSCE on this issue. The OSCE, and especially the High Commissioner, have had to deal with a double concern - the reduction of statelessness and the high number of people in Estonia acquiring Russian citizenship. On the other hand, the Estonian government was not concerned with the number of Russian citizens in Estonia.

As a matter of fact, already in October 1992, 17,000 persons in Estonia had applied for Russian citizenship. Especially Northeastern Estonia, where the vast majority of the population is Russian, had been a problematic area in this respect. In 1992 only two per cent of Narva's population (of 85,000) had applied for Estonian citizenship. At the same time, already twice as many had obtained Russian citizenship.<sup>393</sup> The survey conducted by IOM with the support of UNDP in 1996 indicated that another wave of applications for Russian citizenship could follow after the adoption of the new Law on Citizenship.<sup>394</sup> The High Commissioner considered this possibility very alarming.<sup>395</sup>

According to Estonian estimates, the number of Russian citizens had already risen to over 89,000 by 1997.<sup>396</sup> This number was calculated on the basis of Estonian residence permits being placed in Russian passports. At the same time, the Russian Federation claimed the number to be significantly higher, at around 120,000 persons.<sup>397</sup> However, the Russian embassy in Tallinn refused to share any official data on this matter with Estonian officials, and one should also take into account that many Russian-speakers who had applied for Russian citizenship at the Russian embassy had left Estonia. The Statistical Office of Estonia estimated that around 40,000 Russian citizens left Estonia during 1992-1996.<sup>398</sup> Thus, it might be realistic to assume that at least 80,000-90,000 Russian citizens lived Estonia in 1997.

The little-contested reasoning behind the tendency for applying for Russian citizenship is that the application process for Russian citizenship is very simple in comparison to Estonian naturalization requirements. According to Russian legislation, any former citizen of the Soviet Union can acquire Russian citizenship on the basis of a simple application that can be submitted also to Russian embassies abroad. For these reasons, the High Commissioner throughout the years believed that the interest in acquiring Estonian citizenship was higher than the actual numbers of applications indicated. He therefore argued for the simplification of naturalization conditions in Estonia.<sup>399</sup> In 1997 he even referred in his letter to the Estonian Foreign Minister to the above-mentioned IOM survey, supporting his belief with poll results. According to the study, 62.5 per cent of stateless people in Estonia would have liked to acquire

<sup>392</sup> The Baltic Independent, 9 April 1993, Europe's man speaks softly.

<sup>393</sup> Cf. ODIHR Report on the Study of Estonian Legislation, December 1992.

<sup>394</sup> Cf. IOM 1997.

<sup>395</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>396</sup> Cf. Estonia Today, 23 February 1999.

<sup>397</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>398</sup> Cf. Kirch et al. 1997, p. 54.

<sup>399</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

Estonian citizenship, 11.4 per cent had considered this possibility, and 18.1 per cent would apply for citizenship if the application conditions changed. Moreover, 84.2 per cent would have liked their children to have Estonian citizenship.<sup>400</sup>

In contrast to the HCNM, Estonian officials did not, however, see a problem in the rapidly growing number of Russian citizens residing on Estonian territory, and were more ready to accept that non-Estonians residing in Estonia would become Russian citizens than to accept them as Estonian citizens. The most illustrative example of the Estonian government's position in this respect was expressed in Estonian Foreign Minister Riivo Sinijärvi's letter to the High Commissioner in 1996:

[that] individuals living in Estonia continue to apply for Russian citizenship should not be the cause of concern, as [...] the main goals should be to decrease the number of stateless individuals.<sup>401</sup>

The Estonian government has always shown its commitment to reduce the number of stateless people, but not necessarily to do so by simplifying the Estonian naturalization process. Throughout the years, Estonian officials have not been interested in increasing the number of Estonian citizens through people who can also apply for other countries' citizenship (having in mind citizens of former Soviet Union). The argument has been that the application for Estonian citizenship is the free choice of an individual, which the government cannot influence. People who are willing to go through the naturalization process and who accept the requirements of acquiring Estonian citizenship show and feel a true commitment and loyalty to the Estonian state and its independence. Moreover, those persons who have acquired Russian citizenship can always change citizenship once a feeling of belonging to Estonian State develops.<sup>402</sup> On the contrary, in the opinion of the High Commissioner, facilitating the process of acquiring citizenship would help to develop this feeling of loyalty among non-Estonians.<sup>403</sup> This is where the basic difference between the Estonian government and the High Commissioner lies. The first considers an application for Estonian citizenship as an act of loyalty to Estonia from the side of non-citizens. The latter regards Estonian citizenship as a precondition for developing a feeling of loyalty among non-Estonians.

As has been demonstrated by the numbers above, in addition to those applying for Russian citizenship, a great number of people did not apply for any citizenship. A reduction in the number of stateless residents was a continuous recommendation of the High Commissioner to Estonia. Already in 1992, the ODIHR/OSCE Mission noted with concern that Estonian officials voiced the expectation that a considerable share of the Russian-speaking population in the country should remain stateless, or that they should become citizens of other states.<sup>404</sup> Although the government since then declared to be equally committed to the reduction of statelessness by drafting new policies and legislation (at least in their statements<sup>405</sup>), many people in Estonia remained stateless and their legal status remained one of the main concerns of the HCNM. As it became clear to him that the citizenship law was basically untouchable, the HCNM concentrated his efforts on making recommendations to the draft Law on Aliens, and later to amending the Law on Aliens. His overall goal was to decrease the number of people applying for Russian citizenship, as well as to simplify the status of stateless people. In this regard he welcomed, for example, the government's efforts to solve problems relating to non-citizens by making aliens' passports a more common (travel) document. This, he hoped, would help to avoid new applications for Russian citizenship.<sup>406</sup>

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<sup>400</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>401</sup> Sinijärvi Letter to the HCNM, 27 November 1996.

<sup>402</sup> Cf. *ibid.*

<sup>403</sup> Cf. HCNM Letter to Velliste, 6 April 1993.

<sup>404</sup> Cf. ODIHR Report on the Study of Estonian Legislation, December 1992, para. 23.

<sup>405</sup> Comments on the recommendations by the HCNM, 6 April 1993.

<sup>406</sup> Cf. HCNM Letter to Kallas, 11 December 1995.

#### 4.4 *Aliens' Passports*

Alongside the issue of the citizenship exam, the High Commissioner also concentrated his efforts on the promotion of aliens' passports. As most of the Russian-speakers were still without Estonian citizenship, the pressure to avoid ethnic anxieties remained with the legislation and with policies relating to non-citizens. The High Commissioner saw the alien's passport as a solution to several mundane problems of the Russian minority. On the one hand, he foresaw the alien's passport as a travel document and as a means to guarantee non-citizens the right to travel abroad and to return to Estonia. On the other hand, the High Commissioner promoted also the use of the alien's passport as an internal identification document, especially as the Estonian government was planning to cancel old Soviet-time documents. In general, the High Commissioner wanted the alien's passport to be a widely used document, and not merely an exception that would be issued only in rare cases, the policy striven for by the Estonian government.

In July 1994 Estonian legislators introduced a temporary travel document to guarantee stateless persons the right to travel.<sup>407</sup> However, this document was valid only for one journey, and persons wanting to travel more often had to apply for travel documents repeatedly. Therefore, Van der Stoel recommended to the Estonian government to use aliens' passports as travel documents for all those who were not at the time citizens of any other state.<sup>408</sup> In his opinion, such a step would help to reduce the number of persons applying for Russian citizenship solely in order to solve their travel problems. Estonia would, however, have to guarantee the right to return for all those travelling with aliens' passports, which meant that other states would then recognize the document as well.<sup>409</sup> Sociological surveys conducted in early 1996 indicate that around two thirds of Russian citizens had opted for Russian citizenship in order to travel, as they wanted to visit their relatives in Russia.<sup>410</sup> Making aliens' passports more widely available was therefore seen as a step forward. However, as Russia required (and continues to do so) visas from alien-passport holders, it would not necessarily mean that they would be free from all travel difficulties.

Shortly after the High Commissioner's letter, the use of aliens' passports was considerably increased and the category of persons eligible to receive aliens' passports was expanded. Estonian Foreign Minister Siim Kallas was very happy to inform Van der Stoel about his government's decision. The regulation states that the alien's passport could be issued to:

- a foreigner who has been certified to be a stateless person, who has a right to residence permit in Estonia and who has no other travel document;
- a foreigner who is a citizen of another state and has a right to residence permit in Estonia, but can not obtain a passport from the state of his or her citizenship;
- a foreigner who resides in Estonia on the basis of a Soviet residence permit, who has a right to residence permit in Estonia and who has no valid passport or a similar document;
- a foreigner who has residence permit of Estonia and has no valid passport or a similar document;
- a minor less than 15 years old who is not Estonian citizen nor a citizens of any other state, but whose parent(s) have become Estonia citizen(s) [...].<sup>411</sup>

The largest category benefiting from the change in the regulation was the third one: people who reside in Estonia on the basis of permanent registration in the former Estonian SSR. According to the Law on Aliens, these persons have a right to continue residing in Estonia, given that they fulfil the conditions of the residence permit of the Republic of Estonia. However, they are not considered stateless according to Estonian legislation, as Russia considers itself a successor state of the Soviet Union, and all those with

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<sup>407</sup> Cf. chapter 3.6.

<sup>408</sup> Cf. HCNM Letter to Kallas, 11 December 1995.

<sup>409</sup> Cf. *ibid.*

<sup>410</sup> Cf. Kirch et al. 1997, p. 56.

<sup>411</sup> Cf. Määrus No. 16 [Regulation No. 16], Välismaalase passi väljaandmise tingimused ja kord [Ratification of the conditions and form of issuing alien's passport], 16 January 1996, para. 12.

Soviet citizenship can automatically obtain Russian citizenship. Thus, people could apply for aliens' passports without being considered officially stateless, which had before been the case.

Not only was the number of persons eligible for aliens' passports increased significantly, but the document was also made valid for travel purposes. The regulation states that while the residence permit in the passport is valid, a person in possession of an alien's passport can reside in Estonia, as well as leave and return to Estonia.<sup>412</sup> The document therefore guarantees non-citizens the right to travel and to return to Estonia. However, the passport does not guarantee the beholder Estonian diplomatic and consular representations' protection abroad.<sup>413</sup>

After the adoption of the regulation, the Estonian Foreign Minister called the High Commissioner to encourage member States of the OSCE to recognize the Estonian alien's passport. Van der Stoep did this without delay. On 14 February 1996, the HCNM made a plea to the OSCE community, drawing their attention to the matter:

[T]he Estonian Government decided to enable inhabitants of Estonia who are in possession of a residence permit but who do not have Estonian citizenship to obtain an aliens passport. This decision is of great importance for the approximately 300,000 mainly Russian speakers in Estonia who have not yet obtained Estonian citizenship. It enables them to be provided with a permanent travel document. This document permits them to freely leave the country and to return to Estonia. As the old system of temporary travel documents caused many difficulties for non-citizens of Estonia, I consider this to be a major step forward.

However, this important step forward would be of little practical consequence if the international community would not recognize this alien passport as a legal travel document. According to the Estonian Ministry of Foreign Affairs, so far only seven countries have recognized the validity of this document, notwithstanding the fact that Estonia has committed itself to permit the return of all those travelling with these documents. In practice, this means that holders of the aliens passport can only travel to seven countries. This could entail that potential applicants for this document would look for other means to be in a position to travel to a greater number of countries, such as applying for citizenship of a third country, notwithstanding the fact that they intend to continue living in Estonia.<sup>414</sup>

Despite the High Commissioner's appeal, the number of OSCE member States who recognize the alien's passport has risen very slowly. Five years later, in 2001, only 18 out of 55 member States allow holders of Estonian aliens' passports to enter their territory. Only two of them, Latvia and Lithuania, do not require those in possession of aliens' passports to have a visa to travel, while citizens of Estonia travel visa-free to almost all countries in Europe. Among Eastern European countries, only the Baltic states and Russia recognize the document. However, the situation is not much better with regard to many other countries. For example countries like Canada or Greece have still not recognized aliens' passports as valid travel documents.<sup>415</sup>

Nevertheless, the international recognition of aliens' passports turned out not to be the main problem. By the end of 1996, it became clear that issuing aliens' passports was a major task, and relevant authorities had difficulties in fulfilling their task in time. There were considerable delays in providing both residence permits and aliens' passports. The Citizenship and Migration Office was committed to decide on the

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<sup>412</sup> Cf. Määrus No. 16 [Regulation No. 16], Välismaalase passi väljaandmise tingimused ja kord [Ratification of the conditions and form of issuing alien's passport], 16 January 1996, para. 3. Actually the statement about the right to travel and return was included also in previous regulations. However there are new additional paragraphs which indicate that the new regulation intended alien's passport also for travel purposes, such as para. 10 and 13.

<sup>413</sup> Cf. *ibid.*, para. 2.

<sup>414</sup> HCNM Address to the Permanent Council, 14 February 1996.

<sup>415</sup> According to the Estonian Foreign Ministry's consular information, at [http://www.vm.ee/eng/kat\\_132/918.html](http://www.vm.ee/eng/kat_132/918.html) (24 April 2002), the following countries recognized the Estonian Aliens' Passport by January 2000: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Israel, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, Russia, United Kingdom, USA.

issuance of residence permits by 12 July 1996, and old Soviet internal passports were to remain valid until the same date.<sup>416</sup> Considering the delays, the Estonian government continued to recognize Soviet passports until November 1996 at first, and then extended the date even further. The High Commissioner welcomed the government's decision to continue recognizing Soviet internal passports for internal identification in Estonia until other documents were ready and distributed, but stressed his worry about the slow process of issuing new documents. Once again, Van der Stoel expressed his concern that the situation could create more uncertainty and confusion amongst non-citizens, and push them into applying for Russian citizenship. By October 1996, over 113,000 persons had applied for aliens' passports, and only 18,000 passports had been printed. On this background, the High Commissioner, even though recognizing that the issuance of aliens' passports was complicated and thorough, urged the Estonian authorities to speed up the process as much as possible.<sup>417</sup>

The situation in the late summer and early fall of 1996 was indeed somewhat unsettling. Not only were there delays in passport distribution, but also some other disturbing affairs caught the attention of Russian-speakers. In August, the Minister of European Affairs resigned and blamed the government of too much leniency towards Soviet army pensioners. In response, the government planned not to prolong the residence permits of those army pensioners who posed a security threat to Estonia. In the end, the overwhelming majority of the reservists were nevertheless granted residence permits.<sup>418</sup> In September, members of the nationalist organization 'Russia's National Unity' were found guilty of illegal arms possession, and were convicted in the Northeastern region of Estonia. In October, the court case of Pjotr Rozhok, a Russian extreme nationalist, continued in Tallinn. The leader of the Union of Russian Citizens in Tallinn had been expelled from Estonia because of his extreme nationalist propaganda and incitements to violence. The court, however, found the deportation to be illegal.

Thus, there was an imminent need to make at least the alien-passport distribution run smoothly. The Estonian government excused the delays by several factors. First, the officials had to check the accuracy of information on the applications.<sup>419</sup> There had been several cases of Russian citizens applying for aliens' passports, even though the documents were meant for persons without any citizenship. The Estonian government found the Russian authorities, especially the embassy, to be highly unco-operative in providing information on Estonian residents who had acquired Russian citizenship. Russian officials alleged that such a list could be used for persecutions.<sup>420</sup> Therefore, the Estonian Minister of Foreign Affairs asked the High Commissioner to mediate and to call the Russian embassy in order to provide a list of Russian citizens residing in Estonia.

Other major problems were of technical nature. The quality of blank passports was very poor, so that the officials had to change the provider and order new passports that were due to arrive in November 1996. Additionally, the information database was out-of-date and a new program was ordered in order to speed up the distribution process.<sup>421</sup>

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<sup>416</sup> Cf. Määrus No. 368 [Regulation No. 368], Välismaalastele elamis- ja töölubade andmise, pikendamise ning tühistamise kord [The order of issuing, prolonging and canceling of residence and work permits], 7 December 1995, para. 44. Ajutise reisidokumendi seadus [Law on Temporary Travel Document], 18 May 1994. Määrus No. 202 [Regulation No. 202] Vabariigi Valitsuse 21. septembri 1993. a. määruse No. 288 osaline muutmine [Partial changing of the governmental regulation No. 288 of 21 September 1993], 7 June 1994.

<sup>417</sup> Cf. HCNM Letter to Kallas, 28 October 1996.

<sup>418</sup> In October 1996, 8,490 military reservists and about 11,000 of their family members lived in Estonia. Kirch, A/Haabsaar 1997, p. 89.

<sup>419</sup> The Minister of Interior had decided in January 1995 that if needed, the Citizenship and Migration Office had to check the accuracy of applicants' data with the police and the army. Siseministeerium [Minister of Interior], määrus No. 1 [Regulation No. 1], Siseminsitri 3. veebruari 1994. a. määruse No. 3 täiendamine [Changing the Regulation No. 3 of 3 February 1994], 4 January 1995.

<sup>420</sup> Cf. Kirch et al. 1997, p. 54.

<sup>421</sup> Cf. Sinijarv Letter to the HCNM, 27 November 1996.

By May 1997, when the Soviet internal passports finally lost their validity, the production of aliens' passports had finally reached a level that satisfied demand. However, the distribution of the documents was still lagging behind.<sup>422</sup> According to the High Commissioner, some 50,000 applicants had still not received their new identification papers.<sup>423</sup> Even though both the Estonian government and Van der Stoel assured that other documents, such as drivers' licences and pensioner's identification documents would be accepted for identification within Estonia, the High Commissioner was concerned as these documents could not be used for travel purposes. Thus, he repeated his recommendation to speed up the process of distribution of aliens' passports.<sup>424</sup>

The Estonian government considered the High Commissioner's assessment to be unfair. Even though 50,000 persons had not yet received alien passports, 100,000 applicants already had. Moreover, the authorities had launched and financed an extensive media campaign in order to inform people about the expiration of Soviet passports and the importance of picking up (or applying for) new documents. According to the government, all those who showed any desire to obtain an alien's passport had received one.<sup>425</sup> In any case, the process of distributing the passports was largely completed by the end of 1997, and has not been an issue since then.<sup>426</sup>

#### 4.5 *The Amended Law on Aliens and the Question of Residence Permits*

Next to the (near) completion of the distribution of the aliens' passports, the autumn of 1997 witnessed another beneficial development in the situation of Soviet-time settlers in Estonia. A significant change was made in Estonian legislation: The Law on Aliens was amended so that temporary residence permits could be exchanged for permanent ones faster than the previous legislation had set out. The law had previously stipulated that persons who had lived in Estonia on the basis of temporary residence permits for at least three out of the last five years could apply for permanent residence permits.<sup>427</sup> This clause remained intact, but was complemented by another paragraph, according to which persons who had applied for temporary residence permits by July 1995 could apply for permanent residence permits already starting in July 1998.<sup>428</sup> This was an advantage for a considerable number of non-citizens. Given that most of the Soviet-time settlers had applied for residence permits much closer to the deadline of July 1995,<sup>429</sup> and taking into account that the procedures of an application could take up to a year, the majority of non-citizens would not have had the possibility to change their temporary permits to permanent ones before 1999 - or even later. In fact, only 716 permanent residence permits had been issued in 1997, although 4,030 temporary permits had been issued in 1993, and even 36,076 had been issued in 1994. Thus, as the former member of the OSCE Mission to Estonia, Tatjana Ansbach, has reported,<sup>430</sup> it seemed that Estonian authorities accepted the application *contra legem* just after the applicant had resided in Estonia for five years. The new regulation was, thus, even more welcomed as it assured that the great majority of non-Estonians residing in Estonia could finally enjoy the security of a permanent residence permit. Thus, the fear of deportation, which caused so much unrest and insecurity in 1993, could be overcome.

<sup>422</sup> Määrus No. 33 [Regulation No. 33], Endise NSV Liidu sisepassi Eesti Vabariigis isikut tõendava dokumendina kehtetuks tunnistamine [Cancellation of former USSR internal passport as an identification document in the Republic of Estonia.], 11 February 1997.

<sup>423</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>424</sup> Cf. Ibid.

<sup>425</sup> Cf. Ilves Letter to the HCNM, 4 June 1997.

<sup>426</sup> Cf. Semjonov 2000, p. 19; Thiele 1999a, p. 162.

<sup>427</sup> Cf. Välismaalaste seadus [Law on Aliens], 8 July 1993, para. 12, p. 3.

<sup>428</sup> Cf. Välismaalaste seaduse muutmise ja täiendamise seadus [Law amending the Law on Aliens], 24 September 1997, para. 20.

<sup>429</sup> In 1995, 237,147 temporary residence permits were issued. See the Statistics of the Citizenship and Migration Board, at [http://www.mig.ee/eng/press/stat\\_otsused.html](http://www.mig.ee/eng/press/stat_otsused.html) (24 April 2002).

<sup>430</sup> Cf. Ansbach 1996, p. 221, footnote 34.

The reasons for carrying out the amendment were of both political and technical nature, depending on the point of view of particular political parties in Estonia. The amendment was initiated at the time when the Centre Party was in government, and their leader, Edgar Savisaar, was Minister of Interior.<sup>431</sup> Their political agenda during the transition period originally included the zero-option for citizenship, and in general their political base was quite widespread, including also Russian-speakers. Thus, the amendment proposal was a continuation of their earlier line of minority politics, and an attempt to improve the situation of aliens in the country.<sup>432</sup> After the Centrist Party left the government, the Coalition Party continued to promote the amendment. At the same time, the more nationalist forces in parliament, such as the Pro Patria party, considered such yielding and softening of minority politics to be unnecessary.<sup>433</sup> Moreover, in their opinion the amendment would grant permanent residency to almost all non-citizens in Estonia, without any effort having been made by applicants, and with no requirements having been set by the authorities.<sup>434</sup> Even though there was great resistance to the amendment in parliament and it took three readings to be accepted, it was finally adopted.<sup>435</sup>

The government had decided that residence-permit applications, which were filed after the 1995 deadline would also be considered, but only on a case-by-case basis and with supplementary sanctions for breaking the law.<sup>436</sup> The amendment in the law can therefore be viewed as a type of 'award' for those persons who had respected Estonian laws and who had applied for residence permits in time. It can also be seen as a levy, as the process of issuing permits and aliens' passports had taken longer than planned. In addition, the original Law on Aliens included two paragraphs on the special treatment of persons who had resided in Estonia prior to 1990. Paragraph 20 specified the preferential rights of persons who had settled in Estonia during the Soviet period, in comparison to other foreigners.<sup>437</sup> Paragraph 21 addressed the simplified order of applying for a residence permit. The amendment was to cancel these paragraphs and make the treatment of Soviet settlers dependent on the legislation and residence permits of the Republic of Estonia, instead of dependent on references to the Soviet period.

However, basing the particular rights on the application deadline of 1995 instead of the residence before 1990 demanded some additional specifications, in order not to limit the rights people had held before the change in the law. Thus, the amendment stated that persons who had applied for a residence permit before July 1995 would not need a work permit for employment in Estonia and could vote in Estonian local elections, as persons with permanent residence permits could also do. In the opinion of the nationalist-minded opposition, this would make the concept of work permits completely obsolete, and would unnecessarily complicate the local elections process. Their attempts to exclude these sentences from the amendment law were, however, not successful.<sup>438</sup>

Finally, the Citizenship and Migration Office justified the amendment using technical arguments. As the temporary residence permits were usually issued for five years, and as most non-citizens had received their permits in 1996, most of the re-applications would be crammed into a rather limited timeframe around 2001. By allowing applications for permanent residence permits to be submitted already in 1998, the re-application procedures would be spread over a period of three years. This would spare the

<sup>431</sup> Cf. Stenogrammid [Parliamentary debate], 17 September 1997.

<sup>432</sup> Cf. *ibid.*

<sup>433</sup> Cf. Stenogrammid [Parliamentary debate], 30 June 1997.

<sup>434</sup> Mart Nutt, cf. Stenogrammid [Parliamentary debate], 30 June 1997.

<sup>435</sup> With votes 56 for, 5 against and 1 abstention. Stenogrammid [Parliamentary debate], 24 September 1997.

<sup>436</sup> According to the government regulation No. 368 those who had not applied for residence permits by July 1995 could still file their applications, along with a motivation for being late, by 30 April 1996 (määrus No. 368 [Regulation No. 368], Välismaalastele elamis- ja töölubade andmise, pikendamise ning tühistamise kord [The order of issuing, prolonging and cancelling of Residence and work permits], 7 December 1995, para. 14, 27. They were fined for administrative offence, but they were not to be expelled as the law had originally foreseen. Stenogrammid [Parliamentary debate], 24 September 1997.

<sup>437</sup> Their rights and obligations determined in earlier legislation of Estonia would be conserved. They continued to hold the right to receive residence permits if in accordance with the legislation and they maintained their right to file a complaint in court if their applications for residence permits were denied.

<sup>438</sup> Jüri Adams, cf. Stenogrammid [Parliamentary Debate], 17 September 1997.



residence-permit holders and the relevant permit-issuing authorities from long queues and heavy workloads. According to Minister of Interior Robert Lepikson, this could diminish potential social tensions.<sup>439</sup> Reasons that would appeal to the sceptical opposition forces were also publicised. For example, exchange at an earlier date would allow for the addition of a security code to the permits, which in turn would make it easier and more effective to control the migration processes. This would help to implement the rest of the law more effectively. Also, it would be easier to keep track aliens' ties with foreign states and cancel residence permits if the beholder had been away from Estonia for more than 183 days in one year, and had not registered his or her absence as the law required. In his words:

it is not a secret that a certain number of foreigners, who hold Estonian residence permits, actually reside permanently in other states. This amendment would help to avoid creation of such pseudo-residents.<sup>440</sup>

The same amendment included another set of changes that benefited the citizens of the European Union and the European Free Trade Association. The Law on Aliens set a quota of immigration to persons wanting to settle in Estonia since 1990, i.e. every year the number of people applying for residence permits in Estonia could not be more than 0.1 per cent of Estonia's total population.<sup>441</sup> According to the new amendment, citizens of the EU, Norway, Iceland and Switzerland could settle in Estonia without being counted in the quota limit. The limitation had started to stall the development of economic relations between Estonia and the EU, as international business partners of Estonian companies could be denied residence permits if the quota was full for the respective year. The nationalist forces in parliament did not welcome that the quota would increase the number of settlers from other parts of the world (i.e. Russia and the East) if citizens of EU would not count for the quota.<sup>442</sup> Thus, the draft could not be passed in parliament until a compromise was reached and the yearly immigration quota consequently was reduced to 0.05 per cent of Estonia's total population.<sup>443</sup>

While the High Commissioner welcomed the government's proposal to start issuing permanent residence permits earlier than originally planned, and hoped that this decision would be implemented, there is no record that he actually recommended the change.<sup>444</sup> The High Commissioner was not mentioned during the parliamentary debates. However, other pan-European organizations had played a role in the concerned change in the Law on Aliens. Apparently, the previous government followed up a promise given on the matter to the Council of Europe, and initiated the amendment draft in order to speed up the transition to permanent residence permits.<sup>445</sup> It seems also that this particular amendment was triggered by the looming invitation to the accession talks with the EU, and was adopted foremost because of the exemption of EU citizens from the immigration quota. During parliamentary debates, the proponents stressed on several occasions that the amendment was a necessary step in order to promote Estonia's accession to the EU, and was hence required in order to harmonize Estonian legislation with European Union regulations.<sup>446</sup> However, the opposition forces, especially Pro Patria, considered the amendment and Estonia's accession to the EU to be completely unrelated and independent of each other. Moreover, in their opinion, increasing the number of new settlers from the East would actually breach Estonia's successful accession to European Union.<sup>447</sup> Not surprisingly, at the other end of the political spectrum, the Russian deputies in the parliament also opposed the amendment law as it decreased the immigration quota. They claimed that the

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<sup>439</sup> Cf. Stenogramm [Parliamentary debate], 30 June 1997.

<sup>440</sup> Author's translation, Stenogramm [Parliamentary debate], 17 September 1997.

<sup>441</sup> Välismaalaste seaduse muutmise ja täiendamise seadus [Law amending the Law on Aliens], 24 September 1997, para. 6. This totals to approximately one thousand persons a year according to the Minister of Interior Robert Lepikson. Cf. Stenogramm [Parliamentary debate], 30 June 1997.

<sup>442</sup> During 1994-1996 the proportion of EU citizens and other persons among the residence permits receivers was about even, of whom 709 were citizens of Finland, 104 citizens of Germany and 90 citizens of Sweden. Cf. Stenogramm [Parliamentary debate], 30 June 1997.

<sup>443</sup> Cf. Välismaalaste seaduse muutmise ja täiendamise seadus [Law amending the Law on Aliens], 24 September 1994, para. 6.

<sup>444</sup> Cf. HCNM Letter to Ilves, 21 May 1997.

<sup>445</sup> Cf. Stenogramm [Parliamentary debate], 24 September 1997.

<sup>446</sup> Minister of Interior Robert Lepikson, cf. Stenogramm [Parliamentary debate], 30 June 1997.

<sup>447</sup> Mart Laar. Stenogramm [Parliamentary debate], 30 June 1997.

new quota would be in opposition to the liberalization of minority politics, which the European Union expected of Estonia as it seriously limited the right to family reunification.<sup>448</sup> The practice of often applying the immigration quota in cases of family re-unification had, as a matter of fact, already been criticized by the OSCE Mission to Estonia in 1993.<sup>449</sup> It was, however, not taken up by the HCNM. Notwithstanding the silence of the High Commissioner on this issue, it was brought up by the Russian-speakers themselves, and on 18 May 2000 the Supreme Court of Estonia reached a final judgment on the matter:

In its ruling, the Court held that exertion of the immigration quota with respect to residence applications purposing the family unification did not apply provisions of the Estonian Constitution and European Convention on Human Rights.<sup>450</sup>

Although the respective law has not been changed until today, the Citizenship and Migration Board obeyed to this ruling and issued residence permits for cases of family re-unification, beyond the limits set by the immigration quota. Whereas the HCNM continued to remain silent on this issue, the European Union demanded further efforts to continue to ensure that the issue of reunification of families was properly resolved.<sup>451</sup>

In general, one can consider the process of re-registration of all Estonian residents as a successful enterprise, which offers a relatively reliable picture of the new demographic situation in Estonia. Citizens of Estonia or of foreign states have adequate documentation. Stateless persons are the hardest to keep track of, but considering that some 150,000 of an estimated 210,000 stateless persons applied for alien passports, and over 320,000 non-citizens applied for residence permits by the 1995 deadline, they are also relatively well documented. In 1997 the Ministry of Interior estimated the number of illegal residents to lie at around 50,000 people.<sup>452</sup> In consequent years, 'amnesties' have been granted to persons who missed all of the application deadlines. However, these amnesties did not prove to be as successful as one would have hoped for. Estimates today are that still up to 30,000 people remain unaccounted for,<sup>453</sup> while according to official statistics 164,785 non-citizens have been provided with aliens' passports.<sup>454</sup>

#### *4.6 The Ratification of the Council of Europe's Framework Convention for the Protection of National Minorities*

While important changes were made to the domestic legislation concerning the non-citizens in Estonia, an important international legal document, the Council of Europe's Framework Convention for the Protection of National Minorities, was also ratified in the Estonian parliament. Obstacles and complications defined this latter process of ratification.

Estonia had signed the Council of Europe's Framework Convention for the Protection of National Minorities on 2 February 1995 - just after it was adopted. Already in autumn 1996, the Estonian government presented it to parliament for ratification. Just shortly before the issue came up in parliament, the High Commissioner addressed the ratification of the Convention in a letter to the Estonian Foreign Minister Siim Kallas. He was concerned about the formal reservation, which the government intended to include in the convention, in order to clarify that the convention would apply only to the citizens of Estonia. The text of the declaration contained the following:

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<sup>448</sup> Viktor Andrejev, cf. Stenogrammid [Parliamentary debate], 24 September 1997.

<sup>449</sup> Cf. CSCE Mission to Estonia, Political Report No. 13, 15 June 1993.

<sup>450</sup> LICHR 2000.

<sup>451</sup> Cf. EU 2001, Progress Report, p. 22.

<sup>452</sup> Later calculations set the number of illegal persons lower, at 30,000 people. Tammer 2001, p. 39.

<sup>453</sup> Cf. EU 2000, Progress Report p. 18.

<sup>454</sup> See <http://www.vm.ee/eng/estoday/2000/Integration%20statistics.html> (30 November 2000).

The Republic of Estonia understands the term "national minorities", which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as "national minority" those citizens of Estonia

- who reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity.<sup>455</sup>

The High Commissioner doubted whether such a declaration was in line with the meaning of the Framework Convention, as its article 6.1 refers explicitly to all persons living on the territory of a state:

The Parties shall encourage a spirit of tolerance and inter-cultural dialogue and take effective measures to promote mutual respect and understanding and co-operation *among all persons living on their territory* irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.<sup>456</sup> (Emphasis added by the author)

The HCNM pointed out that Estonia had not previously made any reservations to several OSCE documents concerning national minorities, which entail many similarities to the Council of Europe Framework Convention on National Minorities. He also drew attention to resemblance between the Convention and UN Declaration of 13 December 1985 on the Human Rights of Individuals who are not Nationals of the Country in which they live, granting them certain rights, such as to retain their own language, culture and tradition.

Even though the High Commissioner did not refer to his own institution, he personally favored the wider understanding of national minorities. As he had stressed on numerous occasions, he refrained from offering a definition of national minorities, claiming he could recognize a national minority when he saw one. Having made continuous recommendations on the Estonian legislation affecting the aliens, he certainly recognized non-citizens of Estonia as part of his mandate, and thus as members of a national minority.

All in all, it was not in the High Commissioner's power to recommend that the Convention be adopted without any reservations. However, he did hope that the added declaration would not signify that Estonia would withdraw from its previously made international and domestic commitments to respect and protect minorities. In his opinion, the reservation needed to be supplemented with adequate explanations and reassurances that Estonia would not restrict its policies concerning non-citizens in Estonia, nor limit their existing rights. Otherwise suspicions and concerns over the government's intentions could arise among the non-Estonian population.<sup>457</sup>

Nevertheless, the Russian parliamentary deputies expressed exactly these kinds of fears during the debate preceding the ratification of the Convention. Nikolai Maspanov pointed out that some 75 per cent of minority representatives in Estonia would not be protected by the Convention, and that their political rights would be breached if the additional declaration was adopted. Thus, Sergei Issakov, another Russian deputy, argued that the Estonian state did not need to protect its national identity, preserve its culture, and ensure the right to education in Estonian, etc. He was implying that persons not covered by the Convention would be denied basic rights, such as the right of association. In the opinion of the Russian

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<sup>455</sup> Declaration contained in the Instrument of Ratification of the Framework Convention for the Protection of National Minorities, deposited 6 January 1997; see also: Comments on the Declaration to Accompany the Ratification of the Framework Convention for the Protection of National Minorities

<sup>456</sup> Framework Convention for the Protection of National Minorities, 1 February 1995.

<sup>457</sup> Cf. HCNM Letter to Kallas, 28 October 1996.

deputies, the ratification of the Convention with such a declaration would not support stability and peace in the country, and would lead to protests by hundreds of thousands of non-Estonians, as sociological studies had indicated.<sup>458</sup>

Chairman of the Constitutional Committee, Mart Nutt, was of the opposite opinion and claimed that no European state wished immigrants to become national minorities, because such a development was considered the very source of instability. He also criticized that Russian deputies had taken the liberty to speak for all minorities in Estonia, especially as no historical minority in Europe would favor the idea of granting the status of a national minority to new immigrant groups. During parliamentary debates, members of the Reform party stressed that no previously existing rights would be breached, and that it would be inflammatory and irresponsible to claim otherwise.<sup>459</sup> For example, the above-mentioned right of association applied to all persons in Estonia, and the Convention would not take that right away. According to the government, Estonian legislation guarantees all human rights and freedoms of non-citizens in the country, for example by the Law on Aliens, but foremost by the Constitution. Article 9.1 in the Estonian Constitution stipulates:

The rights, liberties, and duties of everyone and all persons, as listed in the Constitution, shall be equal for Estonian citizens as well as for citizens of foreign states and stateless persons who are present in Estonia.<sup>460</sup>

Russian deputies saw the definition of national minorities that the government was proposing as too restrictive, not respective of the situation in Estonia and also out-of-date internationally. For example, the Commissioner on Democratic Institutions and Human Rights of the Baltic Sea Council, Ole Espersen, had on several occasions favored a definition of national minorities reaching beyond mere citizens. Also the UN was moving in the same direction, as the UN Human Rights Committee in its declaration of the 49<sup>th</sup> Session found that members of national minorities do not necessarily have to be citizens of the state, but can also be permanent residents.<sup>461</sup> Thus, the Russian deputies proposed another wording of the declaration to be adopted, and the definition of members of national minorities to include also permanent non-citizen residents. Only according to such a definition would the Convention give Russians the legal basis to seek for protection of their rights.

According to the government, the definition of national minorities, as spelled out in the reservation of the Convention, stemmed from other Estonian legal documents, primarily from the Law on Cultural Autonomy. This law dates back to 1923, and is heavily embedded in the particularities of the inter-war period. Most minority groups in Estonia today deem the law absolutely inapplicable and desolate, because it grants cultural autonomy only to citizens of Estonia. Russian deputies pointed out this general attitude towards the law. The position of the Foreign Ministry on this issue was a classical catch-22. Changing the definition of national minorities in the Convention would require major revisions to be made in Estonian domestic legislation, but making a reservation to the Convention would, at the same time, confirm the very same definition by an international document.

While Russian deputies had appealed to such international organizations as the Baltic Sea Council and the UN to support their arguments, Estonian deputies found refuge in the Council of Europe. The expert opinion of the Council of Europe was that no universal definition of national minorities existed. However, in international practice, only citizens of the state are usually considered as members of a national minority. Moreover, the definition of national minority as citizens was intended to be included in the Framework Convention itself, but one member, Turkey, opposed this. Thus, the scope of the Convention's application was left to be decided by the contracting parties. Since then, several other states, such as

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<sup>458</sup> This claim was made by Russian deputy Sergei Issakov, cf. Stenogrammid [Parliamentary debate], 21 November 1996.

<sup>459</sup> Cf. Stenogrammid [Parliamentary debate], 21 November 1996.

<sup>460</sup> Cf. Constitution of the Republic of Estonia, art. 9, para. 1.

<sup>461</sup> Cf. Stenogrammid [Parliamentary debate], 21 November 1996.

Germany and Luxembourg, who have ratified the Framework Convention, have made reservations to the document which are very similar to the Estonian ones.

Both the Minister of Foreign Affairs and the Chairman of the Constitutional Committee stressed that it was politically very important to obtain the greatest possible support for the document in parliament, as ratification would improve Estonia's reputation in the Council of Europe and in Europe in general. Nevertheless, only 60 MPs voted for the document, and eight parliamentarians who were present did not participate in the voting at all. In the end, five Russian deputies found it impossible to vote in support of the convention in its present form.<sup>462</sup> To conclude, most parliamentarians found it necessary to adopt the Convention on national minorities, but their opinions differed greatly with regard to the formal reservation.

On the same day when the Convention was ratified in parliament, the coalition government fell apart. The High Commissioner received an answer to his concerns only after the Convention was already ratified, and the reply came from a new Minister of Foreign Affairs, Riivo Sinijärv. The new minister defended the reservation made, and indicated how Estonia's laws exceed its international commitments anyway:

As you are already aware, Estonia's legislation in the areas of alien and minority protection is more progressive in many respects than comparable statutes in the majority of western European states, going well beyond the requirement of the UN Declaration of 1985 and exceeding many of the prescriptions in the Framework Convention for the Protection of National Minorities. The requirements of the Framework Convention have in large part already been fulfilled by Estonia; however, by ratifying the Convention Estonia hopes to create a degree of international momentum which could in turn influence other countries to approve the Convention.<sup>463</sup>

He also reassured that existing rights of non-citizens were not cancelled. Such basic rights and freedoms as equality before the law, right to education, freedom of information, freedom of the media, right of ethnic minorities to establish institutions of cultural self-government, and use of minority languages for administrative purposes were guaranteed to the citizens of foreign states and stateless persons in Estonia on an equal basis with Estonian citizens. The ratification of the Framework Convention did not affect these constitutional rights. Moreover, Estonia did not limit the meaning or commitments of the Framework Convention, as Estonia had made a 'declaration', not a 'reservation', to the document. A formal reservation would have meant that Estonia abstained or modified some part of the Convention's text. By adding a declaration, Estonia only specified some terms for a clearer implementation of the document, without making actual restrictions to the meaning and content of the Framework Convention.

#### *4.7 Estonia and the Outside World: Relations to International Organizations and to Russia from 1995 to 1997*

After the main developments between 1995 and 1997 regarding the rights of non-Estonians, in particular those of non-citizens, have been discussed in the last seven subchapters alongside the recommendations of the High Commissioner, it is now worthwhile to take a somewhat closer look at the international environment that influenced these events. To begin with, it is interesting to note that the CBSS Commissioner for Democratic Institutions and Human Rights, Ole Espersen, elaborated in public on a law that the HCNM addressed only in confidential letters to President Meri.<sup>464</sup> The law concerned is the 1996 Law on Local Elections.<sup>465</sup> Even though this law was not in the center of public attention in Estonia, it was

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<sup>462</sup> Cf. Stenogrammid [Parliamentary debate], 21 November 1996.

<sup>463</sup> Cf. Sinijärv Letter to the HCNM, 27 November 1996.

<sup>464</sup> Cf. OSCE Mission to Estonia, Spot Report, 18 June 1996.

<sup>465</sup> This issue came back on the political agenda in 1998 and will be discussed more detailed in chapter 5.3.

important because it introduced language requirements for candidates running for local council elections. The CBSS Commissioner followed this up and stated the following:

On 2 May 1996 I wrote to the Estonian President through the good offices of the Minister for Foreign Affairs concerning the Law on Local Elections adopted by the Parliament on 17 April 1996. I urged the President not to promulgate this law which in my opinion contained provisions which ran counter to the Constitution and to the spirit and letter of several human rights instruments, *inter alia* the UN Covenant on Civil and Political Rights and the ECHR and Protocol No. 1. The President's subsequent decision not to promulgate the law on the grounds that it provided for preliminary selection (on the basis of linguistic skills) among Estonian citizens standing for election, thus violating the important principle of free elections, is to be commended. The law was returned to Parliament for reconsideration according to Article 107 of the Constitution. It was then amended and promulgated and it now permits a satisfying implementation.<sup>466</sup>

Back in April 1995, the CBSS Commissioner had affirmed that human rights were not violated in Estonia, but in the following years, he made many recommendations on Estonian citizenship and aliens' policies. Whereas the CBSS Commissioner seemed to become more critical towards Estonia during this period, other international organizations relaxed their critique on Estonia after 1996. In its 1995 Memorandum on the Honouring of Obligations and Commitments by Estonia,<sup>467</sup> the Council of Europe voiced some criticism to Estonia, as the country had not yet ratified the European Conventions on Human Rights and the Prevention of Torture and Inhuman and Degrading Punishment or Treatment.<sup>468</sup> With regard to minorities, the rapporteur of the Council of Europe stated that Estonia's treatment of its historic national minorities could be called exemplary, but that problems remained with regard to the treatment of the non-historic Russian-speaking minority.<sup>469</sup> In this respect, strong critique was voiced towards the 1995 Law on Citizenship, as Estonian authorities had not taken into account some of the critical comments the Council of Europe had made during the drafting of this law. The rapporteur criticized, *inter alia*, that "the new citizenship law strengthens the requirements for the naturalization of resident aliens",<sup>470</sup> which in the Council of Europe's opinion is contrary to the aim that Estonia should be pursuing. Like the HCNM, the Council of Europe also referred to the citizenship and constitution tests, as well as to the strict language requirements.<sup>471</sup> With regard to the Law on Aliens, the report asked, as the HCNM had done, for the automatic issuance of temporary residence permits to those who had settled in Estonia before 1 July 1990, and suggested that the temporary travel document should be valid for multiple entrances.<sup>472</sup>

Estonia finally ratified the European Convention on Human Rights March in 1996, although without the extra protocol abolishing capital punishment, despite the hopes of the Council of Europe. However, in December 1996 the parliament amended the Penal Code and abolished capital punishment. In autumn 1996, the Convention on National Minorities was in turn. This was also ratified with an additional declaration that limited the definition of national minorities to citizens of Estonia. Although the above-mentioned problems towards the Russian-speaking minority remained, Estonia was exempted as one of the first Eastern European states in January 1997 by the Parliamentary Assembly of the Council of Europe from external supervision in the area of human rights.<sup>473</sup> Just a month earlier in December 1996, the United Nations General Assembly had decided to omit from its agenda the question of human rights in Estonia, an issue that Russia had repeatedly drawn UN attention to.<sup>474</sup> The HCNM also turned more positive towards Estonia. In January 1997 he sent an open letter to a Russian-language daily newspaper in Estonia, announcing that Estonia had made significant process in guaranteeing human rights, and that

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<sup>466</sup> CBSS, Commissioner, Annual Report 1995/1996.

<sup>467</sup> Cf. CoE/PA, Doc. AS/Jur (1995) 29, 8 September 1995.

<sup>468</sup> Cf. *ibid.*, para 6, 12.

<sup>469</sup> Cf. *ibid.*, para 13.

<sup>470</sup> Cf. *ibid.*, para 15.

<sup>471</sup> Cf. *ibid.*, para 16, 18-23.

<sup>472</sup> Cf. *ibid.*, para 26, 27.

<sup>473</sup> Cf. The Baltic Times, 6 February 1997, CE ends Estonia monitoring.

<sup>474</sup> Cf. Kirch, A/Haabsaar 1997, p. 92.

since the start of his involvement in 1993, he had not found any evidence in support of systematic persecution of minorities or violation of human rights.<sup>475</sup>

Also Estonia's relationship with the European Union, which became one of the most important international players in Estonia in the following years, developed positively between 1995 and 1997. The issue of an association between the Baltic States and the (then) European Community (EC) was raised as early as 1991/92 when the first Trade and Co-operation Agreement was negotiated. European integration was already at the top of the agenda of the Estonian government at the time.<sup>476</sup> The EC was quite reserved on this issue in the beginning, but finally began negotiations on the Europe Agreements with Estonia and the other Baltic states in August 1994. The Europe Agreement between Estonia and the European Union was initialed on 12 April 1995, signed on 12 June 1995 and ratified by the Estonian parliament on 1 August 1995.<sup>477</sup> Estonia was now included in the EU pre-accession strategy,<sup>478</sup> but the EU still reserved the right to suspend the agreement unilaterally, for example in the case of violent domestic conflict between Estonians and the Russian-speaking minority.<sup>479</sup> Given that the European Union did not rule out such a dangerous development, and given that the EU in general is compelled to prevent 'turbulent neighborhoods',<sup>480</sup> the EU became more active in this respect in 1995. For one, beginning in 1996, the European Union supported the language training for Russian-speakers in the framework of its PHARE programme, in order to facilitate the naturalization process. This had, in the EU's understanding, been hampered mainly by the inadequacy of resources available for Russian speakers to learn Estonian.<sup>481</sup> Secondly, the EU addressed problems related to the Russian-speaking minority in its Agenda 2000, which was elaborated by the European Commission in July 1997 and which set the criteria for Estonia's EU membership. In this document the Commission stressed, among other things, that "Estonia needs to take measures to accelerate naturalisation procedures to enable the Russian-speaking non-citizens to become better integrated into Estonian society."<sup>482</sup>

Moreover, in 1998 the EU began issuing progress reports on Estonia, as it did on other applicant countries as well. These reports raised quite detailed questions regarding the Russian-speaking minority. In this regard, it is also important to note that the EU conducted its foreign policy with a view to solving outstanding problems in Estonia also in the framework of the OSCE and other regional and sub-regional institutions, such as the Council of Europe and the CBSS.<sup>483</sup> Thus, by committing itself to the process of European integration, Estonia was forced to take the recommendations of the EU as well as these other organizations into account. It is therefore fair to claim that the co-operative intentions of the Estonian government were, to a large extent, influenced by the starting integration process towards the European Union, and that the government was interested in co-operating with other pan-European organizations, such as OSCE and Council of Europe, in order to make a good impression on the member States of the European Union.

However, relations with Russia did not develop equally well. The Estonian-Russian July Agreements were heavily criticized by some of the Ministers in the new Estonian government. This could have seriously affected the Agreements' ratification in parliament. In response, Russian President Yeltsin dissolved the delegation for the Estonian-Russian negotiations. Nevertheless, the July Agreements were ratified in December 1995. Though the border negotiations were reinstated in July 1996, and several complicated border sectors were agreed upon, no general agreement was reached. In September 1995, Prime Minister Tiit Vähi declared that Estonia would not make demands on territories lost to Russia. This opinion had

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<sup>475</sup> Cf. The Baltic Times, 6 March 1997, OSCE chief denies Estonia report.

<sup>476</sup> Cf. Gänzle 2002, p. 85.

<sup>477</sup> Cf. Estonia Today, 12 July 1998, Estonia and the European Union; Arnswald 2000, p. 35f.

<sup>478</sup> Cf. Gänzle 2002, p. 87.

<sup>479</sup> Cf. Arnswald 2000, p. 36.

<sup>480</sup> Gänzle 2002, p. 73.

<sup>481</sup> Cf. EU Agenda 2000, 15 July 1997, p. 19.

<sup>482</sup> EU Agenda 2000, 15 July 1997 p. 20. For a detailed discussion on the issue of integration, see chapter 5.1.

<sup>483</sup> Cf. Gänzle 2002, p. 74.

been spreading already earlier, but it was now made official. In November 1996 Estonian negotiators agreed to leave the Tartu Peace Treaty out of the Border Agreement altogether, if the 1991 Agreement between Estonia and Russia would also not be mentioned. According to this Agreement, Estonia would have to grant citizenship to all Russians in Estonia. The Estonian government approved the Treaty, and even though the Minister of Foreign Affairs was given the credentials to sign it on behalf of Estonia, no deal was born out of it.

Another spike in Estonian-Russian relations came with Russia's accession to the Council of Europe. Estonian delegates had voted against Russia's membership, mainly because of the situation in Chechnya. The Estonian Prime Minister later strongly criticized the actions of Estonian delegates, and accused them of undermining Estonia's economic interests. In addition, Russia demanded compensation for the rubles confiscated in Estonia during the currency reform of 1992. In this year, Estonia had adopted its own currency, the Estonian crown. Estonia refused to discuss this issue. An additional negative effect on the Estonian-Russian relations was caused by the fact that the city of Narva had reduced its water supplies to its neighbouring town in Russia, Ivangorod, in March 1997, due to the latter's outstanding debts.

It is possible that compromises concerning the border treaty were made in order to lessen Russia's opposition to NATO enlargement. However, this strategy did not bear fruit immediately. President Yeltsin threatened that NATO enlargement could even lead to war. When NATO finally made its enlargement decision public, it did not specify any particular states. NATO Secretary General Javier Solana visited Estonia in April 1996 in order to investigate Estonia's readiness to join the Alliance. In June 1996, US President Bill Clinton wished for the Baltic states' accession to NATO in a public address. Nevertheless, by 1997 it was clear that the Baltic states would be left out of the first round of NATO enlargement.

In February 1997, the Russian Foreign Ministry adopted a new doctrine on Russia's politics towards the Baltics that aimed at good neighbourly relations, co-operation, economic integration and exchange, each state's national security and respect for human and minority rights. These aims were to be achieved through the following steps:

- 1) safeguarding of region security;
- 2) protection of compatriots (Russians) rights in the Baltic states;
- 3) development of economic contacts;
- 4) demarcating the border between Russia and the Baltic states following to international law;
- 5) preventing the spread of illegal criminal activity from the Baltic states and
- 6) cultural co-operation.<sup>484</sup>

Estonians widely considered this doctrine as a neo-imperialistic attempt to establish control over the Baltic states, after Russia had lost its grip on slandering the Baltics in the eyes of international organizations. Thus, relations with Russia remained strained during the period of 1995 to 1997, and the need for Western support, including even protection against the Russian allegations that the human rights of Russian-speakers were violated in Estonia, was still visible. However, with the beginning of the EU accession process and the long-term prospect of joining NATO in a further enlargement round, the importance of the OSCE vanished in this regard.

#### *4.8 Conclusions Drawn by the Estonian Foreign Ministry and the HCNM*

The conclusions on the High Commissioner's involvement in Estonia by the end of the periods discussed so far were actually provided by the Estonian Foreign Ministry and the High Commissioner themselves. The European Commission had declared that it would evaluate Estonia's readiness to EU accession in the

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<sup>484</sup> Kirch, A./Haabsaar 1997, pp. 91-92.



question of minority politics on the basis of High Commissioner's recommendations. Therefore, in spring 1997 the Estonian Foreign Ministry prepared an overview of all of the High Commissioner's recommendations, and how these had been implemented by Estonia.<sup>485</sup> The document was presented to the members of the OSCE Permanent Council, where all states of the European Union are also represented. The analysis was meant to illustrate to EU members that Estonia had respected all recommendations made by the High Commissioner, and that Estonia had thus fulfilled its responsibilities in the field of minority politics and legislation, and could start accession talks with the EU.

The document divided the High Commissioner's recommendations since the beginning of his involvement in 1993 into four categories: suggestions made on technical problems, on public relations, on humanitarian considerations and on core issues. In the category of technical proposals, Estonia pointed out that the High Commissioner's concerns that persons who had failed the language test or who were unemployed could not apply for Estonian citizenship were unfounded, as the language test could be retaken unlimited times and unemployment benefits also counted as a legal income that was required for citizenship application. In relation to residence permits, the HCNM twice recommended to prolong the deadlines of applications, in 1994 and in 1995. On both occasions the deadlines were indeed extended.

In the category of public relations, the document listed all of the HCNM's calls to provide more information on minority policies and legislation. Van der Stoel had suggested to apply more widely known language-test requirements, language-training possibilities and to ensure that the practical information on all citizenship application procedures was available in the Northeast of Estonia in particular. As researchers Marika Kirch and others found, little communication or exchange of viewpoints took place between Estonian and Russian public sphere:

Russians who live within a Russian-speaking majority generally have poor access to detailed information about the Estonian society they live in. They are in a state of informational and psychological isolation, which generates fear for the future and makes their entire society unstable.<sup>486</sup>

Again, in the opinion of the Foreign Ministry, Estonia had implemented all of the HCNM's recommendations. Information on residence permits and citizenship applications was spread through mass media, both in print and broadcast. Information centres were also opened in the Northeastern region for this purpose. The centre in charge of language tests provided adequate information on language requirements. Language-training programmes were available on television and in classroom format, and these were supervised by the Ministry of Education.

Thirdly, humanitarian considerations were presented in the analysis of the High Commissioner's work. On several occasions, the HCNM had expressed his concern for the elderly, disabled and the poor in the process of residence permit and citizenship applications. In his opinion, the elderly and disabled should not have to fulfill the language requirement for naturalization. In return, Estonian authorities made *partial* exemptions to the groups in question, but they did not fully implement the HCNM's recommendations in this regard. Van der Stoel also stressed that application fees should not be prohibitive. Again, the government had established reduced rates (or complete exemptions) for pensioners, the unemployed, students and other more vulnerable social groups. These groups usually had to pay only 10 per cent of the regular fees.

Finally, the Foreign Ministry's analysis focused on issues of real substance. In response to the HCNM's constant recommendation to decrease the number of stateless persons, the Ministry concluded that the number of naturalized citizens was constantly growing, and lay well beyond the number of births in Estonia. In order to promote citizenship applications, the language requirements had been reviewed many

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<sup>485</sup> Cf. Ilves Letter to HCNM, 4 June 1997.

<sup>486</sup> Kirch et al 1997, p. 62; Kirch, M. 1997, p. 102.

times, and the naturalization exam had been made very simple. However, the government refused to consider changing the citizenship policy from the *ius sanguinis* to *ius soli* principle, which would grant automatic citizenship to all children born to stateless parents. The government claimed this would have been a substantial alteration. The HCNM's recommendations had also touched upon the importance of institutionalizing inter-ethnic dialogue. Again, the government found that the establishment of the President's Round Table on Minorities, as well as the imminent opening of an ombudsman's office,<sup>487</sup> satisfied this requirement. The analysis also declared that all recommendations made on the Law on Aliens and the Law on Local Elections had been implemented without further explanation. The recommendation to postpone the implementation of the Law on Public Service in Northeastern Estonia had been taken into account, and policemen and other public servants of the region were given extra time to learn basic Estonian and pass the language tests by January 1999.<sup>488</sup> The use of Estonian in the internal affairs of private companies was never implemented, contrary to what the HCNM had feared. The government also assured in the overview that all legislative acts that concerned minorities had been passed to the Council of Europe for evaluation, so that discrimination could not occur on the grounds of nationality or ethnicity.

Most of the recommendations and their implementation analysed in the Foreign Ministry's presentation to the Permanent Council concerned the years 1993 and 1994. During the period 1995-1997, the recommendations of the High Commissioner and the liberalization attempts by the Estonian authorities were not as compatible. While the High Commissioner talked about the unfavorable implications of the citizenship exam, the Estonian government stubbornly explained that the exam was necessary and useful for the future citizens. To ease the situation as much as lay in his power, the HCNM asked the Foundation on Inter-Ethnic Relations to publish booklets that entailed the exam questions and answers. In relation to the ratification of the Council of Europe's Framework Convention on Protection of National Minorities, the High Commissioner's implicit hope had been that the additional declaration defining the national minorities only as citizens of the state would not be included. However, it was. Nevertheless, the Foreign Ministry gave the HCNM assurances that no existing rights of the non-citizens would be breached as a result.

At the same time, the Estonian government made an independent step to provide non-citizens with permanent residence permits earlier than planned, and the HCNM could afterwards but happily welcome the decision. During this period, some other minor liberalizing changes were also made to the legislation on aliens. The HCNM and the Foreign Ministry did not consider these changes worthy of mention. For example, the conditions according to which former convicts and Soviet army pensioners could receive residence permits were relieved.<sup>489</sup>

With regard to the question of aliens' passports one can, however, detect clear links between the HCNM's recommendations and the Estonian government's actions. It had been the HCNM's long-standing wish that aliens' passports be made widely used documents in Estonia, both for domestic identification and for travel purposes. This recommendation was finally implemented in 1996. However, the joy was short as technical complications concerning the distribution of aliens' passports arose soon thereafter. The HCNM made pleas to the Estonian government to speed up the issuing process, but officials were obstructed by the poor quality of the passport blanks and the enormity of the information to be processed. Only by 1997 did the situation ease up and most people were finally issued new identification documents.

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<sup>487</sup> The ombudsman will be discussed in more detail in chapter 5.4.

<sup>488</sup> In 1997 some 200 policemen in Northeast Estonia were facing loss of employment due to their lack of knowledge in Estonian.

<sup>489</sup> Cf. Määrus No. 368 [Regulation No. 368], Välismaalastele elamis- ja töölubade andmise, pikendamise ning tühistamise kord [The order of issuing, prolonging and canceling of residence and work permits], 7 December 1995, para. 38. Määrus No. 309 [Regulation No. 309], Vabariigi Valitsuse 14. mai 1996. a. määruse nr. 130 Välisriigi relvajõududes kaadrisõjaväelaseks teeninud välismaalastele ja nende perekonnaliikmetele elamislubade andmise ja pikendamise korra kinnitamine muutmise [Changing the Regulation No. 130 on issuing and prolonging the residence permits to retired servicemen of foreign army and their family members], 13 December 1996.

The HCNM admitted that Estonia had made considerable progress in establishing and implementing legislation that guaranteed the rights of the non-Estonian population. He restated that he had not found violations of human rights in Estonia, and that minorities in Estonia were not persecuted. Van der Stoel was confident that as Estonia had never followed a policy of expulsion, it would not do so in the future either. He confirmed that the language test could no longer be considered as too demanding, but stressed again the importance of intensively continuing the language-training efforts. In addition to the establishment of the Presidential Roundtable and the ombudsman's office, he also welcomed the appointment of the Minister for Inter-Ethnic Affairs, which will further promote the flow of information between the officials and minority representatives.

There were only two concrete questions that the HCNM thought Estonia could still work on: the constitution exam and granting citizenship to stateless children. Both of these issues were part of his larger concern for the high number of stateless persons and citizens of Russia in Estonia. In the opinion of Van der Stoel, Estonia could still further promote the naturalization process by simplifying the constitutional exam. He did not envisage it necessary to abolish the test as such, but only the most difficult questions were to be excluded. He also found that Estonia is bound by international commitments to grant citizenship to children born in Estonia to stateless parents, and this policy could thus be implemented without actually dropping the *ius sanguinis* principle.<sup>490</sup>

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<sup>490</sup> Cf. HCNM Letter to Ilves, 21 May 1997.



## Chapter 5. The Liberalization Period Since 1998

1997 was a turning point in Estonian politics, both domestically and internationally. As already indicated, Estonia was invited to accession talks with the European Union, alongside Cyprus, Hungary, Poland, the Czech Republic and Slovenia. This was a major recognition of Estonia's successful democratization and economic development. Consequentially, Estonia became even more confident about its minority politics, and by and large accepted advice from no-one else but the EU. Thus, after 1997 the effectiveness of the HCNM was dependent to a high degree on whether or not his recommendations were backed by the EU. For example, the Estonian Foreign Ministry and the High Commissioner fought heavy battles over granting citizenship to stateless children born in Estonia. Both dived into lengthy argumentations on why this could or could not be implemented respectively. Only with the pressure of the EU did Estonia agree to change its legislation and offer a simplified opportunity for stateless children in Estonia to acquire Estonian citizenship.

The liberalization of the citizenship legislation was, however, coupled with the tightening of the language law, which was a major drawback in Estonian minority politics during this period. Only after renewed international protests were the restrictions abolished bit by bit, finally leading to an actual liberalization of language questions. Another breakthrough concerned the ombudsman's office, which was finally established in 1999.

All of the above-mentioned steps were taken were carried out under the auspices of the national Integration Programme, which had been developed step by step since 1996. Once Estonia realized the importance of its own initiatives to solve minority-related issues and to promote its chances of EU accession, an overarching Integration Programme was launched and liberalization was striven for.<sup>491</sup>

This chapter on the period from 1998 to 2001 will first elaborate on the Integration Programme, and will then address the issue of granting citizenship to stateless children, the language question and the ombudsman institution.

### 5.1 *Integration Programme*

Already in his first letter to the Estonian Minister of Foreign Affairs, the HCNM had recommended to the Estonian government that it should pursue a policy aimed at:

the integration of the non-Estonian population at by a deliberate policy of facilitating the chances of acquiring Estonian citizenship for those who express such a wish, and of assuring them full equality with Estonian citizens.<sup>492</sup>

The Estonian government responded to the HCNM that it "supports the recommendation of the High Commissioner to take early action to improve a visible policy of dialogue between the Government of Estonia and the non-citizen population."<sup>493</sup> A concrete strategy in this respect was, however, not forthcoming. Only after 1997 did the Estonian government pursue a more active integration policy. In order to support the government's efforts, the UNDP office in Tallinn convened a working group in May 1997, consisting of several well-renowned Estonian scientists. After intensive consultations with other experts, the group drafted a document titled "Integrating non-Estonians into Estonian Society: Setting the Course."<sup>494</sup> The document was not drafted as a systematic plan of action, but as a mere "guiding support

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<sup>491</sup> Cf. Government of the Republic of Estonia, State Programme "Integration in Estonian Society 2000-2007", 14 March 2000.

<sup>492</sup> HCNM Letter to Velliste, 6 April 1993.

<sup>493</sup> Comments by the Ministry of Foreign Affairs of Estonia on the Recommendations submitted by the HCNM, 6 April 1993.

<sup>494</sup> Cf. UNDP, 15 September 1997.

material for working out a domestic integration strategy."<sup>495</sup> The next step was the nomination of Andra Veidemann as Minister responsible for Interethnic Relations. For the first time, a member of the Estonian government became officially responsible for the integration process. This was even continued under the conservative government of Mart Laar in 1999, when Katrin Saks was appointed to the post. On 10 February 1998, the Estonian government adopted a policy paper called "The Integration of Non-Estonians into Estonian Society – The bases of Estonia's national integration policy", and on 31 March 1998 an "Integration Foundation"<sup>496</sup> was established in order to co-ordinate and conduct projects targeted at the integration of non-Estonians into Estonian society. The policy paper resulted in an "Integration Strategy", which was presented to the public on 6 April 1998 together with the OSCE Mission to Estonia.<sup>497</sup> Finally, on 14 March 2000 the Estonian government adopted a State Integration Programme for the period from 2000 to 2007. This programme aims to serve as an action plan for social integration through government institutions, county governments, local governments and other institutions and organizations. It was characterized by the OSCE as a significant development, as it aimed not only at the linguistic and socio-economic integration of non-Estonians, but also at their legal and political integration "defined as the formation of a population loyal to the Estonian State and a reduction in the number of residents without Estonian citizenship."<sup>498</sup> Notably, the new document no longer spoke of integration of non-Estonians into the Estonian society, but of the integration of Estonian society in its entirety.<sup>499</sup>

As indicated above, the Estonian Integration Programme was developed with the help of prominent Estonian scholars. Already for several years, Estonian researchers on ethnic relations had been working on possible integration tactics. The first project, dated 1996, focused on the integration of Russian-speaking youth into Estonian society, concentrating on issues of multicultural education and cultural adaptation programmes. The project resulted in concrete policy measures, which were published and also implemented.<sup>500</sup> One of the scholars, Mati Heidmets, presented an integration model visioning the formation of multicultural and multilingual minorities, i.e. minorities with their own strong ethnic identity, but ones that were well-adapted to the Estonian cultural environment.<sup>501</sup> The initiative of Estonian scholars has been viewed as a very important step towards internalizing the need for inter-ethnic integration of Estonian society. The steps taken by researchers were an important sign that Estonian society itself was taking over the initiative to solve ethnic problems in the country.<sup>502</sup>

Thus, in contrast to the early 1990s, when the idea that the Russian-speakers would finally leave Estonia was still widespread, by the end of the decade it was widely accepted that the great majority of Russian-speakers would remain in Estonia. At the same time, the Estonian government had observed that by the beginning of 1998 a "mental shift has occurred among the majority of non-Estonians, including the acceptance of Estonian independence as inevitable fact."<sup>503</sup> It also recognized the danger emanating from a continued alienation of the non-Estonian population.<sup>504</sup> Thus, a positive change of perception, in a direction recommended to the Estonian government already in 1993 by the HCNM, had finally taken place by 1998. However, moderate Russian-speakers, such as Alexei Semjonov from the Tallinn-based Legal Information Centre for Human Rights, criticized the new approach that demanded for integration as a prerequisite for participation, instead of aiming for integration through participation, as had been actually intended by the HCNM in 1993.<sup>505</sup>

<sup>495</sup> Ibid., p. 1.

<sup>496</sup> Cf. <http://www.meis.ee> (21 May 2002). The foundation was originally named "Non-Estonian Integration Foundation".

<sup>497</sup> Cf. OSCE Mission to Estonia, Activity Report No. 112.

<sup>498</sup> Cf. OSCE Annual Report 2000, p. 27.

<sup>499</sup> Cf. Poleschchuk 2001b, p. 32.

<sup>500</sup> Cf. Kirch, et al. 1997, p. 33.

<sup>501</sup> Cf. Heidmets 1997, p. 338.

<sup>502</sup> Cf. Mätlik, Tanel, Adviser to Minister Katrin Saks, Author's interview, 22 September 1999.

<sup>503</sup> Government of Estonia, The Integration of Non-Estonians into Estonian Society, 10 February 1998, p.1.

<sup>504</sup> Ibid.

<sup>505</sup> Cf. Semjonov 2000 and his remarks at a ECMI Seminar 1998, summarized in Järve/Wellmann 1999, p. 12.

Nevertheless, the Nordic countries and the United Kingdom supported the Integration Programme through a special project, launched in August 1998 and implemented together with the UNDP.<sup>506</sup> Also the European Union allocated more than 4,5 million Euros for the period from 1998 to 2003 for language and integration projects via PHARE.<sup>507</sup> As a matter of fact, the EU had demanded in its Agenda 2000 that Estonia should integrate the non-Estonian population better into Estonian society.<sup>508</sup> Thus, there was not only international pressure but also, and even more significantly, a widespread international support for integration. The HCNM on his part kept a low profile with regard to concrete integration projects, leaving it to the OSCE Mission and the EU to play a more visible part. However, the HCNM was not entirely passive either. He supported the integration process indirectly through The Hague-based Foundation for Inter-Ethnic Relations, which, for example, published two brochures on the naturalization process.<sup>509</sup> Moreover, this Foundation organized, on the initiative of the HCNM and in close collaboration with the OSCE Mission to Estonia, a seminar in Tallinn in July 1999 on "Integration, Educational and Linguistic Rights."

These positive developments notwithstanding, one has to note, however, that there still remains an important point of difference among Estonians and Russian-speakers with regard to the integration process. Even though Estonians recognize that integration is a two-way process that requires efforts from Estonian society as well as from the Russian community, the general opinion is still that the newcomers have to integrate into the Estonian society.<sup>510</sup> While Estonians view the naturalization process as an indication of loyalty to the Estonian state, for non-citizens who become Estonian citizens the process as a mere 'official exercise'.<sup>511</sup> This difference has not yet been overcome, which indicates that the integration process itself has just started. However, it seems that it has reached a sufficient degree of internal support both from the Estonian and the non-Estonian side.

## 5.2 *Granting Citizenship to Stateless Children*

Next to the start of a general integration policy, a major step in minority politics during the liberalization period concerned granting Estonian citizenship to stateless children. Ever since Estonia became a member of the OSCE, and since the latter got involved in the minority politics of Estonia, the issue had been on the agenda. This question has revolved around the longest and most detailed controversies and discussions between the Estonian government and the High Commissioner. The Estonian Citizenship Law, dating from 1992, states that children will acquire Estonian citizenship through the process of naturalization together with their parents.<sup>512</sup> In general, the naturalization conditions for persons who settled in Estonia during the Soviet occupation were accepted as such, and the international recommendations concerned mainly the simplification of these conditions. However the international community always stressed that the same process could not be applied to minor children whose parents were stateless, as this would be contradictory to international law.<sup>513</sup>

At the earliest in 1992, the ODIHR report on Estonia pointed out that Estonia has a commitment to the International Covenant on Civil and Political Rights, according to which every child has a right to nationality. Therefore, the report recommends registering as Estonian citizens all children born of former USSR nationals who would otherwise be stateless.<sup>514</sup> The report does not specify the time nor place of

<sup>506</sup> Cf. UNDP et al. 1999; OSCE Mission to Estonia, Activity Report No. 143.

<sup>507</sup> Cf. EU/PHARE 1999, 2001.

<sup>508</sup> Cf. EU 1997, p. 20.

<sup>509</sup> Cf. Zaagman 1999, p. 33.

<sup>510</sup> Cf. Kirch et al. 1997.

<sup>511</sup> Kirch et al. 1997, p. 58.

<sup>512</sup> Cf. Ülemnõukogu [Supreme Council], Kodakondsuse seaduse rakendamise kohta [Decision on Implementing the Law on Citizenship], 26 February 1992, para. 4.

<sup>513</sup> Cf. Wiegandt 1995, p. 123.

<sup>514</sup> Cf. CSCE/ODIHR Report 1992, para 71.

birth of these children. According to the report, implementation of this recommendation would be in conformity with the Estonian Citizenship Law's paragraph 3.6.<sup>515</sup> As mentioned above, this law is a reformed version of the Law on Citizenship that was in force in 1940. The 1940 version still included the right to Estonian citizenship at birth for children born in Estonia to stateless parents (para. 3, points 6-7). However, the resolution of the Supreme Council on implementation of the Citizenship Law restates just generally the birthrights to Estonian citizenship in paragraph 3. Thus, in fact, for a whole year after the promulgation, the law granted the right of Estonian citizenship, at birth, to children born to stateless parents. However, in March 1993 the decision about the implementation of the Law on Citizenship was amended, so that the enumeration of the right to Estonian citizenship at birth ends with point 5. Thus the stateless children born in Estonia are left out of the law. In 1993 the High Commissioner mentioned the issue again in two of his communiqués with the Estonian government.<sup>516</sup> He recommends granting Estonian citizenship to children who would otherwise be stateless, but limits this recommendation to children *born in Estonia*. In support of his argument, the HCNM refers particularly to article 3 point 6 in the Citizenship Law, which by the time when the recommendation was written had already been decided to be cancelled.<sup>517</sup> In addition, he did, however, also refer to other legal documents that the ODIHR report had mentioned, as well as to the Convention of the Rights of the Child (article 7, para. 2) that had been in force in Estonia since 1991.

The issue of granting citizenship to stateless children is included in the High Commissioner's recommendations again only in 1997. Thus, a rather long break occurred during which the issue did not receive any attention on behalf of Van der Stoel. Even prior to the adoption of the new Law on Citizenship in 1995, when the High Commissioner made some other recommendations, the concern for the children of stateless persons was not expressed in available official communication. It is possible that the issue still remained on the agenda during this period, but there is no official record of recommendations on stateless children. Alternatively, the issue could have faded in the face of other, greater problems that arose in consequent years, for example in relation to the aliens' law and other aspects of the new Law on Citizenship.

Nevertheless, the High Commissioner's concern for stateless children arose with new vigour again in 1997. In that year, the Estonian Foreign Ministry prepared the aforementioned document, which provided an overview of the High Commissioner's recommendations up to that date. The Estonian authorities claimed to have implemented most of these recommendations. In the document, the Foreign Ministry also put forward an argument that Estonia had no legal obligations to naturalize children born in Estonia, thus opening up the topic to debate again. The High Commissioner's letter from 21 May 1997 is largely a response to these assertions.<sup>518</sup> Among others, Van der Stoel brought up again the recommendation to grant Estonian citizenship to children who otherwise would remain stateless. The Estonian government had not implemented this policy by then. The letter includes a long articulation of Estonian international commitments, and in response, the High Commissioner went into length in interpreting different clauses in international conventions that Estonia had committed itself to. Thus, the HCNM stressed that, according to the Convention of the Rights of the Child, children could not be made beneficiaries of the rights of their parents. Therefore, even if Estonia would consider former citizens of the USSR to hold the right to apply for Russian citizenship, thus not being fully viewed as subject to statelessness, the same consideration could not be applied to their children. Van der Stoel thus recommended introducing the *ius soli* principle to Estonian citizenship policy in this particular case, as was done in Finland. He rushed to add that this did not necessarily mean that Estonia would be obliged to grant citizenship to all children born in Estonia, but only to those who would otherwise become stateless. Consequently, the HCNM referred to two further limitations on the issue of stateless children that were accepted in the Convention, and which were also

<sup>515</sup> Cf. *ibid.*

<sup>516</sup> Cf. HCNM Letters to Velliste, 6 April 1993 and to Meri, 1 July 1993.

<sup>517</sup> The amendment to the Law on Citizenship was adopted in the Parliament on 23 March 1993, but the change came to force only on 26 April 1993, after High Commissioner's letter; see Kodakondsuse seaduse muutmise seadus [Law amending the Law on Citizenship], 23 March 1993.

<sup>518</sup> Cf. HCNM Letter to Ilves, 21 May 1997.



recently supported by a consensus opinion in the Council of Europe. First, parents were still required to submit a formal application on behalf of their child. Thus granting citizenship on the basis of *ius soli* principle was not necessarily automatic. Second, proof of previous residence could also be required. According to the Convention on Nationality, up to five years could be set as a requirement.

Further discussions on the same issue revolved around the constitution exam and language tests that were included in the Estonian Citizenship Law. From the High Commissioner's letter one can assume that that one reason why the Estonian government declined to grant citizenship to stateless children related to the questionability of their loyalty to the Estonian state, as they were brought up by parents who do not have Estonian citizenship. Much more certainty could be obtained about their attitudes if children were naturalized together with their parents, who would thereby illustrate their commitment to the state they were living in (and proving it by knowledge of Estonian laws and language through the tests). Alternatively, the children themselves could be required to pass the tests. Only in response to this line of argument can one understand the High Commissioner's concern that keeping the obligation of citizenship tests robbed the Convention of the Rights of the Child its meaning. In this way, the child's right to nationality would be made dependent on the tests, as well as on the prerequisite timeframe of more than five years. Tests would be passed only when 'approaching adulthood'. The official response of the Estonian government was that granting citizenship to stateless children would rob Estonian citizenship legislation of its meaning with regard to the constitution and language tests.<sup>519</sup> This argument was expressed even though the High Commissioner had just previously stressed that according to the Estonian Constitution (para. 123), international law prevails over domestic law if a conflict exists between the two.

The High Commissioner referred to further integration-related arguments in support of his recommendation. He reminded that the Estonian Foreign Minister had stated that it is foremost the younger generation of non-Estonians who are eager and more likely to integrate into Estonian society. Surveys indeed illustrate that parents prefer their children to have Estonian citizenship, and attach great importance to their children's knowledge of Estonian language.<sup>520</sup> Consequently, it is unlikely that the recommended amendment in the Citizenship Law, concerning stateless children, would create a great number of ill-integrated citizens in Estonia. Moreover, as parents would have to submit the application, they would through this process express their willingness to integrate their children into Estonian society. Estonian authorities used the same argument of integration to reason the opposite. If families who were stateless were willing to integrate, by learning the Estonian language among others, they would not face any difficulties in passing the naturalization tests themselves.

In turn, the Estonian government went into lengthy reasoning as to why granting citizenship to non-citizens' children born in the country was neither a universal nor an OSCE obligation which Estonia was subject to comply with. While the HCNM stated that European states mostly complied with the European Convention on Nationality, the Estonian government pointed out that many did not. Among this latter group Austria, Norway, Germany, Malta, the Netherlands and Switzerland were mentioned. Moreover, particularly in respect to citizens of former USSR, many European Union countries held the position that these people were not stateless, as they could be registered as citizens of the Russian Federation.<sup>521</sup>

While in 1997 Estonian politicians showed extreme reluctance in granting citizenship to stateless children born in Estonia, only a year later, in December 1998, the law was finally amended to allow for a limited application of the *ius soli* principle. In the Law on Citizenship, points 4 to 6 were added to paragraph 13. These points state that children born after February 1992 to stateless parents have the right to citizenship, on the condition that the child is under the age of 15 and that the parents, who are required to reside in Estonia on a legal basis for five years, file an application on behalf of their child.<sup>522</sup> Former nationals of

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<sup>519</sup> Cf. Ilves Letter to HCNM, 4 June 1997.

<sup>520</sup> Cf. IOM 1997, p. 23.

<sup>521</sup> Cf. Ilves Letter to HCNM, 4 June 1997.

<sup>522</sup> Poleshchuk 2001b, p. 64.

the Soviet Union are included in this category, but only in this particular context. The amendments were supposed to affect an estimated 6,500 Russian-speaking children.<sup>523</sup> However, as a matter of fact, only 1419 children had acquired citizenship on the basis of this condition since the amendment had come into force on 12 July 1999.<sup>524</sup>

In a press release on the subject, the High Commissioner welcomed the adoption of the law on children of stateless parents, which he viewed to be more or less in conformity with his recommendations. The HCNM expressed his appreciation for the Estonian government, thanking it for coming to the understanding that a mere opportunity to apply for another citizenship did not make a person a citizen of that country, as Foreign Minister Mälik had also declared during parliamentary debates. In addition, the High Commissioner claimed he was confident that the new law would help to reduce statelessness in Estonia, and would also stimulate integration.<sup>525</sup>

Thus by December 1998, the Estonian government had followed up also the last recommendation that had been made by the HCNM since 1993. At this point, one has to recall the reluctance in 1997 to implement this recommendation, expressed, *inter alia*, in Foreign Minister Ilves' letter to the HCNM dated 4 June 1997. Whereas the Council of Europe did not play an active part in this issue after the monitoring procedure for Estonia had been closed in January 1997, both the EU and the OSCE had supported easing the country's naturalization requirement for children. Granting citizenship to stateless children was among the short-term priorities of Estonia's preparation for EU accession, listed in the *Agenda 2000*, which was published on 15 July 1997. Therein it was stated that the "Estonian authorities should consider means to enable stateless children born in Estonia to be naturalized more easily, particularly with a view to the impending entry into effect of the European Convention on nationality agreed within the Council of Europe."<sup>526</sup> Moreover, the Commission stated in its conclusions the need to "accelerate naturalisation of Russian-speaking non-citizens and to enable them to become better integrated into Estonian society."<sup>527</sup> Thus, there are good reasons to assume that the involvement of the European Union in this issue, and in particular the backing that the EU gave to the recommendations of the High Commissioner, was a crucial factor for the success of the HCNM's involvement.

### 5.3 *Language Questions Back on the Agenda*

Once the amendment on stateless children to the Citizenship Law had become inevitable, politicians attempted a tit-for-tat game by striving towards tightening the language requirements. Estonian-language requirements for candidates were included in the amended Law on Local Elections in February 1998. A similar attempt was made in May 1998 concerning the draft law on Parliamentary Elections, which would have required fluency of Estonian from parliamentary candidates. The law was, however, not passed. Moreover, in February and July 1999, the language requirements for the private and public sector were tightened. Thus, the language question was back on the agenda. This provoked new comments by Van der Stoep at a time when Estonians thought that they had fulfilled all recommendations made by the HCNM.<sup>528</sup>

In late 1998, the HCNM criticized the laws that set language requirements for parliamentary and local government candidates. According to his statements, the requirements unreasonably limited the equality of citizens. Although the law on language requirements had already been adopted by the parliament, the

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<sup>523</sup> Freedom House country report: Estonia 1999.

<sup>524</sup> Information provided by the Estonian Citizenship and Migration Board on 24 May 2002.

<sup>525</sup> Cf. HCNM Press Release on Estonia, 9 December 1998.

<sup>526</sup> EU Agenda 2000, 15 July 1997, p. 19.

<sup>527</sup> Ibid., p. 116.

<sup>528</sup> Cf. Ilves Letter to the HCNM, 4 June 1997. Therein Ilves states that 28 out of 30 recommendations had already been fulfilled. The remaining two, concerning the simplification of the constitution test and the issue of citizenship for stateless children, had been resolved by December 1998.

HCNM had hoped that he could make a difference. He wrote to the Estonian President,<sup>529</sup> and made his views clear also in the Estonian press. The High Commissioner again assured that he fully supported the position of Estonian as an official language, and that Russian-speakers would have to learn the Estonian language. He also stated that the Estonian parliament could establish Estonian as the working language by law. However, requiring a certain knowledge of Estonian from parliamentary and local government candidates would deprive citizens of their free choice to elect their representatives. In his letter to the President, the HCNM also referred to the UN Convention on Human and Political Rights (para. 25), which prohibits restrictions of citizens' rights on the basis of language.

Estonians felt that they had been cheated. In their understanding, the HCNM had promised not to make any more recommendations after the Law on Citizenship was liberalized. To this the HCNM replied that he found all the existing laws to be by large in accordance with international standards and his own recommendations, and that he would not make any more suggestions on the Citizenship Law. However, he assured that he would still interfere in accordance with his mandate if Estonia adopted new laws concerning minorities that ran opposite to liberal principles.

The HCNM also objected to Estonian allegations that the statements on behalf of the Russian Federation had induced his latest criticism.<sup>530</sup> While the HCNM had made his confidential address to the Estonian President on 19 December 1998, the press representative of the Russian Foreign Ministry made a statement only on 22 December.<sup>531</sup>

In fact, language requirements for candidates had been introduced already in spring 1996. The Law on Parliamentary Elections of 1994 stated in section 26 that candidates running for a parliamentary seat had to affirm by their signature that they know enough Estonian to participate in the work of the Riigikogu.<sup>532</sup> The Law on Local Elections of 1996 also declared, in section 3, paragraph 3, that a candidate had to know the Estonian language as set in the Language Law.<sup>533</sup> The changes, introduced in the Law on Languages in 1996, stipulate that candidates must have written and oral skills of Estonian, and that the standards of written language requirements will be set by a government regulation.<sup>534</sup> In the draft, the requirements had even been spelled out in more detail, and were backed up by a control mechanism that would act to check the candidate's language skills. Exams would also be carried out if this were deemed necessary, a matter which provoked strong negative reactions from the representatives of Russian-speakers. These even threatened to hold parallel elections in Narva. On this background, the OSCE Mission to Estonia as well as several embassies undertook a considerable amount of lobbying in order to soften the language requirements.<sup>535</sup> The HCNM on his part pointed out in a still unpublished letter to President Meri, that the language requirements ran contrary to the International Covenant on Civil and Political Rights. Consequently, he asked the President not to promulgate the law.<sup>536</sup> Indeed, President Meri refused to promulgate the law, claiming that it was unconstitutional. In his explanation, he claimed that the language requirements set preconditions to the candidates.<sup>537</sup> The President referred also to the UN Covenant on Civil and Political Rights, section 25, which declares that every citizen should have a right to elect and to be elected without discrimination or unfounded limitations.

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<sup>529</sup> HCNM Letter to Meri, 19 December 1998.

<sup>530</sup> Cf. Baltic News Service 30 December 1998, Estonia's Ex-Foreign -Minister Sees Russia's Hand Behind OSCE Commissioner's Recommendation.

<sup>531</sup> Cf. Postimees, 12 January 1999, Van der Stoel arvustab jätkuvalt Eesti seadusi [Van der Stoel is continuously criticising Estonian laws].

<sup>532</sup> Cf. Riigikogu valimise seadus [Law on Parliamentary Elections], 7 June 1994, art. 26, para. 12, point 1, as of 11 July 1994.

<sup>533</sup> Cf. Kohaliku omavalitsuse volikogu valimise seadus [Law on Local Elections], 16 May 1996, art. 3, para. 3 and art. 26, para. 7, point 1, as of 8 June 1996.

<sup>534</sup> Cf. Kohaliku omavalitsuse volikogu valimise seadus [Law on Local Elections], art. 48: Keeleseaduse muutmise [Amendment to the Law on Language], 16 May 1996.

<sup>535</sup> Cf. OSCE Mission to Estonia, Spot Report on Local Elections Law, 19 April 1996.

<sup>536</sup> Cf. Kemp 2001, p. 147.

<sup>537</sup> The parliament replied that the age limit, residence requirement and lack of criminal record were similar preconditions.

The parliament was of the opinion that the President's refusal to promulgate the law was due to political rather than juridical reasons. However, as the local elections were approaching and the previous election law was deemed unsatisfactory, the parliament agreed to change the controversial sections in the law on pragmatic grounds. However, the parliamentarians did not agree that they had been in conflict with the Constitution or international law.<sup>538</sup> Thus, the language requirements remained in the law, but the control mechanism to check a candidate's language knowledge was omitted.<sup>539</sup> After this mechanism had been taken out of the law, the President promulgated it as a political compromise and the law came into force on 8 June 1996. As the control mechanism was neither introduced in the law nor in the government decree regulating language capabilities, the changes were of no practical relevance for the 1996 Local Elections. Parliamentary elections were not scheduled before 1999. However, one should note that in November 1997, the mandate of a Sillamäe city councilor was annulled due to her lack of Estonian language knowledge. Another councilor from Maardu was allowed to continue his legislative work only because he could prove in court that he spoke at least some Estonian. The HCNM did not comment on these cases, but the OSCE Mission was actively involved and reported on both of them.<sup>540</sup> Thus, one could assume that the HCNM was informed about the implementation of the language requirements, but that he did not deem it necessary to complement the activities already undertaken by the OSCE Mission at that stage.

However, the situation took a different turn when the *Riigikogu* passed new amendments to the Law on Languages on 19 November 1997, enabling the government to check the language abilities of candidates.<sup>541</sup> After the Estonian Supreme Court had ruled this unconstitutional on the grounds that this stipulation was only introduced in the Law on Languages but not in the Laws on Local and Parliamentary Elections, the *Riigikogu* followed suit and changed the Laws on Local and Parliamentary Elections. According to the new amendment, candidates standing for election to parliament or a local council were required:

- a) to understand the content of legislative orders and other texts;
- b) to present reports on agenda, and to express their opinion in speeches and interventions;
- c) to put questions and make proposals (for a deputy in Parliament: to be able to make inquiries); and
- d) to communicate with electors, to reply to complaints and requests, to answer inquiries.<sup>542</sup>

As in 1996, the HCNM urged President Meri in a confidential letter not to promulgate the changes to the law.<sup>543</sup> Again, the HCNM claimed that the new rules ran counter to international law, notably the International Covenant on Civil and Political Rights.<sup>544</sup> This claim was also supported by international scholars and by the OSCE/ODIHR Election Observation Mission, which monitored the 1999 parliamentary elections in Estonia.<sup>545</sup> However, this time the Estonian President did not follow the recommendations made by the HCNM, and promulgated the law on 31 December 1998. The changes came into force only on 1 May 1999 and, thus, did not apply to the parliamentary elections of 7 March 1999.<sup>546</sup> The law did, however, apply to the 17 October 1999 local elections. The new Estonian

<sup>538</sup> Cf. Stenogrammid [Parliamentary debate], 14 May 1996. The amended law was passed by 70 votes in favor and 7 abstentions on 16 May 1996. Latvia had established similar language requirements, and as a matter of fact, no-one had accused them at that time to be in contradiction with the UN Covenant. However, in April 2002, the European Court of Human Rights (ECHR) ruled that Latvia violated the European Convention on Human Rights by preventing the candidate Ingrida Podkolzina from participating in parliamentary elections in 1998 because of her alleged inadequate knowledge of the Latvian language. Cf. RFE/RL Baltic States Report, 17 April 2002, Latvia Loses European Human Rights Court Case, Right to Set Language Laws Affirmed.

<sup>539</sup> The only way to question an elected person's language knowledge was by taking the issue to court. This policy is very reasonable, considering that otherwise officials of the state's Language Department could have decided who could and who could not stand in elections.

<sup>540</sup> Cf. OSCE Mission to Estonia, Activity Report No. 108.

<sup>541</sup> Cf. East European Constitutional Review, Constitution Watch Estonia, Winter 1998; Poleshchuk 2001b, p. 72.

<sup>542</sup> Poleshchuk 2001b, p. 67.

<sup>543</sup> Cf. HCNM Letter to Meri, 19 December 1998.

<sup>544</sup> Cf. *ibid.*

<sup>545</sup> Cf. Thiele 1999a, p. 177, 1999b; OSCE/ODIHR, 31 March 1999.

<sup>546</sup> Cf. *Riigikogu valimise seaduse, kohaliku omavalitsuse volikogu valimise seaduse ja keeleseaduse muutmise ja täiendamise seadus* [Law amending the Law on Parliamentary Elections, the Law on Local Elections and the Law on Language], 15

government under Prime Minister Mart Laar was quite reluctant at the beginning to revoke the new stipulations. In a letter dated 26 April 1999, Foreign Minister Ilves replied to Van der Stoel that, according to a ruling of the Estonian State Court, the requirements of certain knowledge of Estonian for candidates running for parliament or local councils were constitutionally justified.<sup>547</sup> He even openly questioned the authority of the HCNM on this issue, declaring that:

in light of the legal complexity of the issue, the best opinion would undoubtedly be to let the European Court of Human Rights rule on this issue should any further case arise regarding the conformity of the recent amendments to the Estonian election law with international standards.<sup>548</sup>

Moreover, Prime Minister Laar declared that the recommendations of the High Commissioner were not obligatory for Estonia.<sup>549</sup> In a letter sent by several Estonian MPs to the CiO on 28 January 1999, the efforts of HCNM were criticized "as being 'unconsidered, political in effect' and no longer serving to defuse situations involving minority issues."<sup>550</sup> Things were also taken to the personal level: The idea forwarded by the Netherlands to nominate Van der Stoel for the Nobel prize were openly objected to by 15 Estonian MPs.<sup>551</sup>

Thus, 1999 was clearly a period of crises for the OSCE in Estonia. Alongside the HCNM, also the OSCE Mission was under strong attack from the Estonian government. The Estonian Ministry of Foreign Affairs demanded the Mission to be closed down, and even President Meri, who was considered to be a moderate, suggested that the Mission should be reorganized into a "center for educating youth in the art and science of conflict prevention."<sup>552</sup> On this background, the Austrian Chairmanship of the OSCE for the year 2000 developed a set of guidelines for the OSCE Mission. The Mission was requested to focus its attention on bringing the Law on Parliamentary Elections and the Law on Local Elections into conformity with international standards, by removing language requirements for candidates who ran for a political office. Moreover, the Mission was to address the amendments to the Language Law in the private sector and the implementation thereof (see below), as well as the support and the establishment of a regional office of the Estonian Legal Ombudsman in North-east Estonia (see chapter 5.4). Also, the further implementation of the State Integration Programme was to be monitored and supported. Finally, obstacles to naturalization, family reunification and residence permits were to be identified and removed.<sup>553</sup>

These guidelines had been drawn up on the basis of input from the OSCE Mission to Estonia and the Office of the High Commissioner. Moreover, broad consultations among OSCE participating States had taken place, and especially the European Union had demonstrated that it wished these issues to be resolved. Already in its 1999 Progress Report, the European Commission had referred to the HCNM's view that the "the current text [of the law on languages] contradicts a number of international standards as regards freedom of expression, in particular those introduced by the European Convention on Human Rights, of which (sic) Estonia is a contracting party."<sup>554</sup> As the language requirements for candidates had not been removed by early November 2001, the European Commission stated in its 2001 Progress Report on Estonia that, "although enforcement of these provisions is weak in practice, these restrictions affect the

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December 1998, RFE/RL Newline 30 December 1998, OSCE Criticizes Language Requirements for Estonian Deputies; RFE/RL Newline 11 January 1999, Van der Stoel Again Criticizes Estonian Language Requirements for Deputies; see also Bollow 2000, p.172.

<sup>547</sup> Cf. Poleshchuk 2001b, p. 68.

<sup>548</sup> Citation from Ilves Letter to the HCNM, 26 April 1999, by Poleshchuk 2001b, p. 73.

<sup>549</sup> Deutsche Welle Monitor Osteuropa, 28 April 1999, Estlands Premier betrachtet UN[sic]-Empfehlungen als "nicht obligatorisch" [Estonian Prime Minister views UN[sic] recommendations as "non-obligatory"], Moskow, 27 April 1999 (INTERFAX, russ., from Tallinn).

<sup>550</sup> Kemp 2001, p. 150.

<sup>551</sup> Cf. Päevaleht, 2 February 1999, Eesti ei tahtnud Stoelile Nobeli preemiat [Estonia not in Favour of Granting Nobel Prize to Van der Stoel].

<sup>552</sup> Cf. OSCE Mission to Estonia, official translation of Postimees, 7 May 1999, Possibilities for New Co-operation. What if we reorganise the work of the OSCE Mission.

<sup>553</sup> Cf. OSCE Annual Report 2001, p. 32f.

<sup>554</sup> EU 1999, Progress Report, p. 15.

right of non-Estonian speakers to choose their candidates, in particular at local level."<sup>555</sup> Consequently, the Commission concluded that "Estonia should ensure that the implementation of language legislation respects the principles of justified public interest and proportionality, Estonia's international obligations and the Europe agreement."<sup>556</sup>

A week after this report had been published, the parliament finally passed the necessary changes to the Laws on Parliamentary and Local Elections on 21 November 2001.<sup>557</sup> The abolishment of the language requirement also opened the way for the envisaged closure of the OSCE Mission to Estonia by the end of the year. The new High Commissioner, Rolf Ekéus, who took office on 1 July 2001, welcomed the abolition of the language requirement for individuals running for local or national office. This was what the office of the HCNM had long been promoting. In the statement made on 22 November 2001 he explained:

The amendment to the Elections Laws brings Estonian legislation into conformity with Estonia's international observations. More generally, Estonian law now ensures the basic democratic principle that, through their freely chosen representatives, the will of the people shall be the basis of the authority of government.<sup>558</sup>

Thus, also this recommendation of the HCNM was finally implemented. This recommendation had never, as a matter of fact, been published as an "official" recommendation. The HCNM had played an important role in the combined international efforts to convince the Estonian government and parliament of the necessity to take these restrictions out of the respective laws.<sup>559</sup> This was especially the case since the High Commissioner, alongside the OSCE Mission, had taken this issue up at an early point, bringing it to the attention of other relevant international actors, primarily the European Union. The effectiveness of the sticks-and-carrots game played by the OSCE alone, as well as together with the EU, should not, however, be overlooked. The guidelines formally presented to the OSCE Mission were, first of all, a list of actions that the OSCE expected the Estonian government to undertake before the OSCE Mission would be closed. At the same time, the European Union had bound itself openly to these guidelines, and backed this strategy up, *inter alia*, through its Progress Reports on Estonia. As will be laid out below, these EU-backed guidelines and the EU's pressure in general were also crucial in defusing another crisis connected with the language legislation. This crisis arose also in 1999.

On 9 February 1999, the *Riigikogu* passed an amendment on the Law on Languages, according to which an obligatory level of knowledge of Estonian language was established not only for government officials and municipal employees, but also for the employees of commercial and non-profit organisations and institutions, as well as for private businessmen. The rationale behind these amendments was to protect the rights of the consumers, as well as to ensure public order, health and national security.<sup>560</sup> The most controversial provision of the amendments to the law was that entrepreneurs, employees of business associations, NGOs and foundations had to use Estonian at their workplace for the purpose of offering goods and services.<sup>561</sup>

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<sup>555</sup> EU 2001, Progress Report, p. 23.

<sup>556</sup> *Ibid.*, p. 24.

<sup>557</sup> Cf. RFE/RL Newline 26 November 2001, Estonian Parliament Abolishes Language Requirements for Deputies; Riigikogu valimise seaduse §-de 2, 2<sup>1</sup> ja 26 ning kohaliku omavalitsuse volikogu valimise seaduse §-de 3, 3<sup>1</sup> ja 26 muutmise seadus [Law amending the Law on Parliamentary Elections and the Law on Local Elections], 21 November 2001.

<sup>558</sup> OSCE Newsletter, Vol. IX, No. 1, January 2002, p. 20, Ekeus welcomes abolition of language requirement in Estonia.

<sup>559</sup> Cf. Kutseõppeasutuse seaduse, rakenduskõrgkooli seaduse, Eesti Vabariigi haridusseaduse ja keeleseaduse muutmise seadus [Law amending the Law on Vocational Education, the Law on Applied Higher Education, the Law on Education of the Republic of Estonia and the Law on Language], 13 June 2001; Tõestamiseseaduse rakendamise seaduse muutmise seadus [Law amending the Law on Notarisation Law], 14 November 2001; Keeleseaduse § 8 muutmise seadus [Law amending the Law on Language], 17 January 2002; Riigikogu valimise seaduse §-de 2, 2<sup>1</sup> ja 26 ning kohaliku omavalitsuse volikogu valimise seaduse §-de 3, 3<sup>1</sup> ja 26 muutmise seadus [Law amending the Law on Parliamentary Elections and the Law on Local Elections], 21 November 2001.

<sup>560</sup> Cf. Karzetskaya 1999.

<sup>561</sup> Cf. EU 1999, Progress Report, p. 15.

In two unpublished letters to Foreign Minister Ilves, dated 26 March 1999 and 12 July 1999, the HCNM criticized the law. He claimed that it allowed intrusion into the private sphere which went beyond what international standards allowed for.<sup>562</sup> He also "raised severe reservations about the implementation decree concerning the private sector which he felt was overly intrusive."<sup>563</sup> The European Commission not only supported the position of the HCNM as far as the question of minority rights were concerned, but was also concerned that the intrusion of the language issue into the private sector could have wider implications:

The concerns raised by the adoption of this law go beyond the non-compliance by Estonia of the political criteria for membership on minorities issues and could conflict between the law and the obligations of Estonia under the Europe Agreement, in particular in the fields of free movement of persons, right of establishment, supply of services, capital movements and award of public contracts (Title IV and V of the EA).<sup>564</sup>

Also the Head of the OSCE Mission to Estonia criticized the new regulations in an extraordinary open and harsh manner.<sup>565</sup>

As the impact of the law depended on how it is implemented, the focuses of the HCNM, the OSCE Mission and the EU shifted to the government decrees for implementing the law. The HCNM urged the Estonian government to ensure that these decrees would be in compliance with international standards. In this regard, he also made a clear reference to the European Union, noting that it would be regrettable if this issue would become an obstacle in the negotiations between Estonia and the European Commission.<sup>566</sup>

In his above-mentioned letter to Van der Stoep, dated 26 April 1999, Foreign Minister Ilves also referred also to the Estonian State Court. He assured the HCNM that the "government's Regulation on the implementation of the amendments will not be in contradictions with the relevant international standards."<sup>567</sup> As a matter of fact, however, the implementation decree that was issued by the Estonian government on 27 July 1999<sup>568</sup> was not what the OSCE and the EU had expected:

An examination of the draft decree by the Commission indicates that the draft texts envisaged so far, suffer from a lack of precision in the definition of professions (sic) and that the language requirements are unjustified in relation to the stated objectives, thus constituting a possible restriction in the application of the Europe Agreement. The application of the law in the public sector could have considerable impact in some groups of public workers such as prison officials, of which around 40% are non-Estonian citizens and have a relatively low command of the Estonian language.<sup>569</sup>

Finally on 14 June, the Estonian parliament relaxed the conditions governing the use of Estonian as the official language in the private sector.<sup>570</sup> Article 2<sup>1</sup> of the Law on Languages now called for the justification of requirements concerning proficiency in and use of Estonian in proportion to the objective that was being sought, and stipulated that these requirements might not distort the nature of the rights which are restricted. Nevertheless, some questions regarding the implementation of the revised Language Law and the subsequent regulations<sup>571</sup> remained.<sup>572</sup> The OSCE Mission to Estonia therefore organized a

<sup>562</sup> OSCE Annual Report 1999, p. 52; Kemp 2001, p. 151.

<sup>563</sup> Kemp 2001, p. 151f.

<sup>564</sup> EU 1999, Progress Report, p. 15.

<sup>565</sup> Cf. The Baltic Times online, 8 July 1999.

<sup>566</sup> Cf. Kemp 2001, p. 151.

<sup>567</sup> Citation from Ilves Letter to the HCNM, 26 April 1999, by Poleschchuk 2001b, p. 69.

<sup>568</sup> Cf. RFE/RL Newline 28 July 1999, Estonian Government Enacts Language Law Regulations.

<sup>569</sup> EU 1999, Progress Report, p. 15.

<sup>570</sup> RFE/RL Newline 21 June 2000, EU Praises Changes to Estonian Language Law.

<sup>571</sup> Kutseõppeasutuse seaduse, rakenduskõrgkooli seaduse, Eesti Vabariigi haridusseaduse ja keeelseaduse muutmise seadus [Law amending the Law on Vocational Education, the Law on Applied Higher Education, the Law on Education of the Republic of Estonia and the Law on Language], 13 June 2001; Tõestamiseseaduse rakendamise seaduse muutmise seadus [Law amending the Law on Notarisation Law], 14 November 2001; Eesti Vabariigi Valitsus [Government of Estonia], Kohustusliku eesti keele oskuse tasemed äriühingute, mittetulundusühingute ja sihtasutuste töötajatele ning füüsilisest isikust ettevõtjatele [Mandatory Levels of Estonian Language Proficiency for Employees of Companies, Non-Profit Associations or Foundations and for Sole Proprietors], No. 164 and Kohustusliku eesti keele oskuse tasemete, eesti

seminar on "Incorporating International Standards in Enforcing Estonian Language Law" on 8 and 9 November 2001. The seminar, which was also attended by a member of the HCNM's office, aimed at assisting the Estonian State Language Inspector in his staff training, as well as to enhance the understanding of the HCNM's recommendations concerning the implementation of the Language Law.<sup>573</sup>

Thus, one can conclude that the involvement of the OSCE and the EU in the language issues that resurfaced were successful. As a matter of fact, the situation in 2002 is even more favorable than at the time before these issues returned onto the agenda. This effectiveness was mainly due to the combination of incentives that the international community had to its disposal in 2000 and 2001. What was foremost striking was the changed role of the European Union. Whereas the EU hardly played a role during the discussions in 1996, it was heavily involved after 1999. Moreover, the OSCE itself had "produced" a new incentive in 2000 by "sacrificing" its Mission to Estonia in exchange for concrete steps on the behalf of the Estonian government. As a result, the HCNM could operate effectively in 2000 and 2001, although he had come under heavy fire in 1999, and even though he had not made public his recommendations on these issues in 1999 and 2000 and, thus, had basically changed to an even quieter diplomacy than before.

#### 5.4 *Creation of the Ombudsman Office*

Over the years, the High Commissioner encouraged the creation of independent institutions that would deal with minority questions in Estonia. Notably in his first letter from April 1993, he recommended to the Estonian government to establish the office of a "National Commissioner on Ethnic and Language Questions."<sup>574</sup> He foresaw that the tasks and profile of such a commissioner would be to:

take up any relevant complaint which he/she considers to require further attention with any government agency. He/she would also have to actively find out about uncertainties and dissatisfaction involving minorities, act speedily in order to help clarify gray areas in legislation and practice, answer to questions within a specified period of time (e.g.) two months and finally act as a go-between to the Government and the minorities in Estonia. He/she should focus his/her activities primarily on the Northeastern region of Estonia, specifically including his/her activities the Estonian minority there.<sup>575</sup>

As a matter of fact, the Estonian government had already in its first composition included a Minister responsible for Inter-Ethnic Affairs. This position indicated that Estonia took minority questions seriously, and would deal with them on the highest political level. At the same time, the government's position was strongly tied to the official views of the state, which could be in clear opposition to the minority standpoints. Moreover, in summer 1993, the Presidential Roundtable for Minorities was established in order to enhance the dialogue between minority representatives and government officials. Despite having been a valuable forum for discussion and a meeting point, the Roundtable had little real effect or output on the minority politics in Estonia. The Roundtable made comments and amendment proposals on minority-related legislation and policies, but its standpoints were not considered as particularly accountable. As a matter of fact, in February 1999, after the aforementioned amendments to the Electoral Law and the Language Law were introduced without prior consultation with the roundtable, and as they were actually in obvious contradiction with the recommendations the roundtable has issued on its own initiative, four prominent Russian-speaking members of the roundtable declared they would resign from this institution.<sup>576</sup> Although this crisis was overcome in the following months, and although the Roundtable

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keele tasameeksami eelsete konsultatsioonide ulatuse ja korra ning eesti keele oskuse tunnistuse vormi kinnitamine [Ratification of the mandatory levels of Estonian language proficiency, of the extent and order of the consultations prior to the language exam and the form of the language proficiency certificate], No. 249.

<sup>572</sup> Cf. Põlseshchuk 2001b, p. 70.

<sup>573</sup> Cf. OSCE Mission to Estonia, Activity Report No. 144.

<sup>574</sup> HCNM Letter to Velliste, 6 April 1993.

<sup>575</sup> HCNM Letter to Velliste, 6 April 1993.

<sup>576</sup> Cf. Semjonov 1999.



was re-organized in late 2001 under the newly elected President Arnold Rüütel, it has to be stated that this body was, in any case, a body for enhancing dialogue, but not an institution that could follow up on complaints. Thus, the Roundtable, like the Minister for Inter-Ethnic Affairs, could hardly act as go-between to the government and the minorities in Estonia: Neither could be considered as an alternative for the institution that the HCNM had in mind.

Therefore, the HCNM continuously proposed to establish the "National Commissioner on Ethnic and Language Questions" as an independent body. This would serve neither the government's nor minorities' interests, but see into the improvement of inter-ethnic affairs and the respect of human and minority rights. The Estonian government's response was that the Estonian Constitution foresees the post of an ombudsman, but promised also to consider the High Commissioner's proposal of a National Commissioner on Ethnic and Language Questions. It is true that the Estonian Constitution has a separate chapter on a Legal Chancellor. However, this chapter establishes only the function of a constitutional reviewer:

The Legal Chancellor shall be, in conducting his or her work, an independent official supervising the accordance with the Constitution and legislation of the legal acts issued by the state legislature and executive, as well as by local government bodies [...]

The Legal Chancellor shall analyse the proposals made to him or her for amending legislation and adopting new laws, as well as for the work of government institutions, and, if necessary, shall present a report to the Riigikogu.<sup>577</sup>

The Legal Chancellor's office was instated in May 1993, after the Law on Legal Chancellor was adopted. According to that law, anyone could make statements to the Legal Chancellor and inquire after the constitutionality of varying laws and other legislative acts. Since then, many people have turned to the Legal Chancellor for help.<sup>578</sup> As the law gives everyone the right to appeal to the Legal Chancellor's office, non-citizens of Estonia also had the right to do so.<sup>579</sup> However, a complaint could only be filed if a person considered that their rights had been violated on the basis of particular laws or acts which were not in conformity with the Constitution and international treaties ratified by Estonia. According to the law, the Legal Chancellor could not deal with cases that concerned the maltreatment of citizens by public offices. He did not, therefore, have the powers of an ombudsman.

It soon became clear that the legal powers vested to the Legal Chancellor were insufficient for him to fulfill the responsibilities of an ombudsman. The Legal Chancellor could only solve cases where the laws were not in accordance with the Constitution, not if the public institutions had failed to implement the laws properly. This problem had been on the agenda in Estonia for years. The Foreign Ministry was pushing for the establishment of an ombudsman's office as a result of international pressure on Estonia to initiate such an institution. As until then, Estonia would be under stricter scrutiny of the international organizations in terms of general respect for human rights. The Foreign Ministry, in fact, had proposed to the Ministry of Justice to draft a relevant law already in 1995. However, the latter did not come up with such a law before 1998. Varying interpretations of the Estonian Constitution caused this delay. Even though there was a general agreement about the necessity of an ombudsman's office, there were varying opinions on whether the ombudsman's office should be independent, or whether its powers should be vested in the already existing post of Legal Chancellor. One of the problems connecting the posts of Legal Chancellor and ombudsman lay in the fact that the former is a government official, whereas the latter is

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<sup>577</sup> Estonian Constitution, art 139.1.

<sup>578</sup> In the first year, in 1993, 264 inquiries were made. In the following year, this figure lay at 786, and by 1998 the number of appeals had risen to 1033. Cf. [http://www.oiguskantsler.ee/stat/1993kuni\\_.htm](http://www.oiguskantsler.ee/stat/1993kuni_.htm) (24 April 2002).

<sup>579</sup> For example in years 1993-1998 there were 35 complaints made concerning residence permits. The share of non-citizens among other issues raised cannot be determined as there is no differentiation made according to citizenship in the statistics. Cf. [http://www.oiguskantsler.ee/stat/1993kuni\\_.htm](http://www.oiguskantsler.ee/stat/1993kuni_.htm) (24 April 2002).

supposed to be independent from the government.<sup>580</sup> On the other hand, the Estonian Constitution does not foresee the post of an ombudsman. Therefore, some analysts considered that the establishment of an ombudsman's office would require amendments to the Constitution itself. At the same time, the paragraph on the Legal Chancellor states that he or she also has the responsibility to analyse proposals made to him or her with regard to the work of state institutions. Thus, linking the ombudsman's responsibilities to the Legal Chancellor was in the end seen as constitutionally viable.<sup>581</sup> Moreover, the Legal Chancellor already indirectly dealt with these issues, as people's complaints to him often concerned the violations of their rights. The institution of an ombudsman was therefore to be attached to the existing position of the Legal Chancellor, creating a unique solution in international practice.

Some Estonian politicians pointed that out of all HCNM recommendations, the office of an ombudsman remained one of the very few issues still to be implemented. In the overarching analysis of the Foreign Ministry, which was compiled for presentation at the OSCE Permanent Council in April 1997, the government explained that preparations for the institution of an ombudsman, who would deal with all human rights-related pleas, were in process.<sup>582</sup> During parliamentary debates, the drafters of the law claimed that in the process of drafting the new law on the ombudsman's office, the OSCE Mission, the HCNM and the ODIHR were not consulted. However, apparently this was not the case. The CBSS Commissioner on Democratic Institutions and Human Rights, Ole Espersen, was also intensively involved as an expert. Experts of UNDP and the European Union were also informed or invited to participate in the preparations of the draft. Therefore, stating that the draft went through international expertise would go too far, but international participation was widespread.<sup>583</sup> The HCNM replied to the plan to establish an ombudsman's office supportively, but nonetheless with suspicion:

I am of course aware that an Ombudsman can, in principle, perform many of the tasks which I hoped a National Commissioner on Ethnic and Language Questions might be able to undertake. This would be the case, however, if the Ombudsman would be allowed to extend his activities to all residents of Estonia, and not only to the citizens of Estonia. I hope that such a formula is being envisaged.<sup>584</sup>

The HCNM was therefore mainly worried that the large non-citizen population of Estonia would not benefit from the ombudsman's office. However, such worries were unfounded. Already under the existing functions, anyone could turn to the Legal Chancellor with a plea, irrespective of their citizenship. The Law on Legal Chancellor of 1993 did not limit who could appeal to the Legal Chancellor on the basis of citizenship. Many non-citizens had already addressed the Legal Chancellor, and issues included such that related to residence permits and aliens' passports. Thus, it was unforeseen that the new regulation would establish any limitations. This is also what the Estonian government communicated to the HCNM:

The draft law on Ombudsman, currently under preparation in the Ministry of Justice, does not foresee any discriminatory provisions. All residents of Estonia will have a right to lodge a complaint, which [is] the only rightful way of doing it.<sup>585</sup>

The HCNM was unsure whether the ombudsman's office could fulfill all the functions a commissioner on national or language questions was to carry out as the HCNM pictured it. Russian deputies expressed similar concerns when the draft law was debated in parliament. Namely, the draft foresaw that some of the Legal Chancellor's councilors would be employed regionally, so that all complainants would not have to travel to the capital Tallinn to file their statements. The Russian deputies proposed that the functions of the ombudsman could be divided on an issue-basis instead: minority rights, children's rights, etc. The

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<sup>580</sup> Cf. Poleshchuk 2001b, p. 30.

<sup>581</sup> Cf. Stenogrammid [Parliamentary debate], 25 November 1998.

<sup>582</sup> Cf. Ilves Letter to HCNM, 4 June 1997.

<sup>583</sup> Cf. Stenogrammid [Parliamentary debate], 25 November 1998.

<sup>584</sup> HCNM Letter to Ilves, 21 May 1997.

<sup>585</sup> Ilves Letter to the HCNM, 4 June 1997.

Minister of Justice replied that in practice, different councilors would most probably concentrate on different issues. However, establishing certain divisions by law would be too arbitrary.

The law was finally adopted in February 1999, and came to force in June 1999. The previous Legal Chancellor's term of office was, however, coming to the end, and the new ombudsman could take up his work only in February 2001. However, the fact that the appointment of a new person started also a new era of the Legal Chancellor, with his newly vested responsibilities as an ombudsman, should be seen as positive. Most importantly, paragraphs 19 and 20 in the law state the ombudsman's powers and who can file complaints with the Legal Chancellor:

§ 19. Right of recourse to Legal Chancellor to supervise guarantee of constitutional rights and freedoms of persons

Everyone has the right of recourse to the Legal Chancellor to supervise the activities of state agencies, including the guarantee of the constitutional rights and freedoms of persons.

§ 20. Exercise of supervision

(1) The Legal Chancellor shall exercise supervision pursuant to law over the activities of state agencies, including the guarantee of constitutional rights and freedoms.<sup>586</sup>

In the beginning, there was some concern within the OSCE and the EU whether the inhabitants of Northeastern Estonia would have equal access to the ombudsman's office. As a matter of fact, unlike an earlier draft, which envisaged complaints to be filed only in Estonian, the new law foresaw also the possibility to address the ombudsman in Russian.<sup>587</sup> And although the response would generally be in Estonian, a real language problem did not exist. However, in the beginning, no offices were opened in the Ida-Viru County of Estonia, where the Russian-speaking population is concentrated. Only after the Chairman-in-Office included this question in the above-mentioned letter, and only after the European Union supported this demand,<sup>588</sup> were the envisaged offices in the Northeast opened, namely in Narva, Jõhvi and Rakvere.<sup>589</sup> Whether or not the Estonian government would have opened these offices anyway is, of course, hard to determine. In any case, it was not the HCNM, but the CiO, who interfered directly in this matter. However, the guidelines were developed by the CiO with the support of the Mission and the HCNM's office, and one could consequently assume that the HCNM had been involved to a certain extent. As a matter of fact, since the enacting of the Legal Chancellor's ombudsman responsibilities, the number of applications to its office rose by fifty per cent.<sup>590</sup> Also, many of the petitioners came from minority communities in Estonia. For example, in 2000 28 petitions made to the Legal Chancellor on the questions of citizenship and migration.<sup>591</sup> The inhabitants of the Ida-Viru County make on average ten addresses to the Legal Chancellor every month.<sup>592</sup>

As far as the Legal Chancellor is concerned, one should highlight that this institution enjoys wide public respect as a neutral and impartial figure, and that his statements are taken into account. He has also taken a stand on several important issues that concern the Russian-speakers in Estonia. Thus, the creation of the ombudsman's office should be judged as a step forward. It at least created a situation in which calls for a commissioner on ethnic and language questions would not be renewed, as had been the case in 1993.

<sup>586</sup> Õiguskantsleri seadus [Law on Legal Chancellor], 25 February 1999.

<sup>587</sup> Cf. Law on Legal Chancellor (draft) 1998 and Õiguskantsleri seadus [Law on Legal Chancellor], 25 February 1999.

<sup>588</sup> Cf. Poleshchuk 2001a, p. 6; OSCE Mission to Estonia, Activity Report No. 128 and No. 141.

<sup>589</sup> Ibid., <http://www.oiguskantsler.ee/avaldus/avaldus.htm#saavadesitada> (24 April 2002).

<sup>590</sup> Under the earlier provisions of the law, in 1998 the number of petitions was 1033. In 1999, when the ombudsman's position was activated, the number of petitions rose to 1530. In the year 2000, this figure reached 1595. Cf. Homepage of the Legal Chancellor of Estonia, at: [http://www.oiguskantsler.ee/stat/1993kuni\\_.htm](http://www.oiguskantsler.ee/stat/1993kuni_.htm) (24 April 2002).

<sup>591</sup> Cf. *ibid.*, <http://www.oiguskantsler.ee/lahendatud/lahendatud.htm#Kodakondsuskusimused> (24 April 2002).

<sup>592</sup> Cf. *ibid.*, <http://www.oiguskantsler.ee/stat/statistika.htm#oigusharude> (24 April 2002). The petitions can only be analysed on the basis of their topic and region. The entry of ethnicity is a private matter and is not accounted for in the statistics. It is probable that more applications are made by Russian-speakers, for example by those living in and around Tallinn, which concern more topics than citizenship and residence permits.

## 5.5 Summary

Summing up the High Commissioner's work in Estonia between 1997 and 2001, one can state that at the end of 2001, all recommendations of the HCNM to Estonia had been implemented by the Estonian government. Accordingly, the new High Commissioner, Rolf Ekéus, on 26 March 2002 told Siim Kallas, who had become Prime Minister on 22 January 2002,<sup>593</sup> that in his view, no major problems exist in Estonia, and that he would focus his efforts in the country on supporting social integration.<sup>594</sup> The progress already made in the integration policy after 1997, the establishment of an ombudsman's office in 1999 and the easing of the naturalization procedure for stateless children in December 1998 meant that the last recommendations drawn up by the HCNM in its first letter to the Estonian Foreign Minister as early as 1993 had finally been implemented. The changes introduced in the legislation regarding elections and the use of languages meant that also the later recommendations of the HCNM had been followed up. Thus, in terms of effectiveness, this period had been quite successful. However, one also has to point out that the HCNM had been "saved" by the European Union during this period. After the *Riigikogu* had eased the naturalization process for stateless children, as required by the HCNM, a quite obvious reluctance among Estonian policymakers to accept any more recommendations by the High Commissioner emerged. The "assault" staged on the HCNM and the OSCE Mission in early 1999 by leading Estonian politicians effectively limited the OSCE's room for maneuver in Estonia. Given that Estonia had implemented all recommendations published by the HCNM between 1993 and 1998, and also given that Estonia had started an active policy towards integrating the non-Estonians into society, the acceptance of further OSCE scrutiny, whether conducted by the Mission or by the HCNM, was at an all-time low. Moreover, a secession of Narva or violent conflicts between Estonians and Russian-speakers in Narva or Tallinn seemed as unlikely as did Russian aggression towards Estonia. To be sure, Russian rhetoric against Estonia was still strong, but Russia by no means represented an immediate threat. Thus, unlike 1993, when Russian troops were still stationed in Estonia and when Estonia was also in urgent need for help in defending itself against Russian allegations that human rights were being violated in Estonia, there was not much incentive for Estonia to accept continued interference by the High Commissioner. Furthermore, Estonia was still bound by the OSCE principles and by the fact that it had subscribed to the HCNM's mandate as well as to that of the OSCE Mission to Estonia. However, this no longer appeared to be sufficient. In this situation, the fact that the EU effectively used the High Commissioner's recommendations as benchmarks for assessing whether or not the situation of the Russian-speaking population in Estonia was in accordance with EU accession criteria<sup>595</sup> was crucial for the effectiveness of the High Commissioner.

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<sup>593</sup> Cf. RFE/RL Baltic States Report, 4 February 2002, Kallas Approved as New Prime Minister.

<sup>594</sup> Cf. RFE/RL Newswire, 29 March 2002, OSCE High Commissioner Sees No Problems in Estonia.

<sup>595</sup> Cf. Johansen 1999, p. 78; EU Agenda 2000, 15 July 1997, p. 12.

## Chapter 6. Conclusion: The Effectiveness of the High Commissioner's Involvement in Estonia and Its Conditions

The High Commissioner's work in Estonia has often been criticized for its inconsistency, which consequentially undermined the government's co-operativeness and compliance with him and his recommendations. In the Estonian perception, it seemed that that no matter how much the Estonian authorities amended minority-related legislation in accordance with the High Commissioner's notifications, the latter always came forward with new recommendations, which were often regarded as being increasingly demanding.<sup>596</sup> This strategy created confusion with regard to the uniformity of international standards, and frustrated the authorities, who felt that they were never able to satisfy the demands of the OSCE and the High Commissioner.

Indeed, since the beginning of the HCNM's involvement, his focus on central issues that concerned him shifted on several occasions. However, these alterations seem to have been a response to the order of preparation and ratification of minority-related legislation, as well as to broader changes that took place in society. The issues of citizenship and naturalization were central until the Law on Aliens came into discussion. This, on the other hand, lost some of its importance in relation to some other legislative acts that came into being later, such as the Law on Language or the election laws. In addition to the HCNM's responsiveness to the legal and social developments in Estonia, in his recommendations one can also notice a clear ranking of issues, based upon what was of concern and importance for Van der Stoep. Thus, on the controversy over the HCNM's consistency in his recommendations, we can conclude that the shifts in his concern over various issues has been justified, as they correspond to shifts in Estonian legislation and society, as well as to the High Commissioner's issue-ranking according to importance.

Indeed, one can deem a tentative ranking of the issues which the High Commissioner intervened in. The most substantial issues in the HCNM's recommendations concerned by far the questions of naturalization and the aliens' legislation. With regard to the Language Law, the High Commissioner was less consistent in his attention and position, which affected the overall substantiality of his involvement in Estonia. Finally, the creation of the Presidential Roundtable for minorities and the ombudsman's office illustrate the HCNM's influence on more instrumental issues.

Whereas the HCNM was not active in the process of drafting the Law on Aliens in spring 1993, the OSCE Mission to Estonia was. The HCNM reacted with urgency once Estonian President Lennart Meri refused to promulgate the law in June 1993. The High Commissioner's recommendations were linked to conflict mediation attempts, as the Russian-speaking population had become highly agitated over the consequences of the planned Law on Aliens. The HCNM's recommendations bore fruits and were taken into account of in the amended version of the law. Many ambiguities concerning the refusal of residence permits were removed, and unemployment benefits and maintenance by other family members were accepted as sources of legal income. His recommendation to make the aliens' passport a widely-used document both for domestic and travel purposes was not at first considered by Estonian legislators. However, as the HCNM continued his endorsements, the aliens' passports were in 1996 indeed made the main identification document for most of the 300,000 stateless persons in Estonia. On several occasions, the High Commissioner turned his attention to the application deadlines (for residence permits and aliens' passports), and to the imminent need to postpone these. However, in this aspect the Estonian government itself realized the practical difficulties in the process of application and distribution of the documents, and planned postponements independent from the HCNM. The last major breakthrough was made in 1997, when the parliament decided to start issuing permanent residence permits to non-citizens several years earlier than had originally been planned for.

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<sup>596</sup> Kristina Mauer, Programme Coordinator of UNDP, in an interview conducted by the author on 2 September 1999.

The changes proposed by the HCNM were seldom welcomed by Estonian politicians, especially among the opposition, no matter who happened to be in it at the time. It was almost a 'must' for each consequent opposition in the parliament to criticize the doings of the government in the field of aliens' legislation. However, whenever the previously critical opposition forces got into government themselves, they did not rush to tighten the regulations, but actually took their own steps towards liberalization. This was true not only in the case of the aliens' legislation, but also concerning most other changes that were undertaken. This can be illustrated most powerfully with the example of the Pro Patria Party. While in opposition in the years 1995-1999, the party's members constantly and resoundingly voiced their views against the liberalization of the aliens' legislation. For example, when it was decided to change temporary residence permits to permanent ones earlier than planned, the party declared the step to run against Estonia's national interests. However, once in government after the 1999 parliamentary elections, the Pro Patria Party in turn had to convince the new opposition about the necessity of liberalizing the citizenship legislation, and had to prove that these changes were not contrary to national interests.

Two factors explain such varying attitudes between the government and the opposition forces. The opposition focused more on the domestic audience. As the majority of Estonians was in general against making any concessions towards the Russian-speakers, the opposition always played the intolerance-card in order to strengthen its support amongst its constituencies. This strategy of ethnic outbidding was especially successful during the early 1990s, when the Russian-speaking electorate was still negligibly small.<sup>597</sup> However, once the opposition parties came into power, they realized the importance of international pressure and the inter-relatedness of Estonian domestic success, for example in the economic sphere, and Estonia's international reputation, among other with regard to the question of minorities. As the ruling elites realized at the same time that the international spectrum had more or less accepted Estonia's *ius sanguinis* basis of citizenry and the consequent restrictive citizenship policies, they were more ready to accept amendments in the sphere of aliens' legislation. These were more practical in nature and their implementation was in general more acceptable to the Estonian electorate than changes in the citizenship policies.

Both the initial adoption of the Law on Aliens as well as the later amendments, for example with respect to the use of aliens' passports, were also under attentive scrutiny of other international actors, most importantly the Council of Europe and the OSCE. These institutions co-ordinated their approach to this question informally in summer 1993.<sup>598</sup> The CoE was thoroughly consulted after the President's refusal to promulgate the law, in order to determine the law's compatibility with international standards. Additionally, the CoE helped in printing the large number of aliens' passports once they came into common use. However, the role of the HCNM can be considered more important in the question of aliens' legislation, first because of his very swift and appropriate interference in the midst of the crisis of summer 1993, and second because of his continued insistence on the issue over the years.

In short, the HCNM made a right decision to move his imminent attention from citizenship policies to aliens' legislation already in the early phase of his involvement in Estonia. The most burning issue of diminishing the share of stateless persons in Estonia had always been on the table. However, as the naturalization process appeared to develop with its own speed, the issue of aliens' legislation was put forward by the High Commissioner. The latter issue had a more immediate effect on most Russian-speakers in Estonia, and could thus have led to (as happened in 1993) heightened ethnic tensions in the country. Guaranteeing the large portion of Estonia's population without Estonian citizenship the right to reside in Estonia, including the right to travel freely to and from Estonia, had to be solved before everything else. At present, one could conclude that questions relating to the aliens have been resolved: Most non-citizens of Estonia possess permanent residence permits, which save them from procedural hassles. Also, most stateless persons hold aliens' passports, which allow them to travel.

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<sup>597</sup> Cf. Metcalf 1996, pp. 224-230.

<sup>598</sup> Cf. Kemp 2001, p. 144.

Thus, naturalization was of secondary importance, as it was clear that the process would take significantly longer. As soon as the general idea of Estonian citizenship politics was left to develop at its own speed and there was no more insistence on unconditional naturalization, the HCNM started to operate within the established framework, initiating less substantial changes within the existing citizenship context. The HCNM accepted by and large the residence and language requirements as necessary prerequisites of granting citizenship to Russian-speakers in Estonia. However, he made numerous recommendations on how to soften these same requirements, as well as on how to simplify citizenship acquisition for certain groups, such as the elderly, disabled persons and children. He had considerable success in doing so. The elderly and disabled people were partially exempted from the language test quite soon after the HCNM's indication. However, as he had asked for a complete and not only partial exemption, he initially continued his recommendations on this matter. However, the issue was no longer discussed in public after 1997, and it seems that the HCNM tacitly accepted that further liberalization would not be forthcoming in this area. Thus, it is worth noting that on 14 June 2000 further liberalization indeed took place, as the parliament decided to exempt disabled people from both naturalization exams on the basis of a medical certificate.<sup>599</sup> As for elderly persons, it seemed that the HCNM, as well as the Estonian government and the Russian-speakers, had come to the conclusion that the focus of the naturalization process should be on the younger generations, and that people who were born prior to 1930 and who had not been naturalized until now were unlikely to consider this step anyway.

As far as the level of difficulty of the language test is concerned, the HCNM provoked Estonian criticism by recommending a lower required word amount in one of his later letters than in his first one on this issue. The Estonian Foreign Ministry was quick to point this out, and informed the HCNM that the government had already significantly, though step-by-step, lowered the level of Estonian required in order to acquire citizenship. In this process, the Council of Europe was again actively involved. It was called in for its expertise, according to which the level of language knowledge was lowered, and based upon which a concrete list of words suitable for that level was established. However, as the language requirement was set to the lowest level, the language test was in 1995 coupled to a test on the Estonian Constitution. The HCNM failed to address this issue in the phase when the law was being drafted, and his consequent attempts to bring about the simplification of the constitutional exam were minimal. His general comments on the difficulty of the test went to deaf ears, as the government kept insisting that the citizenship applicants' best interests had been taken into account. Moreover, the Estonian Foreign Ministry declared that if the HCNM was compelled to criticize the test, he should be more concrete and point out which questions he considered problematic. This is exactly what the HCNM did. He mentioned three questions, which he considered unfairly complicated, and these same questions were indeed rapidly removed from the test by the Estonian government. Although the HCNM was thus in a formal way effective with his recommendation, one has to note that this step did not improve the overall content of the exam, and that the government started reflecting upon the general restructuring and reformulation of the exam only five years later. Thus, in substance, the effectiveness of the HCNM was relatively low in this particular question. The technical character of many of the HCNM's recommendations had in fact both its positive and negative sides. On the one hand, the concrete form of these proposals made it easier for the Estonian government to implement the recommendations, and one could even argue that this example demonstrates that the HCNM's recommendations were more effective if they concerned concrete solutions and proposals. On the other hand, the motivation behind the implementation remained for the most part arbitrary or superficial, and did not change the general policies. Moreover, some of the concrete recommendations of the HCNM were perceived by the Estonian side as inconsistent and even seen as raising the pole of expectations. Consequently, the HCNM's general credibility was undermined. This trend was, for example, apparent concerning the above-mentioned Estonian language knowledge required for acquiring Estonian citizenship. In addition, the HCNM's interpretations of Estonian legislative acts seemed to the Estonians in several questions overly suspicious. One example in this regard concerns the High Commissioner's fear that people could be denied citizenship because they failed the language test.

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<sup>599</sup> Cf. Poleshchuk 2001b, p. 59.

As applications for naturalization would not be accepted at all unless the language test was passed and as the language test could be repeated several times, these fears were, as a matter of fact, groundless.

The most extensively and enduringly pursued recommendation of the HCNM was related to the question of naturalization: Granting citizenship to stateless children born in Estonia since the declaration of independence. The issue was first mentioned by Van der Stoel in 1993, but was resolved only in 1998, after heavy legal discussions took place between the HCNM and the Estonian Foreign Ministry. This issue most illustratively raised the question of the HCNM's timing, and whether he should have paid more attention to the level of preparedness of society to bring about changes. Many researchers have established a connection between the decision to liberalize stateless children's opportunities to acquire citizenship and the tightening of the language law that followed. The sociological studies on the period indicate that Estonian society was getting ready to accept the idea of granting citizenship to stateless children, and that the Estonian government itself was planning to propose the amendment to the law. However, after the HCNM had extensively insisted on the issue, and the change was more or less forced upon Estonia with the help of the European Union, it brought with it a general rejection of the amendment, of the HCNM's interference and, most dramatically, a drawback in people's attitudes towards the liberalization of minority politics. According to the government, only months later the amendment concerning stateless children could have been made as an internalized and a widely accepted social decision, but the HCNM's haste had undermined this.<sup>600</sup> It has therefore been speculated that as the decision on stateless children was informally rejected, the legislators initiated another change, this time making the language law stricter. However, the question of societal readiness can be easily turned around. Had the HCNM waited for societal support in every issue he raised, he would not have gotten very far, as the attitudes of Estonians towards minority politics were usually stricter than what the political elites were willing to undertake. By issuing his recommendations and by mastering international support for them among the participating States of the OSCE, Van der Stoel not only put pressure on the Estonian government, but also strengthened the position of moderate forces among the Estonians by giving them a point of reference. At the same time, he was able to place the blame on somebody for unpopular legislative changes. Thus, the HCNM certainly needed internal coalitions of moderate and compromise-seeking forces for the implementation of his recommendations. However, instead of waiting tacitly until they appeared, the HCNM accelerated the process of societal readiness through his continuous involvement in Estonia.

The regulations concerning the minimum language requirement for candidates running for local or national elections has been the only issue in Estonian minority politics in which, after initial abiding to the HCNM's recommendations, this decision was later overturned. Namely in 1996, the parliament was planning to include language requirements and their control mechanisms in the Law on Local Elections. However, after the President refused to promulgate the law and the HCNM had voiced his critical opinion, the control of language knowledge of election candidates was left out from the law. However, attempts to include language skill control mechanisms in the laws on elections continued, and in late 1998 were successful. The HCNM reacted shortly after the alterations were made. However, he did not succeed in abolishing the language requirements for the 1999 local elections. As has been laid out in chapter 5.3, it was only due to the continuous pressure of the EU, as well as the incentive signaled by leading delegations in the OSCE Permanent Council not to prolong the mandate<sup>601</sup> of the OSCE Mission to Estonia if the language requirements were abolished, that this "confidential" recommendation<sup>602</sup> was implemented. The fear that Russian might be used alongside, or even push aside, Estonian in the *Riigiikogu* or the local councils remained eminent. The language requirement was therefore a core issue for the Estonians. Accordingly, the abolishment of the language requirement was counterbalanced by a decision to make

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<sup>600</sup> Interview with Katrin Saks, Minister responsible for Inter-Ethnic Affairs, autumn 2001.

<sup>601</sup> See for example the statement of Swedish Foreign Minister Anna Lindh on behalf of the EU presidency at the Permanent Council on 27 June 2001 (PC.DEL/475/01).

<sup>602</sup> This recommendation had surfaced publicly only indirectly, and was never officially published by the HCNM. As a matter of fact, the respective letter to President Meri has until today not been placed on the official HCNM website.



Estonian the official language for local councils.<sup>603</sup> As exceptions to this rule, however, the government could grant local councils the right to use another language to conduct business, if this language was spoken by the majority of the permanent residents in the locality.<sup>604</sup> Thus, this decision was mainly a re-affirmation of the legislation already in force. A similar development could be observed in Latvia in the following year. The language requirements for candidates in the Latvian legislation<sup>605</sup> even survived the closure of the OSCE Mission to Latvia,<sup>606</sup> and it took a decision of the European Court for Human Rights and renewed pressure of Western states, now brought forward in the context of NATO enlargement, to ensure a respective change of legislation also in Latvia.<sup>607</sup>

The above analysis indicates that the HCNM was basically a firefighter who intervened when something had gone wrong or was about to. He was more involved in short-term conflict prevention, aiming at more immediate steps to correct laws or policies that negatively affected minorities. The most serious ‘fire’ was about to flame when the Law on Aliens was in the process of being adopted and promulgated. The President had done his bit to prevent an escalation of tensions by refusing to promulgate the law. Nevertheless, an outsider was required to mediate between the agitated Russian-speakers, who were about to become ‘aliens’, and the Estonian government, who was not about to let autonomy referenda to take place in the overwhelmingly Russian-speaking areas of the Northeast Estonia. The HCNM, having been in office for only half a year, was still considered an objective and neutral figure by both parties, and was called to ease the situation. Though still a novice in his new position, the HCNM reacted quickly and adequately to the crisis that was about to erupt in Estonia, and managed to commit both sides to mutual respect backed up by public statements. This time, the mutual distrust had been contained, but there the HCNM still faced a lot of work.

Despite the HCNM’s concentration on offering concrete short-term solutions, he also attempted to bring about a long-term improvement in inter-ethnic relations as well as in the general trend of liberalization of minority-related laws and policies. Especially in the early phase of the HCNM’s involvement in Estonia, he stressed the importance of inter-ethnic dialogue and the creation of bodies through which dialogue and co-operation could be institutionalized. Despite his efforts, his effectiveness in this area was, however, limited to *operational effectiveness*. Indeed, a Presidential Roundtable for minorities was created during the height of the crisis in 1993, as recommended by the High Commissioner and the OSCE Mission, but the body was buffered up by representation of small minority groups in Estonia. Consequently, the Roundtable failed to fulfill the HCNM’s vision of an institution in which primarily the Russian-speaking minority could meet face-to-face with government representatives. Also the establishment of the ombudsman’s office was not exactly what the HCNM had hoped for when he recommended to install a Commissioner on National and Language Questions. Moreover, the ombudsman’s office was founded long after the HCNM had insisted on such an institution. The ministerial post responsible for inter-ethnic affairs had become a more important figure in each new government - a development which the High Commissioner welcomed, but did not really manage to influence. Also the Integration Programme was initiated by the Estonian authorities independently of the HCNM, although one has to concede that the OSCE as such was involved in the process leading to this programme through the OSCE Mission to Estonia. Primarily, however, the Integration Programme was not set up in order to please the OSCE but to promote the country’s accession to the European Union.

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<sup>603</sup> Cf. RFE/RL Newline, 5 December 2001, Estonian Made Official Language of Local Councils.

<sup>604</sup> Cf. *ibid.*

<sup>605</sup> Cf. Dorodnova 2002.

<sup>606</sup> In this context, it is worth mentioning that the reactions of the OSCE delegation of the Russian Federation to the informal closure of the OSCE Missions to Estonia and Latvia, although negative in both cases, had been much stronger in the case of Latvia than in the case of Estonia, see OSCE PC.Jour/373 and OSCE PC.Jour/374.

<sup>607</sup> Cf. RFE/RL Newline, 10 April 2002, European Human Rights Court Rules Against Latvia and The Jamestown Foundation Monitor, 13 May 2002, Latvia eliminates language qualifications for candidates in all elections. For continued Russian criticism towards the Latvian language legislation see, *inter alia*, PC.DEL/338/02.

As laid out in chapter 5, the influence of the European Union on Estonian politics after 1997 was crucial for the continued work of the HCNM. At first, when Russian troops were still stationed in Estonia and the OSCE was playing an important role in getting them out, the Estonian government responded to the HCNM's recommendations more enthusiastically. Also inter-ethnic relations were still less settled in result of the early steps taken with the citizenship and aliens' legislation. The HCNM served well as a mediator in these cases. However, once the Russian troops were removed and ethnic tensions de-escalated, Estonia became less willing to implement recommendations from the outside on how to manage its minority politics. The extent of co-operation between the HCNM and the Estonian authorities was also affected by the nature of the coalition government that was in power from 1992 to 1994. The leading party, Pro Patria, had been elected on the nationalist card, promising to make a clean slate in the state and start anew. This meant brushing away all remnants of the old order, among them the favourable conditions of Soviet settlers in Estonia.

The consecutive governments, which were in power during the next composition of the parliament, were more pragmatic in their nature and thus complied more willingly with the HCNM's recommendations. Especially when the Center Party was included in the government in 1995, several important changes in the minority-related legislation were initiated. However, also the latter governments from 1996 to 1998, which included parties that were positioned more to the right on the party continuum, such as the Coalition Party and the Reform Party, took the HCNM's advice into consideration. Thus, the ministerial post in charge of inter-ethnic affairs became more active and capable after 1997, and brought about relevant steps in minority politics. These reached their peak with the national Integration Programme. For one, the attitudes of Estonian politicians were already being influenced by Estonia's application for European Union membership. The European Commission valued the positions of the HCNM on the minority politics questions of the accession countries. Thus, the Estonian authorities conformed to the HCNM's suggestions in order to give a better impression to the European Union. Secondly, in 1997-1998 Estonia was ruled by a minority government, which often depended in its decisions also on the votes of the Russian deputies in the parliament.

The most recent period discussed in this study was characterized by a complicated combination of conditions based upon which the HCNM had to act. Once Estonia was invited to the accession talks with the European Union, the new coalition government of Pro Patria, the Reform Party and the Moderates was basically unreceptive to any other advice given than that of the European Union. Also the domestic pressure for the OSCE Mission to leave Estonia was on the rise, and it inevitably affected also the attitudes towards the HCNM, who was another representative of the OSCE. The fact that the letters between the HCNM and the Estonian Foreign Ministry or the Estonian President were no longer published officially by the HCNM after 1997 is striking in this regard. There was obviously a need to conduct a more 'quiet' form of diplomacy, as there was now less readiness to accept public criticism by OSCE institutions in public. The OSCE Mission to Estonia witnessed a similar experience. The Mission's over 100-page-strong report on the aspects of the integration process in Estonia, which had been drafted in August 1998, was not cleared for distribution by the OSCE Secretariat until April 1999.<sup>608</sup>

The interplay and mutual influence of the OSCE Mission to Estonia and the HCNM are aspects which cannot be overlooked. The two institutions are more than often mixed up not only in the minds of normal citizens, but also by the representatives of the political elite in Estonia. In several interviews conducted in relation to the current study, when asked about the work of the HCNM, interviewees would often actually start talking of the actions of the Mission. While the HCNM conducted his visits and consequent recommendations in Estonia rather quietly and according to the principle of 'quiet diplomacy', the OSCE Mission to Estonia was more vocal. The Mission was in constant contact with different state institutions. It also appeared regularly in the media and denoted any slightest issue of relevance in the context of

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<sup>608</sup> Cf. OSCE Mission to Estonia, Report on Aspects of Integration Processes in Estonia, August 1998, distributed 8 April 1999 as SEC.FR/306/99.

minority politics, to the extent as how many songs in Russian the song festival should include. Also, the constantly changing staff of the Mission made co-operation with Estonian officials more chaotic and fluid. Thus, if people were fed up with the OSCE, it was because of the Mission rather than the HCNM.

However, there were also occasions when Estonian officials looked more favourably at the Mission than at the HCNM. This holds true for example in relation to the draft Law on Local Elections and the plan to include in it a mechanism to control a candidate's language knowledge. While the HCNM criticized the plan as discriminatory, the Head of the Mission did not find anything wrong with the draft. Such a difference in opinion between two different sub-institutions within the same organization did not have a positive effect on either one's public appearance. For the work of the HCNM as such, however, the Mission was of a great value. The Mission not only prepared the visits for the HCNM, but was also responsible for follow-ups. Thus, issues raised by the High Commissioner during his visits to Estonia were addressed again by the Head of Mission or regular Mission Members in their meetings with Estonian officials or representatives of the Russian-speakers. Moreover, the Mission reported to the HCNM on new developments in Estonia, and also briefed him on discussions in the Estonian press on the HCNM's activities. Former Secretary General of the OSCE, Wilhelm Höynck, even characterized the interplay of the HCNM and the Mission as the key factor for successful OSCE conflict prevention in Estonia in 1993.<sup>609</sup> Thus, although the OSCE Mission and the HCNM were not always consistent in their recommendations, nor united in their views on particular issues or tactics, the overall co-operation between the Mission and the HCNM was a clear asset for OSCE conflict prevention in Estonia.

To be sure, not only in the cases when the Mission and the HCNM were of different opinion did the effectiveness of the HCNM suffer. Similar occasions occurred also with other international organizations, most notably with the CBSS Commissioner. On most occasions, however, the recommendations of the HCNM benefited from other organizations that held similar positions. This was for example the case with the Law on Aliens, regarding which both the HCNM and the Council of Europe were actively involved. Later on, the HCNM's recommendations carried more weight if they were backed by the European Union. This apparently happened with the granting of citizenship to stateless children. Also, when Estonia amended the Language Law due to pressure from the European Union, and abolished the language requirements for private company managers, the HCNM welcomed the decision and gave a final evaluation that the law was now in accordance with international standards. After 1997, when Estonia had become less receptive to the recommendations of the HCNM, it was in fact the European Union, which through the adoption of the High Commissioner's recommendations, made sure that the HCNM kept his room for manoeuvre and ultimately also his influence in Estonia.

There are several issues in this study, which might have deserved attention, but were not discussed because the HCNM did not address them. The HCNM only once touched upon the Russian-language education in Estonia, and then only to welcome the changes the President had initiated. Nor was the HCNM concerned with the issue of family reunification, which many other international observers and most importantly the OSCE Mission to Estonia had laboured over. Another unsolved problem that the HCNM could have addressed within his mandate was the schism of the Orthodox Church in Estonia, concerning the difficulties with recognition and conflicts over property. However, explanations can be found for each of the above-mentioned examples on why the HCNM did not interfere. These were not issues of high alert and the HCNM, as a firefighter, chose to concentrate on other riskier issues. For example, the plan to lessen Russian-language education was received with dissatisfaction among the Russian speakers, but did not raise tensions in a way that the aliens' legislation did. It was also not going to have an immediate effect on the Russian-speakers' lives. Moreover, the HCNM has in general been supportive of Estonia's language policies, and acquisition of Estonian as the common language for all persons in the state would, in his opinion, promote inter-ethnic integration in Estonia. Also the question of the orthodox churches in Estonia affects far fewer Russian-speakers than some other, more general

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<sup>609</sup> Cf. Höynck 1994, p. 66

policies. Finally, the avoidance of the family-reunification issue by the HCNM, though this is a very humanitarian concern, is most illustrative of the position of the HCNM. His main concern in Estonia was the large number of stateless people and the increasing number of people applying for Russian citizenship. The insistence on family reunification would have, however, run opposite to these views. Instead, it would have meant more stateless persons or Russian citizens moving to Estonia who would make the situation less settling.

This brings us to the main conclusion on the HCNM's involvement in Estonia: The HCNM has been more interested in advancing security in Europe than in promoting respect for minority rights. He concerned himself foremost and almost exclusively with the issues which had large-scale effects on the Russian-speaking community in Estonia. Some other concerns, such as the above-mentioned family-reunification or minority-language-education issues, perhaps affected minority rights more than the issues that the HCNM dealt with. However, whereas the former issues could have caused extensive tensions and conflict escalation, which could have led to a situation in which Russia would have found itself compelled to interfere, did the latter not have the explosive output of ethnic unrest, which could have resulted in interference by the 'kin-state', at least not in the Estonian context. Thus, the HCNM was - especially during his early involvement - not so much concerned with the situation of the Russian-speaking minority in Estonia, but rather with possible reactions of Russia. He therefore also traveled to Moscow in 1993 and kept in contact with then Foreign Minister Andrei Kozyrev. The Estonian authorities failed, however, to realize this simple truth. Whenever they saw a connection between the HCNM's recommendations and prior complaints on behalf of the Russian Federation, they suspected that the High Commissioner must have been representing the interests of Russia. More likely was that the HCNM was attempting to avoid Russia's influence on Estonia, most importantly on its Russian-speaking minority.

In conclusion, one could state that Estonian authorities implemented most of the recommendations made by the HCNM, at least partially, though this was always done with a great deal of grumbling and for the wrong reasons. Changes were made in order to improve Estonia's international reputation, to increase Estonia's chances of EU accession or to get the OSCE finally off Estonia's back. However, changes were rarely made because of the acknowledgement that the changes would be for the good of the state and society, for the advancement of inter-ethnic relations in Estonia or as an integral part of security concerns in Europe. Nevertheless, they have been accepted and have been internalized to the extent that they are no longer questioned. Given the increasing integration of Russian-speakers into Estonian society and into Estonian politics, and given that discrimination on the bases of language or ethnicity could be quite successfully challenged at the European Court of Human Rights in Strasbourg as well as, in a few years time, at the European Court in Luxembourg, major setbacks in the future are rather unlikely. A low profile engagement of the HCNM and ODIHR, as well as a continued close scrutiny by the Russian Federation, will, in any case, ensure that remaining and re-emerging problems in the relations between Estonians and Russian-speakers in Estonia will be included on the international agenda also in the future.

The question evolving from this kind of conclusion is, however, less directed to the future prospects of the relations between Estonians and Russian-speakers in Estonia, and more to whether we could label the HCNM's involvement in Estonia effective with regard to the definition presented in the introductory chapter. The conclusion that most recommendations have been accepted is only part of the answer in this regard. The notion that they have been accepted mainly due to the direct and indirect pressure caused by other international actors, namely the EU, provokes the question whether the High Commissioner's recommendations caused the established changes in the Estonian legislation. Moreover, one should wonder whether these recommendations and their implementation have contributed to the dispersion of the conflict constellation and to a sustainable reduction of the level of conflict.

As far as the question is concerned whether the High Commissioner's recommendations caused the established changes in the Estonian legislation, the main factors enabling these changes next to the HCNM's influence have already been identified in the discussion above: (1) the growing influence of the

European Union, (2) Russian pressure and (3) the readiness of moderate Estonian forces to change the legislation. As matter of fact, all these factors are intertwined, as is the influence of the HCNM and other OSCE actors, namely the OSCE Mission and the Chairman-in-Office. To start with the European Union, one has to state clearly that the EU was not active during the crisis in 1993. As an actor, the EU has been engaged in Estonia only since 1997. Thus, as far as the implementation of recommendations before 1997 is concerned, the EU did not play an active role. After 1997 it was indeed the European Union, which caused, through its Progress Reports and its continued lobbying, the implementation of the HCNM's recommendations. However, without the HCNM's involvement and the continued reporting of the HCNM and the OSCE Mission, the European Union would not have had the detailed information and concrete recommendations at hand. Moreover, also the EU relied on the willingness of the Estonian political elite to integrate into the European Union and to accept the changes in the aliens' and citizenship legislation forwarded by the EU. Although the Estonian public was less enthusiastic about Estonia's accession to the EU, within the political elite of the country the integration into EU and NATO was largely undisputed. This was especially true for the right-wing parties that had come to power in 1992 through a strategy of ethnic outbidding. In the context of an integrationist policy, ethnic outbidding reached its limits already in 1992. Even before the negotiations on EU accession began, the general attitude prevailed that concerns forwarded from the West should be considered seriously. Moreover, accession to the Council of Europe, which was regarded as first step of the longer way of integration into Western structures, was dependent on changes in the drafted aliens' legislation. Thus, the Estonian government was receptive to Western advice and pressure already in 1993. This readiness to accept outside interference in its internal problems was reinforced by Russian pressure at that time. Newly independent Estonia felt threatened by Russia's aggressive rhetoric, and most of all by the Russian troops stationed until August 1994 on Estonian territory. Although Russia very often provoked strong negative reactions in Estonia, and though its rhetoric and its reluctance to withdraw its troops might have been counter-productive to a certain extent, one has to see also that this pressure pushed the Estonian government towards accepting international monitors such as the HCNM and the OSCE Mission. Moreover, it was mainly due to the perceived wider security implications that the Western states and the OSCE got involved in the first place with such a high profile.<sup>610</sup> Thus, although Russian pressure by no means caused the changes in the Estonian citizenship and aliens' legislation, it helped to pave the way for an active engagement of the HCNM in 1992 and 1993. After the perception to be threatened by Russia had considerably decreased in Estonia, it was the European Union which helped to keep the HCNM in Estonia. In fact, the strategy of ethnic outbidding had been replaced to a certain extent by an "integration" outbidding among the Estonian right-wing parties in the mid-1990s. By pursuing the way of EU accession, the right-wing parties effectively limited their ability to conduct a radical policy towards the Russian-speakers. Attempts to follow a strategy of ethnic outbidding had to be reversed after the EU had backed the recommendations of the HCNM. The only political forces more critical towards EU accession, such as the Center Party, were at the same time also ready to back the interests of the Russian-speakers. Thus, a situation had been created in the second half of the 1990s when a radical policy towards the Russian-speaking population could only be conducted to the extent that it would not be questioned by the EU. As the EU took the recommendations and observations of the HCNM into account while drafting its own policy towards Estonia, the HCNM retained its influence on the Estonian aliens' and citizenship policy. The HCNM could, however, not have changed the Estonian legislation by himself. Thus, he needed the co-operation of those Estonian forces who were ready to block radical draft laws or to vote for liberalizing changes in parliament. As mentioned above, these were those Estonian parties who were ready to compromise in the citizenship and aliens' legislation in order to go ahead with the integration process with the EU. However, these were also parties and figures who had been more moderate than the radical forces from the beginning onwards, and who supported also the underlying ideas behind the proposed changes. For them, the HCNM was, on the one hand, a point of reference, meaning that they could demonstrate that their proposals had international backing. Secondly, however, they could blame the HCNM for imposing these changes on Estonia, as the majority of the

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<sup>610</sup> One should not forget that the post-Soviet space experienced violent conflicts in 1992 and 1993, like in Georgia and Moldova, where the West kept a very low profile and did not engage itself in effective conflict prevention, cf. Neukirch 2001.

electorate was against these changes. The decisions of President Meri not to promulgate the draft Law on Aliens in 1993 and other legislative acts in the following years might be recalled as example in this regard. Thus, the HCNM in fact limited the effectiveness of the strategy of ethnic outbidding.

To conclude, one can state that the HCNM was not strictly causing the changes in the aliens' and citizenship legislation, but that he was a central figure in the configuration of national and international actors, which made these changes happen. The HCNM was certainly the driving factor in the naturalization and integration process in the last decade. The implementation of his recommendations would have hardly been possible without the support of the moderate forces in Estonia, the European Union, the OSCE Mission to Estonia and the OSCE Chairman-in-Office, just to name the main supporting actors. However, without the High Commissioner's involvement, these actors would have been left without their main point of reference. Thus, one could say that the HCNM caused these changes in a wider sense, meaning that the probability that they would have been forthcoming in the last decade would have been considerably lower, if the HCNM had not been engaged in Estonia.

With regard to the question whether the HCNM's recommendations and their implementation have contributed to the dispersion of the conflict constellation and to a sustainable reduction in the level of conflict, we should recall that the conflict constellation had already been relatively dispersed in 1992. In the course of 1992, however, the Estonian radicals pursued successfully a policy of ethnic outbidding, resulting in the new citizenship and aliens' legislation that was discussed in chapter 3. As a result, the conflict constellation in Estonia became more ethnified in 1992-93. Thus, in summer 1993 Estonia experienced an escalated and ethnified conflict constellation. With regard to his involvement in the 1993 summer crisis, *operational effectiveness* can certainly be subscribed to the HCNM. His recommendation to establish a Roundtable was followed up in a critical situation. This helped to open new lines of communication between Estonians and Russian-speakers. Moreover, the intensive shuttle-diplomacy of the HCNM, which resulted in a face-saving compromise for all sides, and which was backed up by the confidence-building public statement of 12 July 1993, was an example of effective crisis management. Other examples of successful crisis management, although on a lower level of escalation, were connected to the process of application for temporary residence permits and to the introduction of language requirements for candidates running for local councils in 1996. In the first case, the HCNM, supported by the OSCE Mission, convinced representatives of the Russian-speakers in Narva that their plans to boycott the registration of aliens in a campaign of civil disobedience might provoke deportations, thus escalating the situation<sup>611</sup> more than they intended. In the second case, the HCNM contributed, through talks as well as through his recommendations, that threats to hold parallel elections in Narva were not implemented.<sup>612</sup> Finally, the HCNM's intervention in 1999, when the language issue came back on the agenda, helped to prevent a process, which might have resulted in regressive developments after a more dispersed conflict constellation had already been reached. As the language requirements would have affected in particular Russian-speaking *citizens*, a more ethnified conflict constellation could have resulted from these amendments. Thus, it is fair to conclude that the operational effectiveness of the HCNM is unquestionable.

The second type of effectiveness that was introduced in the introductory chapter is *normative effectiveness*, which means that international norms and standards are introduced, and actors are socialized with these. As a matter of fact, by pursuing his approach to foster the naturalization and integration of the Russian-speaking population in Estonia, the High Commissioner referred from the outset to international norms and standards. In his first letter to the Estonian government, the HCNM expressed his opinion that a policy, which tries to assure a privileged position for the Estonian population would "scarcely be compatible with the spirit, if not the letter, of various international obligations, Estonia has accepted."<sup>613</sup> To soften his criticism and to underscore his argument, the HCNM went on to appeal to the national interest of Estonia, as such a policy, in the High Commissioner's view, would "involve a considerable risk

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<sup>611</sup> Cf. Lahelma 1999, p. 35.

<sup>612</sup> Cf. Chapter 5.3.

<sup>613</sup> HCNM Letter to Velliste, 6 April 1993.

of increasing tensions with the non-Estonian population which, in turn lead to a destabilization of the country as a whole."<sup>614</sup> Consequently, the HCNM recommended to Estonia a policy of "integration of the non-Estonian population by a deliberate policy of facilitating the chances of acquiring Estonian citizenship for those who express such a wish, and of assuring them full equality with Estonian citizens."<sup>615</sup> If we consider that the recommendations concerning the aliens' legislation were basically born from the understanding that progress in the question of naturalization was not imminent, practically all recommendations the HCNM made in the first as well as in his following letters derived from this core recommendation. This holds true also for the above-mentioned technical recommendations.

As far as possible, the High Commissioner continued to back his recommendations with international norms and standards, and he referred also to Estonian legislation when he had the feeling that new legal acts or the implementation practice did not take these laws into sufficient consideration. As a matter of fact, the normative approach was compatible with both the Estonian approach and the one of the Russian-speakers and their kin state. As mentioned in chapter 3, the Estonians primarily justified their policy towards the Russian-speaking settler community with a legal argument, more precisely with the notion of legal continuity. To be sure, the main foundations of this policy were of historical and psychological nature. As the case of Lithuania demonstrates, a different citizenship policy would have been possible without placing the idea of legal continuity under question. Nevertheless, one has to note that Estonians themselves introduced a legal argumentation into the discourse, and did not take recourse *only* to the historical misdeeds of the Soviet "occupiers". The Russian-speakers in Estonia, as well as the Russian government in their support, were quick to point to international norms and standards when defending their point of view. Thus, in the Estonian case it would not be fair to say that the HCNM *introduced* international norms and standards as terms of reference. They have been part of the discourse from the outset. However, their interpretation differed widely between the different actors. In fact, the Estonian side as well as Russia and the Russian-speakers in Estonia used legal norms more or less as instruments for defending their own position. A particularly good example is the argument brought forward by then Foreign Minister of Estonia Juri Luik to defend the reluctance to issue aliens' passports on a larger scale: "the number of persons who are deemed to be stateless [should] not be artificially increased",<sup>616</sup> an argumentation which pointed at least indirectly to the UN Convention on the Reduction of Statelessness. This initial reluctance notwithstanding, Estonia started issuing aliens' passports to non-citizens in 1996 and, by and by, all recommendations of the HCNM, which were sufficiently backed up by international norms or were complementary to state practice, were finally implemented. Two aspects next to the continuous influence of the HCNM and his reference to international norms and standards greatly contributed to this growing acceptance of international norms as basis for viable conflict transformation: (1) the fact that according to the Estonian Constitution, international law precedes over Estonian law and (2) Estonia's wish to integrate into West European structures, namely the EU. Thus, also in this respect, not all credit can be given to the HCNM alone. However, it can not be overseen that the HCNM continuously pushed the Estonian government in this direction. As far as the Russian-speakers in Estonia were concerned, at least their moderate wing also accepted international norms as a framework for co-operative solutions after 1993. The "Legal Information Centre for Human Rights" (LICHR), which was founded in 1994 and which is basically a watch-dog for the rights of Russian-speakers in Estonia, might be characterized as the institutionalized proof in this regard.<sup>617</sup> A good example for the general acceptance of international norms by the Estonians as well as by the Russian-speakers in Estonia is also the lawsuit filed against the Citizenship and Migration Board by the LICHR, with regard to the application of the immigration quota.<sup>618</sup> In this case, the Estonian State Court satisfied the case of the Russian-speaking plaintiff with reference to the European Convention on Human Rights. Thus, one could conclude that the HCNM, operating in a conducive environment in this regard, was normatively effective, as he helped to

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<sup>614</sup> Ibid.

<sup>615</sup> Ibid.

<sup>616</sup> Luik Letter to the HCNM, 4 April 1994.

<sup>617</sup> See <http://www.lichr.ee> (28 May 2002).

<sup>618</sup> Cf. chapter 4.5.

introduce international norms and standards as frames for reference, and helped to socialize primary actors with these norms.

This, however, leads us to the core question. Was the HCNM able to transform his operational and normative effectiveness into substantial effectiveness? In other words, did he succeed in a sustainable dispersion of closed fronts and in lowering the level of escalation? In fact, one has to conclude that the recommendations of the HCNM contributed largely to the dispersion of the conflict constellation in Estonia. To be sure, as the High Commissioner had accepted the core elements of the citizenship and aliens' legislation, his recommendations were not aimed at dispersing the conflict constellation in the short run. His long-term-oriented approach to promote the naturalization of those Russian-speakers who would be willing to integrate, however, helped to disperse the conflict constellation over the years. As more Russian-speakers became Estonian citizens, the old cleavage between moderate and radical Russian-speakers emerged again, resulting in a differentiation of the group of Russian-speakers as an actor. Naturalization and integration are also a prerequisite for the de-ethnification of the political system, as only the emergence of a larger, ideologically-dispersed, Russian-speaking electorate paves the way for a ideologically-based, cross-ethnic coalitions. This is exactly what happened in the last years in Estonia. As the number of naturalized Russian-speakers had slowly risen over the years, also the size of the Russian-speaking electorate grew.<sup>619</sup> Today some 15 to 18 per cent of the electorate for the parliamentary elections<sup>620</sup> and even thirty per cent for local elections, where also the non-citizens are entitled to vote, might be Russian-speakers. Accordingly, not only the Russian dominated parties and the Center Party, but also the Reform party, successfully campaigned for the votes of Russian-speakers in the 1999 parliamentary elections.<sup>621</sup> In November 2001, Russian-dominated parties even backed the Pro Patria-led (!) Tallinn city government in a vote of no-confidence.<sup>622</sup> Finally, during the 2001 presidential election, which was determined by a special electoral college, it seems that the votes of Russian-speaking delegates from local councils were crucial for the victory of Arnold Rüütel over Toomas Savi from the Reform Party. Thus, in situations where just a few votes are needed to break a tie – which happens quite often in the fragmented political system of Estonia – the votes of Russian-speakers are important. This increases the bargaining power of the Russian-speakers and their representatives. As the Russian-speakers are a differentiated group and as they have a variety of interests, which are not based exclusively on their nationality,<sup>623</sup> they are ready to back Estonian parties and candidates. Already back in 1995, one of the leaders of the block of Russian parties who competed in the 1995 parliamentary elections together, Victor Andreev, argued that his block "did not seek to promote and protect a distinctive cultural identity; rather it conjoined sectional parties working to articulate the broad spectrum of Russian interests."<sup>624</sup> In fact, the political party cohesion of Russian-speakers has been already low on the level of local elections in 1993<sup>625</sup> - at a time when the society of Estonia was strongly polarized along ethnic lines.<sup>626</sup> Thus, it seems that over the years a readiness always existed on the part of the Russian-speaking electorate to vote for non-Russian parties, as long as they satisfy their broader interests. The importance of these non-nationality-related interests rises as the rights of Russian-speakers are secured and the process of integration continues. The diminishing role of ethnic affiliations in the Estonian party system finally became evident in March 2002: The Center Party signed a co-operation agreement with the predominantly Russian-speaking United People's Party, while the Reform Party and the likewise moderate Russian Baltic Party in Estonia merged.<sup>627</sup> Given that the Center Party and the Reform Party formed a minority government in late 2001, the moderate Russian-speaking forces are now, for the first time officially, although only indirectly, part of a government coalition. For the upcoming 2002 local elections, however, a pre-election alliance of

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<sup>619</sup> Cf. Raun 2001, p. 25.

<sup>620</sup> Cf. Järve 2000, p. 5.

<sup>621</sup> Cf. *ibid.*

<sup>622</sup> Cf. East European Constitutional Review 2001.

<sup>623</sup> Cf. Kemp 2002, p. 58.

<sup>624</sup> Arter 1995, p. 261.

<sup>625</sup> Cf. Arter 1995, p. 261.

<sup>626</sup> Cf. Evans 1998, p. 71.

<sup>627</sup> Cf. RFE/RL Baltic States Report, 18 March 2002, Center Party Leaders Approve Accord with Russian Party and RFE/RL Baltic States Report, 18 March 2002, Reform Party and Russian Baltic Party in Estonia to Merge.



Russian parties has been formed, indicating that the process of de-ethnification of party politics will be a rocky one.<sup>628</sup>

By helping to reframe the Estonian citizenship and aliens' legislation, the High Commissioner paved the way for the integration of the Russian-speaking population. This process, however, has just started and needs to be continued in the upcoming years. Currently, the naturalization process is still slow. As a matter of fact, the number of newly naturalized citizens has come down from 9,986 in 1998 to 3,090 in 2001.<sup>629</sup> Given that around 180,000 Russian speakers without any citizenship reside today in Estonia, the naturalization process would take two generations, if continued at this speed. As children of stateless persons will receive Estonian citizenship through a simplified procedure, and as the final exams in Estonian at schools and high schools were equated since 2000 with the naturalization test,<sup>630</sup> also children of Russian citizens residing in Estonia might find it easier to apply for Estonian citizenship than their parents. Moreover, the old generation of non-integrable persons will pass away over the years and, thus, it is quite probable that the percentage of stateless persons and foreigners will decrease much faster over the next ten to twenty years than the current naturalization rate indicates. The integration of the younger generation of Russian-speakers and the increase of the Russian-speaking electorate over the next ten years opens the way to a further dispersion of the conflict constellation and finally to a transformation of the conflict itself.

As Estonians still see such a development critically, setbacks are, however, still possible. The attempt to raise language requirements in the economic and political field in 1999 was such a setback, which threatened to re-increase the ethnification of the conflict constellation. Moreover, as Järve<sup>631</sup> argues, the Estonian Constitution defines Estonia practically as an ethnic democracy, in which it is the duty of all citizens (regardless of their ethnicity) to preserve the Estonians as an ethnic group. This dilemma, comprised of an increased number of naturalizations of non-Estonians in the future and a continued reluctance on the side of the Estonians to grant these non-Estonians a greater influence in the formation of Estonian politics, might, however, very well be resolved in the long run through the assimilation of the younger generations of non-Estonians. As a matter of fact, Laitin presumes that the younger generations of Russian-speakers might choose to assimilate at least linguistically, as they anticipate economic benefits for themselves and their children.<sup>632</sup> Such an outcome might lead indeed to a sustainable transformation of the current conflict. However, this is a long-term prospect and in the short- and middle-term, setbacks and processes of intensified re-ethnification can not be ruled out. Preventing such setbacks in the upcoming years will therefore be a continuous task for preventive actors in Estonia.

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<sup>628</sup> Notably the Russian Baltic Party in Estonia is not part of this alliance, see RFE/RL Newsline, 27 March 2002, Four Russian Parties in Estonia Conclude Agreements for Elections.

<sup>629</sup> Cf. [http://www.mig.ee/eng/press/stat\\_otused.html](http://www.mig.ee/eng/press/stat_otused.html) (30 May 2002)

<sup>630</sup> Cf. Poleschuk 2001a, p. 16.

<sup>631</sup> Cf. Järve 2000, p.7.

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