

INTEGRATING ESTONIA'S NON-CITIZEN MINORITY

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INTRODUCTION

Helsinki Watch has followed developments regarding the granting of citizenship in the newly independent states of the former Soviet Union since 1991. In April 1992, Helsinki Watch issued a report, "New Citizenship Laws in the Republics of the Former Soviet Union."¹ The report contains Helsinki Watch's official policy statement on granting citizenship in the NIS, which favors a "zero-option" approach, i.e., the granting of citizenship equally to all who were permanent residents at the time the state in question gained independence. Helsinki Watch maintains this policy and believes it to be both fair and practical.

Although Helsinki Watch takes issue with Estonia's rejection of the zero-option, its August 1993 mission uncovered no systematic, serious abuses of human rights in the area of citizenship. Non-citizens in Estonia are guaranteed basic rights under the Estonian Constitution, including the right to unemployment benefits and social services. Problems exist, however, especially concerning the successful integration of Estonia's large non-citizen population, nearly forty percent of the country's 1.6 million residents. The Estonian language, which is required both for citizenship and employment, is possibly the greatest impediment to integration. Adequate representation for non-citizens and the development of a mechanism to express adequately non-citizen concerns represent another problem. While Estonia has made progress, especially in its mature handling of the Narva referendum² and in its allowing the Council of Europe to review the "Law on Aliens," it still has far to travel if its society is to overcome its present bi-polarity. Finally, while debate has raged in the press and between governments concerning Estonia's citizenship and alien legislation, its influence on the thirty-nine percent of the population it affects has not been explored. This work hopes in part to correct that.

¹ *Helsinki Watch*, "New Citizenship Laws in the Republics of the Former Soviet Union." April 15, 1992.

² See page 32.

MAP OF ESTONIA³

³Map from Estonian government. Dark line indicates present border with Russia. Broken line indicates the former border under the 1920 Tartu Peace Treaty. Stalin annexed the area after World War II.

NOTES ON DEMOGRAPHICS-GEOGRAPHY-SHORT HISTORY

The Republic of Estonia is home to 1,565,000 people, according to the last census conducted in 1989. In that census 61.5 percent (963,000) identified themselves as Estonian; 30.3 percent (475,000) as Russian; 3.1 percent as Ukrainian (48,000); and 1.8 percent as Belorussians (28,000).⁴ Other groups include Finns, Jews, Latvians, and Tatars. The Estonians are a Finno-Ugric people and share linguistic and cultural affinity most closely with the Finns and the many Finno-Ugric peoples of the former Soviet Union.⁵

Estonia, a mostly flat forest land, lies in northern Europe surrounded by bodies of water on two sides: the Gulf of Finland to the north, the Baltic Sea to the northwest, and the Gulf of Riga to the south and southwest. Estonia shares a border with Latvia to the south and one with Russia to east. Tallinn in the north is the capital, with Tartu, a university town in the south-east, the nation's second city.

Until 1920 Estonia was continually under domination—either German, Swedish, or Russian—because of its exposed geographic position on a maritime trade route between the West and Russia. Real independence was gained only after a war with the Bolsheviks and the signing of the Tartu Peace Treaty with the Soviet Union in 1920. Recognition from most Western nations soon followed, and Estonia joined the League of Nations.

During the inter-war period Estonia experienced a period of liberal democracy, 1920-1934, and one of moderate authoritarianism, the so called "era of silence,"⁶ under President Konstantin Pats from 1934-1940. In 1925, the Estonian Parliament passed what many considered one of the most liberal laws on national minorities in Europe. Estonia was also fairly prosperous, trading mainly with England and Germany.

Estonia unfortunately fell victim to the Molotov-Ribbentrop Pact of 1939; in June 1940 Soviet troops completely and unlawfully occupied Estonia. After rigged elections in July 1940, Estonia was forced to become part of the Soviet Union. Mass arrests, deportations, and confiscation of private property took place under Soviet rule. German occupation during World War II interrupted Soviet power, which was reestablished in 1944 after the German retreat. Additional arrests and deportations occurred, especially as a result of the forced collectivization of agriculture in 1949. Soviet rule ushered in mass industrialization programs, and many Russians migrated to Estonia as a result.

Russians in Estonia, some thirty-one percent of the population, live largely in two areas: in urban regions⁷ and in the northeast, primarily in the cities of Narva, Sillamae, and Kohtla-Jarve. This was not

⁴ *Natsional'nyi Sostav Naseleniya SSSR*. Moskva: Finansy i Statistika, 1991.

⁵ Namely the Mordvian (1.2 million), Urdmurt (746,000), Mari (622,000), and Komi (500,000) peoples. Most live in Western Siberia.

⁶ See Toivo U. Raun, *Estonia and the Estonians*. Stanford, California: Hoover Institution Press, 1991, chapter 8. (hereinafter Raun)

⁷ Urbanization and the growth of Estonia's Russian population are two interrelated phenomena. While increased urbanization would have occurred to some extent without Soviet annexation and the large influx of Russians, the

always the case. While a Russian minority inhabited Estonia during both the Tsarist rule and the inter-war Estonian republic, its portion of the population held steady at 8.2 percent according to Estonian census figures of 1922 and 1934.⁸ Even Narva, which today is over ninety percent Russian, was a predominantly Estonian city (64.8 percent of the population) in 1934.

Soviet annexation and forced industrialization⁹ quickly changed Estonia's demographic map in favor of Russians.¹⁰ Three waves of Russian¹¹ migration entered Estonia. The first, between 1945 and 1959, consisted of roughly 300,000 individuals, mostly industrial workers and bureaucrats of all types: Communist Party workers, military personnel, and staff to run a centralized economy.¹² The second wave, which lasted until the mid-1960s, was relatively small. The third wave, which began in the mid-1960s, was connected with a Soviet industrialization drive that came at a time when Estonia's population had little excess labor capacity. Most, if not all, labor had to be imported. The Russian share of the population steadily increased, from 20.1 percent in 1959 to 27.9 percent in 1979, reaching its present 30.5 percent in 1989.¹³

In the late 1980s Estonians took advantage of the increased freedom of Gorbachev's "glasnost" and organized cultural societies and singing festivals to express a national identity that had long been suppressed.¹⁴ Some call the Estonian independence movement, "The Singing Revolution." The Estonian flag of blue, black, and white, which had been outlawed under the Soviets, slowly came to be seen at festivals and meetings. In March 1990, the newly elected Supreme Council called for a period of transition to full sovereignty. In late 1990-early 1991, as Gorbachev moved to the right and Soviet forces brutally attacked the television tower in Vilnius, Lithuania, and the Latvian Interior Ministry building in Riga, Latvia,

overwhelming majority of Russians, nearly eighty-five percent, settled in urban areas after 1940. Some cities, like the nuclear defense industry city of Sillamae, were closed to Estonian migration.

⁸The Russian population increased almost twice between the Tsarist census of 1897 and the census of 1922. Estonia acquired eastern territories populated by Russians under the 1920 Treaty of Tartu. These areas included the east bank of the Narva River from the Gulf of Finland to Lake Peipsi and the area around Petseri, present day Pechory, Russia. Stalin took these territories back after World War II. See Raun, pp. 130-32.

⁹Major industries include fuel and energy production, which is centered in the northeast, light industry and textiles, food processing, machine construction, and wood working, pulp and paper production.

¹⁰Russification also accompanied all waves of migration, but was especially noticeable after the third wave, in the 1970s during Brezhnev's reign. Soviet ideologues talked of one Soviet people, a melting together of nations (*sliyaniya narodov*), with Russian the lingua franca.

¹¹The vast majority of in-migration after 1940 consisted of Russians (at least eighty percent). Ukrainians and Belorussians also came in large numbers.

¹²Riina Kionka, "Migration to and from Estonia," *Radio Free Europe/Radio Liberty Report on the USSR*, September 14, 1990, pp. 20-24. Riina Kionka presently works for the Estonian Foreign Ministry.

¹³Raun, p. 204.

¹⁴See Raun, Chapter 14.

many in Estonia feared a new Soviet clampdown, possibly even an invasion.¹⁵ A March 1991 referendum on independence garnered seventy-eight percent of the vote, strengthening Estonian resolve. After the failed coup in Moscow in August 1991, Estonia declared full and complete independence, which the Soviet Union quickly recognized.

CITIZENSHIP IN THE ESTONIAN REPUBLIC

Citizenship/Naturalization Law 1938/1992

Estonia, like its Baltic neighbors Latvia and Lithuania, is presently trying to reestablish statehood,¹⁶ democratic institutions, and a free market system after more than fifty years of Soviet rule. After declaring independence in the wake of the failed August 1991 coup in Moscow, the republic faced a fundamental question: what was Estonia, and what type of state would it become? With little hesitation, Estonian political leaders declared that Estonia was not a new state, but rather the rightful and legal successor of the Estonian republic declared on February 24, 1918, and forcibly annexed to the Soviet Union on August 6, 1940. Estonian political leaders argued that the Soviet occupation had not interrupted the *de jure* legal status of Estonia; therefore, all the consequences of Soviet rule were *ex tunc*, not valid from their inception.¹⁷

Consequently, during the fall/winter 1991-92, some Estonian politicians, for example representatives from the Congress of Estonia,¹⁸ argued that all those who entered Estonia after the Soviet invasion, i.e., after June 16, 1940, did so illegally and therefore had no automatic right to citizenship. Conversely, all those residing in Estonia prior to June 16, 1940 (or their direct descendants),¹⁹ would

¹⁵Many Estonian Government officials with whom Helsinki Watch spoke still voice concern about Estonia's security vis-a-vis Russia. Many cited a publication in the October 1992 issue of the Russian Foreign Ministry Journal, *Diplomaticheskii Vestnik*. In that issue appears the summary of a paper that S.A. Karaganov presented at a seminar, "Problems in Russia's Foreign Policy Strategy Regarding the Near Abroad," held on October 6, 1992, at the initiative of the Russian Foreign Ministry. The paper outlines Russia's policy towards Russian-speaking minorities in the "near abroad," the former republics of the Soviet Union that are now independent states. Although not an official policy Russian statement, many Estonians found Karaganov's paper threatening.

Others pointed to the harsh Russian rhetoric during the passage of the Law on Foreigners in June-July 1993, when both President Yeltsin and Andrei Kozyrev spoke of apartheid and ethnic cleansing. Especially troubling to the Estonian side was a June 24, 1993 comment of President Yeltsin, in which he stated that the Estonian Government had forgotten "certain geopolitical and demographic realities... The Russian side has means to remind it of them." This topic is discussed in *The Economist*, July 10, 1993.

¹⁶The Baltic States do not consider themselves "newly independent states," but rather the successor states to the interwar Latvian, Lithuanian, and Estonian republics.

¹⁷Statement of Estonian Foreign Minister to United Nations, 47th Session of General Assembly, September 29, 1992.

¹⁸The Congress of Estonia was a shadow parliament made up of and elected by pre-war citizens of Estonia. It cast itself in opposition to the Estonian Supreme Council, which was elected by all residents of Estonia.

¹⁹Throughout the report the term "citizen" implies their descendants also.

automatically be considered citizens of the Estonian Republic. According to this view, these individuals never lost their citizenship; rather, Soviet rule merely held it in abeyance. The Congress of Estonia voiced stiff opposition to zero-option proposals granting citizenship to all those residing legally in Estonia at the time of independence in 1991.

In early 1992, the Estonian Supreme Council rejected the zero-option and passed legislation restoring the 1938 Citizenship law; on February 26, 1992, the Estonian Supreme Council passed a resolution, "On the Application of the Law on Citizenship," that reactivated an amended version of the Citizenship Law of July 1, 1938. The resolution was needed to bring the 1938 Citizenship Law up to date with the realities of post-annexation Estonia. Supporters of the new law argued that Soviet annexation had suspended the implementation of this law, and that therefore all those who entered Estonia after annexation did so unlawfully and were not entitled to receive citizenship automatically.²⁰ Consequently, close to forty percent of the population was disenfranchised.²¹

The amended 1938 Citizenship Law outlines those who had an automatic right to citizenship, namely those who had been citizens of Estonia prior to 1940. The law also provides for naturalization, a process that requires a language test,²² a loyalty oath, and a residency of two years (an additional year was required to process the application, and so the naturalization part of the law came to be known as "2+1").²³ Naturalized citizens do not have the right to dual citizenship; Estonian citizens by birth, however, are allowed the right to maintain dual citizenship.²⁴

Notable amendments to the law, namely point 16 of the Resolution of February 26, 1992, lists those who have no legal right to naturalization: active duty, foreign military personnel; former employees of Soviet security/intelligence organs; individuals convicted of serious felonies or repeat felony offenders; and those without a steady income.

Citizenship Under Simplified Conditions²⁵

The Law on Citizenship waives the language and residency requirements for several groups. In

²⁰"Estonian Law on Citizenship", *Info-Press*; Ministry of Foreign Affairs of the Republic of Estonia, June 1993.

²¹The Estonian Government denies that these individuals were disenfranchised, claiming that all those who entered Estonia between 1940-1991 did so illegally and were not citizens in the first place.

²²There is a greater discussion of language requirements for citizenship in the section Helsinki Watch Critique (of Citizenship Law), "Language." There is also a language test for employment, dealt with in the section Language and Employment.

²³The initial date for residency in Estonia was March 30, 1990, the date when the Supreme Council declared Soviet rule illegal and set out to restore the Estonian Republic.

²⁴This allows members of the large Estonian emigre community to reestablish their Estonian citizenship without losing, for example, their U.S. Canadian, or Australian citizenship. Non-Estonians who gain Estonian citizenship through naturalization must give up their original citizenship.

²⁵The majority of non-citizens do not qualify for citizenship under simplified conditions.

Article 7 (1), (2), (3), Estonian nationals, individuals who "provide valuable services to the national defence or society of the Republic of Estonia," and stateless persons²⁶ residing in Estonia ten years prior to applying for citizenship do not have to take a language exam or meet residency requirements. Paragraph 6 of the Resolution on the Application of Citizenship also removes the residency and language requirements for all those who registered for citizenship with the Congress of Estonia.

Citizenship Figures

The law on citizenship requires, among other things, a two-year residency period plus a one-year waiting period after one has applied for citizenship. Since permanent residency is counted starting on March 30, 1990, an individual who submitted his application on March 31, 1992, and fulfilled all the necessary requirements could become a citizen on March 30, 1993. As outlined above, four categories of individuals have neither a residency nor a language requirement and can acquire citizenship as soon as their application is processed.

There are at present approximately 500,000 individuals permanently residing in Estonia who do not enjoy Estonian citizenship. Of that number, approximately 40,000 have taken Russian citizenship, with 300 becoming Latvian citizens and 230 Lithuanian. According to figures the Estonian Ministry of Foreign Affairs provided, as of September 1, 1993, citizenship has been granted under the following categories:

Citizenship with no language/residency requirement:

Article 7, "Law on Citizenship"	9,754
Paragraph 6, "Resolution on Application"	4,285
TOTAL	14,039

Citizenship with language/residency requirement:

Article 6, "Law on Citizenship"	1,413²⁷
TOTAL	1,413

Law on Aliens

²⁶The Estonian Government does not presently consider the non-citizen population stateless, although it holds the citizenship of a non-existent state (the former Soviet Union).

According to the Law on Aliens, non-citizens have until February 1995 to decide to take Estonian citizenship or the citizenship of another state. At this time those who opt for no citizenship will be considered stateless. Those who fall under Article 7 (3) would not be eligible until 2005.

²⁷An additional 3,000 individuals have passed the language test and submitted citizenship applications under Article 6 of the "Law on Citizenship."

All figures from "Citizenship Statistics-September 1, 1993", Info-Center, Ministry of Foreign Affairs of the Estonian Republic.

The Estonian Parliament, the Riigikogu, passed two Laws on Aliens: the first version was rejected and the second was signed into law after it was sent to the Council of Europe for legal recommendation. In order to regulate the sojourn of non-citizens residing in Estonia, the Riigikogu passed the first "Law on Aliens" on June 21, 1993.²⁸ This version of the "Law on Aliens" did not give an outright guarantee of residency to non-citizens presently residing in Estonia, many of whom had either been born in Estonia or had lived there for twenty, thirty, or even forty years. The bill also required all non-citizens to apply for five-year residency permits. The Riigikogu's passage of the bill unsettled the non-citizen community.²⁹ In the eyes of the law, all individuals who came to Estonia after 1940 now became "foreigners."³⁰

President Lennart Meri refused to sign the bill and sent it the Council of Europe for expert legal advice. In its legal recommendations, the Council of Europe advised that, "The experts are of the opinion that the status of persons already resident on the territory of Estonia cannot be compared to that of non-citizens not presently residing in Estonia, and that, whatever the historical background, the law must be subjected to particularly close scrutiny..." Taking into account the Council of Europe's legal recommendation, the Riigikogu amended the law and passed a revised version of the bill on July 8, 1993. President Meri signed the bill into law shortly thereafter.

The amended "Law on Aliens" came into effect on July 12, 1993. It guarantees the right of residency to those individuals who resided on the basis of a permanent registration³¹ before July 1, 1990, in the Estonian Soviet Socialist Republic "if the alien's legal status meets the requirement set forth in this law {Article 20 (1), (2), (3)}." Article 20 of the first draft of the "Law on Aliens" contained no such guarantees. Article 11 of the amended law allows for a permanent residency permit that does not need to be renewed; Article 11 of the first "Law on Aliens" granted five-year residency permits that had to be renewed.³² Permanent residency also allows permanent employment.

Under the terms of the law, all non-citizens who enjoyed permanent residency before July 1, 1990, must apply for a permanent residency permit within one year of the publication of the "Law on Aliens" in

²⁸For an excellent chronology of events surrounding the "Law on Aliens" controversy plus an interpretation of the law from an Estonian perspective see, "The Law on Aliens Controversy in the Republic of Estonia," *A study by UBA/Baltic Appeal to the United Nations*, Second Edition, September 1, 1993.

²⁹The City Councils of Narva and Sillamae held referendums on autonomy on July 16 and 17, actions that violated the Estonian constitution. The Russian Government vociferously criticized the Estonian government, with Foreign Minister Kozyrev and President Yeltsin speaking of "apartheid" and "ethnic cleansing."

See also Ann Sheehy, "The Estonian Law on Aliens," *RFE/RL Research Report* September 24, 1993, pp. 7-11.

³⁰In Russian the bill was termed *Zakon ob Inostrantsakh*.

³¹With a *postoyannaya propiska*

³²Residency permits can be forfeited under Article 14 for providing false information; not "respect(ing) the constitutional system"; compromis(ing) Estonia's national interests; criminal offenses where the sentence is longer than one year; service in a foreign army.

the State Herald (*Riigi Teataja*).³³ Within two years, non-citizens must obtain residency and work permits if they decide to remain in Estonia; within that time they must also decide if they wish to take Estonian, another citizenship,³⁴ or become stateless and receive an Alien's Passport. The Estonian Government will issue Alien's Passports, which will be valid for international travel.

Like the Citizenship Law, certain categories of individuals have no right to a residency permit under the "Law on Aliens." Those denied include individuals who provide false application information; break Estonian law; compromise state security; commit a criminal offense where sentencing exceeds more than one year and the offender is not considered rehabilitated; were employed in foreign intelligence services; serve as active duty military personnel in a foreign army (and their families); retired as career military personnel of a foreign power (and their families, provided the family members came to Estonia in conjunction with the service of military personnel) {Article 12 (4), (1-7)}. Article 12 (5), however, states that "Exceptions may be made for aliens listed in paragraph four {Article 12 (4)} of this Article, in accordance with procedures established by the Government of the Republic."³⁵

HELSINKI WATCH CRITIQUE

Helsinki Watch Policy on Granting Citizenship

In April 1992, Helsinki Watch issued a policy statement on guidelines that the newly independent states of the former Soviet Union should use in formulating citizenship laws.³⁶ The main recommendation among these guidelines was Helsinki Watch's support of the "zero-option," the granting of citizenship to all legal residents at the time of independence. Roughly summarized, the guidelines underscore the new state's obligation to uphold all international human rights laws to which the USSR was a signatory; to strengthen the protection of human rights; to grant equal protection to the rights of citizens and non-citizens alike; to minimize statelessness; and to avoid arbitrary deprivation of citizenship. When drafting new citizenship legislation, Helsinki Watch also called on states to consider prior legal residence in the state (when the state was a Soviet republic); the need to protect the family; and the imperative to treat each application individually and not to exclude groups of people for past membership in political organizations, for medical conditions, or for criminal convictions.

Discriminatory Effect

³³"Law on Aliens," *Info-Press*, Ministry of Foreign Affairs of the Republic of Estonia, July 1993.

³⁴Those wishing to acquire Russian citizenship must do so before February 1995.

³⁵At present Helsinki Watch does not know whether the Estonian Government has passed procedures to regulate this situation.

³⁶*Helsinki Watch*, "New Citizenship Laws in the Republics of the Former Soviet Union." April 15, 1992. See Appendix for full policy statement.

International law gives states great—though not unlimited—freedom in setting requirements for citizenship. Under Article 1 of the 1930 Hague Convention on "Certain Questions relating to the Conflict of Nationality Laws," "it is for each state to determine under its own law who are its citizens...(but) the citizenship law of a State shall be recognized by other states in so far as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to citizenship."³⁷

Estonia's *ius sanguinis* Citizenship Law seems to violate several international conventions.³⁸ Estonia is a signatory of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1965).³⁹ Following the precedent of the 1930 Hague Convention on Nationality, Article 1(3) of CERD states that, "Nothing in this Convention may be interpreted as affecting in any way the legal provisions of State parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality."⁴⁰ In his April 6, 1993, letter to Estonian Foreign Minister Trivimi Velliste, the Commission on Security and Cooperation in Europe (CSCE) High Commissioner on National Minorities, Max van der Stoep, recommended that, "In view of Articles 1 (3) and 5 (d) of CERD, any discrimination on the ground of nationality or ethnicity should be avoided when enacting or implementing legal provisions concerning nationality, citizenship, or naturalization." While it is true that individuals who were citizens (and their descendants) of the pre-war Republic of Estonia were able to acquire citizenship regardless of their ethnicity,⁴¹ the outcome of the law has disproportionately and negatively affected certain ethnic groups.

The vast majority of those denied citizenship are Russian. Roughly 100,000 Russian-speakers (the vast majority of whom are ethnically Russians) gained citizenship automatically. According to Estonian

³⁷Kees Groenendijk, "Nationality, Minorities, and Statelessness: The Case of the Baltic States." *Helsinki Monitor (Netherlands Helsinki Committee)*, Vol. 4, Issue 3, 1993. (hereinafter Groenendijk).

³⁸*Ius sanguinis* is the principle by which one acquires citizenship through, literally, "blood." One is considered a citizen of Country X if his forefathers were also citizens of Country X. The German System of granting citizenship, like the Estonian one, is based on the principle of *ius sanguinis*. A Turkish migrant worker born in Berlin, for example, does not automatically acquire German citizenship. An ethnic German born in Russia is automatically considered a German citizen even if his ancestors left Germany two hundred years earlier.

The other main principle of granting citizenship is *ius soli*. Under *ius soli*, one gains citizenship by dint of being born on the territory of a country. U.S. citizenship is based on the principle of "ius soli." The child of a non-citizen born in the United States automatically becomes a U.S. citizen.

³⁹Groenendijk, p. 20.

⁴⁰*Twenty-Four Human Rights Documents*. Center for the Study of Human Rights, Columbia University, 1992.

⁴¹Roughly 100,000 Russian-speakers out of a total of 600,000 are Estonian citizens, the majority by birth, some through naturalization. See William J.H. Hough, III, *Human Rights and Minorities in the Baltic States*, p. 59.

In 1934, 8.2 percent of Estonia's population was Russian. See "Estonia in Facts: Ethnic Issues in Estonia." Estonian Ministry of Foreign Affairs.

government figures issued in February 1993, the non-Estonian population consists of 474,834 Russians and 126,447 representatives of other nationalities of the former Soviet Union, for a total of 601,281.⁴² Even if the 100,000 Russian speakers who automatically received citizenship all came from the 474,834 Russians, seventy-five percent of those denied citizenship under the residency law would still remain Russian. Since these figures were widely known at the time of the law's adoption, it would appear that the negative effect the law has had on Russians is not an unfortunate, unforeseen by-product, but an intentional goal.

There were alternatives to the present Estonia Citizenship Law that would not have adversely affected any particular group. The Supreme Council's Citizenship Commission's Draft Citizenship Law of September 9, 1991, represented an amended zero-option.⁴³ The draft envisioned three categories. The first group, citizens of the pre-war Republic, would automatically receive citizenship. The second, all those who were permanent residents of Estonia as of March 30, 1990, would have the choice to become Estonian citizens or citizens of another state. Individuals of the second group who wished to become Estonian citizens would receive preferential treatment: neither a language test nor a ten-year residency would be required. Furthermore, those born and raised in Estonia, those with residency of more than ten years,⁴⁴ and those over sixty who had lived in Estonia for more than twenty-five years would not have to take a language exam or meet any residency requirement for citizenship. Only the third group, those who came to Estonia after March 30, 1990, a small minority, would face any real requirements for citizenship.

After the draft law was published and it became clear that the residency and language waivers would benefit a large majority of those who settled in Estonia after 1940, opposition from the Congress of Estonia killed the draft citizenship law.⁴⁵ The key group in the Congress of Estonia was the National Independence Party, presently a junior partner in Prime Minister Mart Laar's ruling coalition. The parliamentary citizenship committee then wrote a new bill, under the supervision of Congress of Estonia activists, that divided the population into two groups: citizens, i.e., those who were citizens of the pre-war Republic; and, everyone else, nearly 40 percent of the population. More importantly, the new draft law envisioned few exclusions from the residency or language requirements. With certain amendments, this draft was adopted in February 1992 as Estonia's Citizenship Law.

At the time, many observers noted the harsh, exclusionary nature of the Congress of Estonia's citizenship proposal. Radio Free Europe/Radio Liberty commented that, "Because eighty-eight percent of Estonia's population just before World War II consisted of ethnic Estonians, the standards set by the Congress of Estonia automatically exclude most non-Estonians from citizenship. It is worth noting that the Congress of Estonia has steadily lost influence because many Estonians do not believe that its restrictive rules for citizenship are viable for Estonia in its current situation."⁴⁶

⁴²After Estonians and Russians, the next four largest ethnic groups are the following: Ukrainians (48,271); Belorussians (27,711); Finns (16,622); Jews (4,613).

⁴³Riina Kionka, "Who should become a citizen of Estonia," *RFE/RL Report on the USSR*, No. 39, 1991, pp. 23-26.

⁴⁴The vast majority of Estonia's non-citizens have lived in the republic for at least ten years.

⁴⁵Kionka, No. 39, 1991, p. 25.

⁴⁶Riina Kionka, "Are the Baltic Laws Discriminatory," *RFE/RL Report on the USSR*, April 12, 1991, pp. 21-24.

Voting Rights

The Estonian Citizenship Law also violates Article 25 (a) and 25 (b) of the International Covenant on Civil and Political Rights guaranteeing the right to vote and to be elected. All citizens of the Estonian Soviet Socialist Republic were allowed to vote in the March 3, 1991, referendum on independence, a formative event in Estonia's drive for independence.⁴⁷ Observers noted that, "The recent Baltic plebiscite on independence demonstrated clearly that an overwhelming majority of voters in the Baltic republics—regardless of their ethnicity—do not favor preserving the Union but support Baltic independence."⁴⁸ All citizens elected the last Estonian Supreme Council, which in turn sent representatives to the Constituent Assembly, a body that drafted the present constitution.⁴⁹ After Estonia applied for early entry into the Council of Europe, Miguel Martinez, President of its Parliamentary Assembly, criticized the harsh change in the status of forty percent of Estonia's population: "When Estonia was granted associate membership status at the Council of Europe in September 1991, it was given, "to all residents of Estonia and a certain parliament...But this time they were not eligible."⁵⁰

Helsinki Watch rejects the argument that all those who came to Estonia after 1940 did so illegally and therefore were never citizens.⁵¹ Their residency was legally established under the applicable law at the time they entered the territory of Estonia. As (former) legal residents, they are now entitled to the benefits of the Estonian Citizenship Law on the same basis as any other resident of Estonia. Those who settled in Estonia after 1940 must be treated as individuals, not as instruments of state policy, however reprehensible that policy may have been.⁵²

Those Excluded From the Law on Citizenship⁵³

⁴⁷Roughly fifty percent of all Russians supported Estonian independence, which allowed the final tally of pro-independence votes to reach nearly eighty percent. "Presidential Elections and Independence Referendums in the Baltic States, the Soviet Union and Successor States." Commission on Security and Cooperation in Europe, Washington D.C., August 1992, p. 12.

⁴⁸Kionka, April 12, 1991, p. 24.

⁴⁹Riina Kionka, "Debate about New Constitution Sparks Old Rivalries in Estonia." *RFE/RL Report on the USSR*, December 13, 1991, pp. 20-24.

⁵⁰*Baltic Independent*, October 10-15, 1992.

⁵¹The Legal Commission of the Council of Europe that critiqued the aliens law of July 1993 stated that one could not compare the status of those born in Estonia or of those who had resided there before March 30, 1990, with newly arrived immigrants. Hough, p. 8n. See also Council of Europe, *Opinion on the Law on Aliens of Estonia*, July 1, 1993.

⁵²The Soviet Government intentionally sought to alter Estonia's ethnic balance through artificial in-migration. It must be kept in mind, however, that no free labor market existed in the Soviet Union, and that many individuals were simply sent to an area to work (*po raspredeleniyu*).

⁵³The Law On Aliens excludes the same categories for residency permits as does the Law on Citizenship for citizenship. Article 12 (5) of the Law on Aliens, however, states that the Government will set guidelines to review those

Article 16 of the "Resolution on the Application of the Law on Citizenship" denies naturalization to the following groups: 1) foreign military personnel in active service; 2) persons who have been in the employ of the security and intelligence organizations of the Union of Soviet Socialist Republics; 3) persons who have been convicted of serious criminal offenses against persons or who have a criminal record of repeated convictions for felonies; 4) persons lacking a steady income.

While Helsinki Watch has no objection to Article 16 (1), the other exclusions present obstacles when applied to those individuals who resided legally in Estonia prior to 1990.⁵⁴ While such exclusions may appear justified when applied to new immigrants, they are unwarranted and excessive with regards to the vast majority of Estonia's non-citizens, most of whom have long residency in the country. Helsinki Watch believes that denying citizenship to previously convicted criminals who were citizens of the Estonian Soviet Socialist Republic effectively adds an additional, *ex post facto* punishment to the individual. Individuals denied citizenship for service in Soviet security organs are also being penalized *ex post facto*. Each case should be judged individually, with citizenship denied only if the person is found guilty in court for committing offenses under the legal code existing at the time of the offense.

The most troubling exclusion is for "persons lacking a steady legal income." Because of the vast economic restructuring presently underway in Estonia, large numbers of people are—or shortly will be—unemployed. Unemployment especially affects northeastern Estonia, where mostly Russian-speaking workers toil in old, outmoded factories. Once released from work, one has the right to six months of unemployment benefits, which is considered a legal source of income. After that period, a worker is essentially "without a legal source of income." Exclusion based on a lack of a steady income could discourage those who are unemployed or underemployed from applying for citizenship.⁵⁵ Mart Nutt, Chairman of the Riigikogu's Law Committee, told Helsinki Watch that a steady income could include family support or even money sent from abroad.⁵⁶

Property Rights

Non-citizens are also adversely affected when it comes to privatization.⁵⁷ The Privatization Law of June 17, 1993, limits the rights of non-citizens to participate in privatization. Article 3 (2)1 and 3 (2)2 allows those organizations conducting privatization to deny participation to "individuals who do not have Estonian

excluded for residency permits. Those excluded from naturalization under the Citizenship Law have no appeal.

⁵⁴See Appendix.

⁵⁵In his April 6, 1993 letter to the Estonian Foreign Minister, CSCE High Commissioner on National Minorities, Max van der Stoep, recommended that "it should be made explicit that the requirement that applicants have a steady legal income in order to qualify for citizenship will not apply to unemployed people."

⁵⁶Interview, Tallinn, Estonia, 8-20-93.

⁵⁷According to the Baltic News Service, on April 15th the Estonian Parliament amended its land reform act and allowed foreigners to purchase land in Estonia. The purchase, however, must be connected with some type of investment.

citizenship" and to corporate bodies if "individuals who are not Estonian citizens own more than fifty percent of the capitalization of the company."⁵⁸

While many small, newly independent nations limit ownership of certain state assets to foreign interests to prevent outside domination of the economy, forty percent of Estonia's population presently does not have citizenship. Articles 3 (2)1 and 3 (2)2 directly affect the rights of those who reside in Estonia and have made it their home.

Travel Restrictions

Non-citizens, forty percent of Estonia's population, encounter problems with international travel because of a lack of travel documents. This violates Article 12 (2) of the ICCPR, which states that, "Everyone shall be free to leave any country, including his own." Most non-citizens have old Soviet internal passports,⁵⁹ which are not valid for international travel. As a temporary measure the Estonian government was issuing foreign passports of the former Soviet Union to non-citizens, but recently seems to have stopped this practice. Ule Teur, the head of the Passport Section of the Citizenship Department in Narva, told Helsinki Watch that, "For a non-citizen to travel abroad, he needs a foreign passport, which we don't have because Russia is not giving them to us. It doesn't make sense to have them—they've passed a law on foreigners and soon we will have foreign passports." The Estonian government is presently working on developing such a passport for foreigners, which the Department of Citizenship will issue, in conjunction with its "Law on Foreigners."⁶⁰ These passports are being printed, but are not yet ready.⁶¹

The lack of travel documents hampers many non-citizens involved in business with whom Helsinki Watch spoke. Lev, for example, is an ethnic Russian citizen who works at an international trucking firm. Twelve of the firm's trucks travel on international routes. Those with Estonian passports can travel freely, but non-citizens, the vast majority of whom only have their old Soviet internal passports that are not valid for travel except to Russia, are effectively unable to travel. Lev complained:

"Now the old Soviet foreign passports (*sluzhebnye sovetskiye pasporta*) are no longer valid, but twelve of our trucks carry freight on international routes. They go to Europe...So it turns out we have a problem because soon we won't have anybody to drive these trucks because the Russian drivers (non-citizens) will not be able to drive—they won't have

⁵⁸ *Riigi Teataja*, No. 45, *Zakon o Privatizatsii*, 17 Iyunia 1993. The law deals with state enterprises, not with private apartments.

⁵⁹ One can travel to Russia on an internal Soviet passport.

⁶⁰ *Vechernyi Kur'er*, August 20, 1993, p.1. The passport will be in English and Estonian, have thirty-two pages, and contain an individual's residency and work permits.

⁶¹ On September 27, 1993, the "Representative Assembly" and the City Councils of Narva and Sillamae sent a letter to CSCE National Minorities commissioner Max Van der Stoep, complaining of Alien passport problems. *RFE/RL Daily Report*, September 29, 1993. Aino Lepik, a government legal counsel, said that in a couple of months the government would issue a decree regulating alien passport disbursement. See *The Baltic Independent*, October 1-7, 1993.

passports."⁶²

Language

There are two language laws, one for citizenship and one for employment. This section deals with the requirement for citizenship. The language law concerning employment is in the section Language and Employment.

Language presents a serious obstacle in acquiring citizenship, possibly the greatest impediment. Many individuals simply have little talent for language, or are poorly educated in their native tongue, a fact that makes learning a foreign language more difficult. The Law on Estonian Language Requirements for Applicants for Citizenship was not passed until February 10, 1993, almost a full year after the adoption of a citizenship law on February 26, 1992.⁶³ This discrepancy vitiates the intent of Article 17 (1) of the "Resolution on the Application of the Law on Citizenship," which calls on the government "to draft and to submit a bill to the Supreme Council of the Republic of Estonia specifying the required knowledge of the Estonian Language...within one month from the adoption of this resolution." Until the passage of the law on language requirements in February 1993, only those aliens who received their education in Estonian language schools or who received an E or an F on the employment language exam could fulfill the language requirement for naturalization. They were exempted from the language test for citizenship.⁶⁴ Under these conditions only an infinitesimal number of non-citizens could qualify. A language examiner in northeast Estonia told Helsinki Watch: "It's unfortunate, but everything happens so slowly. They passed a citizenship bill, but we turned many away who needed these blue (Estonian) passports, we told them, 'Wait until there are language exams for citizenship.'"⁶⁵

Even after the Law on Language Requirements was passed, serious obstacles remain. After an applicant has handed in his application for citizenship, he has nine months in which to pass the exam successfully.⁶⁶ Two attempts to pass the exam are allowed; if the applicant fails both times, he must apply again, and his one-year waiting period begins anew.⁶⁷ Limiting the number of attempts to take the exam, as well as getting time limitations, seems both unfair and unwarranted.

The pamphlet outlining the language requirements for citizenship, *Kodakondsuse Taotleja Eesti*

⁶²Interview August 21, 1993, Hotel Viru, Tallinn.

⁶³ There are four main requirements. The applicant must pass a listening comprehension exam, which could consist of announcements, news, or official reports; converse on ten topics, ranging from family to Estonian cultural figures; read and summarize a short text; write a c.v. or fill out an application or write a letter of some type.

⁶⁴CSCE ODIHR Mission Report, p. 9.

⁶⁵Interview with Marge Magi and Erika Lindsalu, Language Examiners, Ida-Virumaa Language Center, Johvi, August 25, 1993.

⁶⁶Interview with Mart Rannut, Director General of the National Language Board, Tallinn, August 19, 1993.

⁶⁷Hough, p. 51.

Keele Eksami Nouded, appears only in Estonian. When Helsinki Watch inquired as to the reason behind this, we were informed that at this stage of the citizenship application process one would have acquired sufficient knowledge of Estonian to understand the brochure.⁶⁸ Professor Christian Tomuschat, head of the December 1992 CSCE Office of Democratic Institutions and Human Rights Mission to Estonia, emphasized the need to better inform the non-citizen population of Estonia's language and citizenship requirements: "Lack of information among the Russian-speaking community seems to be the main reason for the mutual inability to understand the other party."⁶⁹

Cost is also a factor. While some enterprises organize free language courses for employees and unemployment offices provide some instruction to those out of work, many people have to finance their own instruction. Instruction is available at government language centers or at private schools. Self-study is also possible, with textbooks and a video course available. The latter, which costs 290 crowns⁷⁰ and obviously requires a VCR, is probably beyond the means of most. Language instruction on T.V. is also an option, and while instruction in both Estonian and Russian were broadcast last season, Estonian Television General Director Hagi Shein told Helsinki Watch that they might be omitted this coming year.⁷¹ Mr. Shein did not believe that the language instruction programs were very effective.

Some whom Helsinki Watch interviewed cited the cost of instruction as a factor. Irina, a thirty-year-old nurse of Russian origin, studied independently because a month's instruction cost two hundred crowns; her monthly wage was six hundred: "I have a book—everything you need can be purchased, he who wants to study can. (But) courses are expensive, and as far as I know not very effective. They are very expensive on my salary...you have to live on something, and after (you pay for the courses) nothing remains."⁷² She added: "In principle of course I want to become a citizen. But you have to do so much for this...The single biggest problem is language, which in my opinion affects every Russian...I agree completely with the fact that I must speak Estonian...but simply, in reality, all this happened so quickly, so many years nothing was demanded of us." Another woman, Olga, a forty-seven-year-old economist who had already applied for citizenship and accepted the need to learn Estonian, commented: "We have a large number of courses from which to choose, but it's true you have to pay for them, the government doesn't. It's tough to pay for the courses, but if there's a desire to study the language more intensively, you have to sacrifice...If my pay is 800 crowns (monthly), then I have to pay half, 400 (for a two-month course)."⁷³ Olga pays a monthly rent of 450 crowns.

⁶⁸"Requirements for the Estonian Language Exam for those applying for Citizenship." Eesti Keelekeskus, Tallinn 1993. Ida-Virumaa Language Center, Johvi, August 25, 1993.

⁶⁹"Estonian Citizenship Requirements questioned by CSCE Visitor." *The Baltic Independent*, December 11-17, 1992.

⁷⁰Interview with Mart Rannutt, Director General, National Language Board, August 19, 1993, Tallinn.

⁷¹Interview with Hagi Shein, Tallinn, August 19, 1993.

⁷²Interview, Tallinn, August 20, 1993. The woman was waiting in line to register to vote in local elections at the *Dom Ofitserov*, Voter Registration Center for municipal elections.

⁷³Interview, Tallinn, August 20, 1993, *Dom Ofitserov*, Registration for voting in local elections.

The Law on Language Requirements for Citizenship also does not take age sufficiently into consideration. An amendment to the original version of the Law on Language Requirements was passed on April 23, 1993. Under this amendment, those born before January 1, 1930, (those sixty-three years old at the time of the amendment's passage) will not be subject to the written portion of the test and will not have to discuss three of the ten topics for discussion: Estonia's cultural institutions, cultural figures, and national holidays.⁷⁴ While the amendment is an improvement, three of the four requirements for citizenship remain. The amendment also does little to aid those who are not yet sixty-three but are retired and living on a pension, a fact making costly language study difficult. The May 1993 United Nations Center for Human Rights Report on Estonia calls for the complete waiving of language requirements for those over sixty and for the handicapped.⁷⁵

Language examiners from the Ida-Virumaa Language Center in Johvi were strong supporters of a complete waiving of citizenship language tests for those over sixty. One examiner told Helsinki Watch:

The single thing for which we have spoken out is that pensioners⁷⁶ who live here be given citizenship automatically, without a [language] examination. Because in the past, they simply had no need to learn Estonian. You can imagine that when someone is sixty he won't study a foreign language...The city council in Kohtla-Jarve passed such a resolution, the government in Tallinn rejected it...Perhaps the fact of the matter is that elderly people are not as well-informed as the young. They don't subscribe to papers, some don't watch television. And old ladies talk on the street that they don't have rights, that they'll be kicked out of their homes, and so forth. They think that because they are not Estonian citizens they are deprived of everything.⁷⁷

Merle Krigul, MP for north-east Estonia, home to many of Estonia's non-citizen Russians, told Helsinki Watch that "questions of language should not be a means to measure loyalty."⁷⁸

HOW NON-CITIZENS VIEW THE 1992 CITIZENSHIP LAW

Helsinki Watch conducted roughly fifty random interviews with individuals during its mission in Estonia. Interviews were conducted at markets, in the street, on public transportation, and during the voter registration for municipal elections. The interviews do not purport to be scientific, but an attempt was made to interview a representative cross-section: young people, men, women, the elderly, middle-aged, etc.

⁷⁴The amendment also covers the handicapped, who take a simplified exam according to their disability.

⁷⁵Hough, p. 8n.

⁷⁶One of the examiners said all those over sixty should be exempt; the other, simply all pensioners.

⁷⁷Interview with language inspectors Marge Magi and Erika Lindsalu, Ida-Virumaa Language Center, Johvi, August 25, 1993.

⁷⁸Interview with Helsinki Watch, August 26, 1993. Ms. Krigul qualified her statement by saying that it represented only her personal opinion, not that of her party.

A majority of those interviewed objected to the 1992 Citizenship Law and their "non-citizen" status. These individuals tended not to speak Estonian and therefore faced the language requirement for citizenship. Several themes dominated the interviews. The sudden change in their lives—economic, political, and social—seemed to have taken a toll. They spoke of need to learn a new language for citizenship and work, to internalize the notion that one no longer had citizenship but had to acquire it through naturalization, and to adjust to a market economy. Many reported being dismayed and angered at the fact that in losing their citizenship, they had lost the right to vote. The overwhelming majority of people interviewed—even the handful who had taken Russian citizenship—expressed the desire to remain in Estonia. Few had relatives or ties to Russia, and many, if not born in Estonia, had lived the majority of their lives in the republic and considered Estonia their homeland. Most indicated that after the initial shock had worn off, they were willing to do what was required to gain citizenship and resume their lives.

Only a small minority of non-citizens voiced little objection to the citizenship law. They, on the whole, spoke Estonian; some had registered with the Congress of Estonia for citizenship and would not have to pass a language exam to become citizens.

The Critics

Alexander, a thirty-nine-year-old ethnic Russian teacher who came to Estonia in 1988 and who had supported the Estonian independence movement, grew disillusioned after the passage of the 1992 Citizenship Law and the election of the present government. "In principle, while the Estonians were fighting for their rights, for their independence, I completely supported them. But after the Popular Front collapsed, and more nationally-minded groups came to power who seemed to be actively dividing society into two groups, I don't want to become a citizen on principle." He also expressed indignation at not being able to vote in the 1992 parliamentary elections: "I was not allowed to vote for this government. I voted for Savisaar, for Ruutel (in the previous parliamentary election in March 1990).⁷⁹ It did not matter whether they were good or not, I still had the feeling that I had taken part in their election. But I wasn't allowed to vote for the present government. I really don't feel any obligation towards them...The laws they pass don't concern me—I couldn't vote for them."⁸⁰

Irina, a Russian born in Estonia who expressed concern about the cost of language instruction, nevertheless considered Estonia her home: "All my roots are here, all my relatives—already for quite some time."⁸¹ Irina's mother has lived for forty years in Estonia, and her father, now deceased, came from Armenia. Irina expressed dismay at being punished because of circumstances beyond her control, a point of view encountered often. "This is my homeland, and I am not guilty of the fact, at least I don't think I am, that my parents settled here, that they were not born here." Irina accepted Estonia independence and understood the national rebirth underway in Estonia; she simply was bewildered at the speed of the process—and at her exclusion from it.

⁷⁹Edgar Savisaar was the Premier-Minister in the Supreme Council elected after 1990; Arnold Ruutel was Chairman of the Supreme Council.

⁸⁰A street interview in Narva, August 20, 1993.

⁸¹Interview, *Dom Ofitserov*. Tallin, Estonia, August 20, 1993.

Kim, a seventy-two-year-old retired Russian air force lieutenant colonel, emphasized these points in his discussion: the arbitrary decision to send him to Estonia and the fact that Estonia was his home. "I've lived in Estonia since 1952...and retired in 1970...I came here by chance. You know, I could have ended up anywhere—on Novaya Zemlya, for example."⁸² Kim also knew—he cited the exact article—that the law on foreigners denies residency permits to military retirees, but hoped that an exception would be made because he was an air force technical officer, and not a KGB officer.⁸³

Kim told Helsinki Watch that he had no desire of returning to Russia, although he had become a Russian citizen in February 1993. "I have no intention of going anywhere. I buried my wife here." He said he became a Russian citizen because he was angered at the public discourse about him. "I read a lot, and these words, "apatrid,"⁸⁴ "occupier" began to offend me. I'm not an occupier, I didn't decide to come here. I fought in the war, I was in Korea, I never shot anyone—I'm a technical officer." Kim said he would never have become a Russian citizen if Estonian citizenship had been offered him automatically, according to the so-called zero- option. Finally, Kim thought that President Yeltsin's and Foreign Minister Kozyrev's statement's about "ethnic cleansing" and apartheid in the Baltics did not contribute to resolving the dilemma of non-citizens in Estonia. "They don't need to inflame things from there, from Moscow, such things are simply not needed."

Vadim, a thirty-four-year-old former naval officer who left active service in 1991 and went into business, told of his difficulties in receiving a permanent residency permit and his situation as a non-citizen entrepreneur.⁸⁵ Vadim was born and lived all his life in Estonia and served in Estonia while a captain in the Soviet Navy. Vadim saw two alternatives for himself: statelessness (a Nansen passport)⁸⁶ or emigration to a third country, like Sweden. Becoming a Russian citizen was not a option for Vadim: "I do not want to take Russian citizenship nor do I intend to; I really do not even know Russia, I've never lived there, I don't even have one relative there."

Vadim did not think his chances for remaining in Estonia were very good. He complained of bureaucratic hurdles and obstacles. He alleged that after leaving the Navy in 1991 he lost his *propiska*, or residency permit. He applied for a new residency permit and in 1991 was given a one-year residency permit. In 1992, he applied for a permanent residency permit and was given another one-year residency permit. This year he went to apply again for a residency permit and was told that he would have to take a

⁸²Interview, *Dom Ofitserov*. Novaya Zemlya is an island north of Russia between the Barents and Kara Seas (August 20, 1993).

⁸³Article 12 (4), (7), denies residency permits to anyone "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...nor to his or her family members." Article 12 (5), however, states that exceptions to all of Article 12, (4) can be made.

⁸⁴A stateless person.

⁸⁵Interview at Registration Center for voting in local elections, "Dom Ofitserov," Tallinn, August 20, 1993.

⁸⁶A Nansen passport was a passport issued to stateless people in the 1920's after the break-up of the Austro-Hungarian Empire; the Estonian Alien's Passport, when issued, will serve the same purpose.

language test, which he said he passed.⁸⁷ When he returned to the Migration Department with a certificate that he passed the test, Vadim claims the authorities refused to give him a permanent residence permit because he spoke Estonian poorly despite his certificate. He contends that since 1991 he has been to the Migration department twenty times.

Vadim also reported having trouble registering to vote in the local elections because he was issued an internal Soviet passport in February 1992 that only contained his temporary residency permit from 1992. Unable to prove the five year residency required to vote in local elections, he was told by the registrar to go to each of his prior residences and obtain proof of having lived there. In Vadim's case this would have been eight or nine different places. Unwilling to do this, Vadim presented his birth certificate and his discharge papers showing that he had served in Estonia; he was allowed to register to vote. Summing up his experiences, Vadim voiced frustration: "My business is registered in Estonia, and I pay taxes like any other firm...As a non-citizen, (however), I confront a lot of legal matters that I can't solve."

Olga, a forty-seven-year-old economist of Russian origin born in Estonia, understood the need to learn Estonian but was somewhat perplexed that she had not received citizenship automatically.

You know, I accepted it (the fact that she did not receive citizenship automatically) as proper, because you definitely need to know the language of the country where you live, otherwise it's nonsense. But I still don't understand why it's so that I did not receive citizenship, because as far as I know a person receives citizenship if he is born on the territory of a country...I believe that to a certain degree there is discrimination on the part of the government. The increased harshness of the language law, that's also discrimination. For example, isn't it discrimination that people who were born in this nation did not receive citizenship? I think that this contradicts international legal norms of a lawful government.⁸⁸

The high cost of language study also troubled Olga.

Valentina, a fifty-nine-year-old ethnic Russian pensioner in Narva, worried about her ability to live her days out in Estonia and about her children, who live across the Narva River in Ivangorod, Russia.⁸⁹

Sometimes I'm for the new Estonian laws, sometimes against. You see, my children can't come, they live on the other side.⁹⁰ (After the passage of the law on foreigners) I personally was scared. I thought: "I'm alone in this country, my husband is dead." Of course I was afraid. I worry to this day if they'll let me live out my days here, if they'll deport me. I live, thinking, "How much longer will I have to live here?"

⁸⁷Helsinki Watch is not aware of a law mandating a language test for a residency permit. The alleged demand for the test came from the Migration Department office at Lai 40, Tallinn, Estonia from a Mrs. Ebek.

⁸⁸Interview in Tallinn, August 20, 1993, at *Dom Ofitserov*.

⁸⁹Interview in Narva, August 22, 1993. The Narva River is the border here between Estonia and Russia.

⁹⁰Estonia has instituted a visa requirement for Russian citizens.

Valentina told Helsinki Watch she rarely read the papers: "Really, what kind of information do we have? One tells the other, that's it." She became a Russian citizen after she heard that they were privatizing gardens in Ivangorod, where she has a small garden, and only Russian citizens would be allowed to take part.⁹¹

Nikolai, a former Soviet officer in his mid-thirties, came to Narva in 1989 and told Helsinki Watch that he supported the Popular Front.⁹² His main concern was language.

On the one hand I understand the Estonians and share their concerns and fears, but on the other hand I myself am a Russian. I don't know Estonian, it's difficult to learn the language—I don't even think I can learn the language given the fact that here in Narva you hear Estonian about as much as you do in Leningrad...I also empathize with the Estonians. This is an Estonian city and there's no Estonian spoken here.⁹³

Helsinki Watch also met several Russians who were openly hostile to Estonian independence. Valeri, for example, a forty-six-year-old worker at the "Pribaltiskaya" Electric station in Narva, expressed little desire to learn Estonian, even scorned the idea. "It's a waste of time (to learn Estonian). There are five languages on the earth that unite the whole world: English, German, French, Chinese, and Russian. These languages are enough. Why introduce Estonian? Because this state appeared—that's it...I am not going to take the language exam. I am an opponent of the Estonian language on principle."⁹⁴ He was also livid in his dislike of the Estonian government and could envision violence. "And those old men in Tallinn, whom we have not elected, dictate laws to us, and I'm supposed to observe their edicts! It's simply nonsense, there never was and will never be such a thing. And if on this wave they try and incite passions...well, we will have a Tajikistan, a Transdniester...and maybe a war could break out, which nobody needs..."

The Adapters

Igor, a thirty-five-year-old Russian who has resided in Estonia for the past eleven years, had few complaints with the present situation in Estonia. Igor's wife, an ethnic Russian, is also an Estonian citizen.⁹⁵ Igor registered with the Congress of Estonia for citizenship and planned to become a citizen in two weeks.⁹⁶ Igor told Helsinki Watch: "I've already adapted here. Why should I go searching for something

⁹¹ *Ogorody* are small kitchen gardens, often on the outskirts of town for city dwellers, that many in the former Soviet Union keep. In a shortage economy, they were important in providing supplemental foodstuffs, especially fruit and vegetables.

⁹² Interview in Narva, August 23, 1993. Nikolai told Helsinki Watch that he had been cashiered from the Soviet Army for his political beliefs and had been discharged as mentally ill.

⁹³ Interview in Narva, August 22, 1993.

⁹⁴ Interview at the Union of Veterans (*Soyuz Veteranov*), Narva, August 24, 1993.

⁹⁵ Her family lived in Estonia before occupation.

⁹⁶ All those who registered with the Congress of Estonia to become citizens do not have to take the language exam.

better when I already have it here."⁹⁷ Igor, however, understood the predicament of those whose circumstances are less fortunate. "Perhaps the situation of my friends is somewhat different. Several came here later than I did and haven't managed to adapt as well as I have. Some have problems, mostly due to language. I think that when people are older than thirty they're uncomfortable studying a new language."

A married couple, Aleksandr, a thirty-five-year-old ethnic Russian, and Galina, an Uigur from Kazakhstan, were also pleased with their situation in Estonia and saw little reason to complain. Aleksandr has lived in Estonia since childhood, speaks the language, and said he has many Estonian friends. He had registered to become a citizen with the Congress of Estonia and did not feel at all handicapped by his present non-citizen status. In many ways he identified with the stereotypical Estonian view, commenting: "I think that there are many migrants here, who simply behave poorly (*neku'turnõ*), very vulgarly (*po khamskã*)—there are lots of them."⁹⁸ His wife could not speak Estonian, but believed learning it was both necessary and justified.

Svetlana, a 47-year-old Dagestani who has lived in Estonia for almost thirty years, was happy in Estonia, felt no anger or discrimination, but was worried about learning Estonian.

Nothing changed for me (after the passage of the new Citizenship Law and the Law on Foreigners). For me there is no uncertainty or unease. I, my husband, my two adult children, we are all assured of this...My husband immediately said that we are not going anywhere, that we will live here—there's simply no place to go. We gave our best years here...We'll live here nevertheless. We'll adapt. The most important thing is work, and at work there are no problems.⁹⁹

She told Helsinki Watch she spoke "kitchen Estonian"—enough to get by in the market or to ask for something at work. Svetlana said she had few complaints as long as she had work.

LANGUAGE AND EMPLOYMENT

The 1989 Language Law

The 1989 Language Law, which deals mostly with employment, requires that non-citizens pass a test indicating their job-related language proficiency. In January 1989, the Supreme Soviet of the Estonian Soviet Socialist Republic passed a fundamental language law reestablishing Estonian as the official state language. The Language Law of 1989 was essentially a linguistic declaration of independence. While

Igor said he could understand, but not speak, Estonian.

⁹⁷Igor used the Russian proverb, *Ot dobra dobra ne ishchut*.

⁹⁸Interview in Tallinn, Lassname, a mostly Russian suburb of Tallinn, August 21, 1993.

⁹⁹Svetlana works at a joint-venture tobacco factory, where she earns a handsome salary of around 1200 crowns monthly.

Estonian had enjoyed legal status under the Estonian SSR Constitution (Article 5), in reality Soviet policy actively sought to banish Estonian from as many spheres of social interaction as possible. Arnold Ruutel, former Chairman of the Estonian Supreme Council at the time of the law's passage, commented: "We have residential regions, branches of the economy, official organizations...where all business dealings are conducted only in the Russian language."¹⁰⁰ The law reiterated the notion that Estonian was the official language in Estonia; many Russian speakers considered Estonian an exotic local tongue.

The Language Law's drafters, however, underscored the importance of Russian as the native language of the second largest group in Estonia. Arnold Ruutel wrote:

The slogan balancing language and people was promoted long ago. This is the ideal to which we must strive. The underlying principle of the Estonian SSR Language Law is to resolve the language rights of citizens who have Estonian as their mother tongue with the language rights of citizens who have Russian as their mother tongue.¹⁰¹

Aware of both the lowly status of Estonian under Soviet rule and the tenuous nature of Estonia's limited freedom in 1989, the Law states: "In its treatment of the Russian language, the present law proceeds...from the fact that after Estonian, Russian is the second largest native language in the republic."¹⁰² The law made generous concessions to non-Estonian speakers, including the right to use a language other than Estonian in dealing with the state {Article 20}, to receive official documents in Russian {Article 8}, and to be educated in Russian {Article 19}.

The law also set dates for implementing Article 4 of the law, which states that Estonian must be used by "persons whose jobs require communications with individuals." Decree number 10 of July 14, 1989, "Guidelines for the Application of Language Requirements in the Estonian SSR," set exact dates when Estonian would have to be used by individuals in the work place. Such persons were given four years to learn the level of Estonian requisite for their occupation.¹⁰³ Six language categories were established, from A, the lowest, to F, the highest, which is near native fluency.

Four years have passed, and many still don't have the required proficiency. Language presents a obstacle to many non-citizens, like Irina, a pediatric nurse. In May 1993, inspectors of the language board went to the hospital where she works and tested all the workers. The inspectors came at the request of the hospital employees. Irina needed to qualify at category D, but failed. She has until September 30 to retake the exam, or, according to Irina, she will automatically lose her job. The head nurse informed her of this. The staff of the hospital where Irina works is equally divided between Estonian and Russian speakers.

¹⁰⁰Hough, p. 104. See also Arnold Ruutel, *Introduction to the Language Law of the Estonian Republic*.

¹⁰¹*Ibid*

¹⁰²Language Law of the Estonian Soviet Socialist Republic, January 18, 1989, Preamble.

¹⁰³Decree number 10 states that, "The acquisition of language within the boundaries of language knowledge requirements shall be considered as a direct requirement of the employee...With the employment of language knowledge requirements, the enterprise shall be permitted to release an employee for non-possession of the required knowledge."

Lev, an ethnic Russian businessman, is the vice-president of a trucking company where primarily Russians work. In the firm's administration, where the directors, accountants, and assistant directors work, the majority of the staff managed to pass the language exam required to work in their professions. The level was E, the second highest. Passing an exam and effectively working in the language are two different things, and Lev fears that his company will be fined because their records are kept in Russian, not in Estonian as required by law.¹⁰⁴ "Now the law requires that all our internal records be kept in Estonian. Our firm, as an example, cannot do this. In a word, (according to the law), people will have to leave. Individuals will have to come who have a command of the language to the point where they can keep the records in Estonian. And this is no more, no less, than roughly forty people in the administration of the firm where I work...In principle an inspection can happen at any minute."¹⁰⁵

Helsinki Watch also heard many second-hand reports of non-Estonian speakers being refused work ostensibly for poor knowledge of Estonian but was not able to confirm these reports.

Language Centers

Two institutions were founded to implement the 1989 Language Law. The "Language Center of Estonia" was established in March 1989 with a mandate of coordinating the teaching of Estonian to adults. Roughly eighteen months later, in November 1990, the "National Language Board" was established to oversee the work of the language center and aid in drafting laws concerning language.

The Estonian government has created a network of thirty-three language centers (*Eesti Keelekeskus*) that administer language tests for both citizenship and work-based language requirements. Helsinki Watch visited the language center in Johvi, the Ida-Virumaa Keelekeskus, and observed its work, including the conduct of work-based language exams.

Helsinki Watch's overall impression of the work of the Ida-Virumaa Language Center was positive in spite of the facility's poor technical resources. The tests observed seemed fair, a fact substantiated by students interviewed by Helsinki Watch. According to figures the language center's director, Ms. Kersti-Volu, provided at the Ida-Virumaa language center, between September 1992 and August 1993 4,634 individuals took the language exam and 164 the exam for citizenship.

Proper equipment, however, is a problem. The one copier the center has, an old, out-dated model, had been broken for some time, forcing the staff to type out assignments and test material manually using

¹⁰⁴Under Paragraph 3 of Decree number 10, "Guidelines for the Application of the Language Requirements in Estonian SSR," by February 1993 "institutions, enterprises, and organizations located in the Estonian SSR must use Estonian for intra-republican reports and documents."

CSCE High Commissioner on National Minorities, Max van der Stoep, recommended that, "The use of the Estonian Language in the internal affairs of private enterprises and organizations should not be made mandatory." April 18, 1993 letter to Estonian Foreign Minister Trivimi Velliste.

¹⁰⁵Inspectors of the Language Department carry out such inspections to determine if Estonian is used according to the Language Law.

carbon paper. Ms. Volu commented: "There are never enough resources. It's clear what we need to improve, but there simply isn't enough technology...The most basic things [are] not available. The photocopier no longer works—it's like being without hands. But a new one costs 34,000 crowns."¹⁰⁶ There also is no video equipment and very antiquated tape recorders.

Language Testing

Helsinki Watch had the opportunity to observe job-qualification language exams at the Ida-Virumaa Language Center.¹⁰⁷ Students come to the center at 9:00 a.m., are registered and given time to prepare. Those who feel prepared start the exam process first. The first step consists of a dictation, the latter part an oral exam. While Helsinki Watch was told anecdotal evidence of abuses by the three-man boards that conduct the exams, the opposite was the case at the Johvi center.¹⁰⁸ One older woman attempted to pass an exam at category C, which demands "limited verbal and limited written proficiency in Estonian." The woman, who appeared nervous and flustered, often stumbled in her conversation or initially misunderstood a question. Her examiners politely corrected her and repeated questions when necessary. She passed the exam. A young woman, Irina, took the exam next, this time trying to qualify at level "D," which is verbal proficiency and limited written proficiency on the basis of a 1,500-word vocabulary. Irina had little trouble answering questions put to her, and her examiners corrected her only a couple of times. Irina passed her exam at level D.

After her exam, Irina, a hairdresser by training who is on maternity leave, told Helsinki Watch about her test and preparation for it. "They asked questions about work, about my home, how we live. Also questions about grammar...No, I don't think the atmosphere [of the test] was tense, because you see the test as it's being conducted, you don't sit behind closed doors, but out in the open...you see the people before you, you hear the questions, you're able to analyze what the examiners ask. At first I had a feeling as if it were my first exam in school...but the atmosphere relaxed me, and I was able to speak freely."¹⁰⁹ Irina had attended a technical school that was divided equally between Russians and Estonians, and there had an opportunity to speak Estonian. She also told Helsinki Watch that she had often spoken Estonian at work, where the work force is mixed.

Draft Law on Secondary Education

¹⁰⁶ Interview with Ms. Kersti Volu, Johvi, August 25, 1993. At the time of the interview, one U.S. dollar bought 13.2 Estonian crowns, making the copier's cost roughly U.S. \$2,750, a very large sum of money in today's Estonia.

¹⁰⁷ Helsinki Watch's visit to the language center was unannounced, and to the best of our knowledge the examiner did not know that outside observers were present.

¹⁰⁸ In meetings with members of the Representative Assembly in Tallinn, Helsinki Watch heard second-hand accounts of individuals being asked questions such as "Who first played the role of Hamlet on the Estonian Stage?" Another told of the daughter of a former deputy to the Estonian Supreme Soviet, Pietro Volkonski, who did not know that a rehabilitated dancer was a dancer of ancient Estonian Dances who, once illegally repressed by Soviet authorities, was now rehabilitated. Interviews at the Representative Assembly, Tallinn, August 20, 1993.

¹⁰⁹ Interview, Ida-Virumaa Language Center, Johvi, Estonia, August 25, 1993.

The language of education is also a concern for non-citizens. Presently seventeen percent of Estonian schools use Russian as the main language of instruction.¹¹⁰ A recent bill on secondary education, first passed on June 16 and rejected by President Lennart Meri, was again passed by the Estonian parliament in an amended form on September 15, 1993.¹¹¹ According to the first rejected bill, language of instruction would be guaranteed in Russian only through the first nine classes; in order to receive a graduation certificate, the final years would have to be completed in Estonian.¹¹² Such changes would become fully effective by the year 2000. The second bill the parliament passed maintains the fundamental nature of the first, with some minor changes. At this time President Meri still has not signed the second bill. The Ministry of Culture and Education is working on new amendments concerning education in languages other than Estonian.¹¹³

While states have the right to set reasonable conditions for the language of instruction in state schools, they also have an obligation to ensure that such instruction can be effectively carried out. Jan Kaplinski, parliamentary deputy from the opposition Center Party, believes the law will have a deleterious affect on the overall quality of education in Estonia, commenting that, "It is highly probable that the graduates won't master either of the languages."¹¹⁴ Rein Rebane, President of the Estonian Headmasters Association, commented that, "It would need more time than that [teaching only in Estonian in all secondary schools by the year 2000]. I could imagine it happening in Tallinn, but not in Narva or Sillamae."¹¹⁵

Estonian Language Education in Narva

At present, Estonian language instruction in schools in Narva, an area with a mainly Russian population, suffers because of budgetary and demographic constraints. Anelya Varul, an ethnic Estonian deputy on Narva's city council who deals with education, sums up the predicament of teaching Estonian in Narva's schools: "Here is the picture in our schools. There are 72 teachers of Estonian, but the most important fact is that 73 classes did not have teachers, there simply wasn't Estonian language instruction. Today our schools need 21 (Estonian language) teachers, but the biggest problem is that most of these individuals are not specialists in language instruction. Of the 72, only 18 are specially trained in Estonian language instruction. Of the remainder, some have finished an Estonian high school, some a technical school. They are here because they speak the language. There are Russian philologists who have a

¹¹⁰Hennart Arismaa, "School Bill Sparks Language Row," *The Baltic Independent*, June 11-17, 1993.

¹¹¹*REF/RL Daily Report*, September 16, 1993, p. 8. President Meri refused to sign the first bill because of minor inconsistencies in the its formulation that gave differing descriptions of how one completed her education. Telephone conversation with Saulinius Girnius, RFE/RL, September 27, 1993.

¹¹²Il'ya Nikiforov, "Srednyaya Shkola kak politicheskii instrument." *Nezavisimaya Gazeta*, June 25, 1993, p. 3.

¹¹³"New Language for Schools Law," *The Baltic Independent*, October 1-7, 1993.

¹¹⁴Arismaa, 11-17 June 1993.

¹¹⁵*The Baltic Independent*, October 1-7, 1993.

university education and have category E."¹¹⁶ "You can imagine what the level of instruction is like."¹¹⁷ Of the 382 graduates from the eleventh class, only 53 were able to pass the Estonian Language exam with an E, a category that allows employment in most—but not all—professional fields.¹¹⁸

The whole of the Estonian secondary school system suffers from a lack of funds, a shortage intensified by the need to move away from the old Soviet-era curriculum.¹¹⁹ Many Estonians living in the Narva area complained of the difficulty of receiving a secondary-education in Estonian because of the predominately Russian-speaking population.

The lack of ethnic Estonians in Narva, where they comprise around 4 percent of the population, also complicates learning Estonian: one simply does not have the opportunity to hear or speak Estonian. During three full days spent in Narva, Helsinki Watch staffers did not hear any Estonian being spoken on the streets, in shops, or in restaurants. A language inspector who works out of the Ida-Virumaa Language Center in the neighboring town of Johvi, Erika Lindsalu, commented: "I always joke with our students. I tell them—'You're lucky, you at least hear Estonian once a day. In Narva it's once a week.' There simply is no opportunity for conversation there, no one to speak with. You simply forget (what you learn)."¹²⁰

CITIZENSHIP AND THE DEMOCRATIC PROCESS

A representative democracy in which nearly forty percent of the population does not enjoy citizenship rights is far from representative. It is true that Estonia was unlawfully, violently annexed by the Soviet Union, but the Estonia of 1993 is not the Estonia of 1939, at least demographically. The CSCE Office of Democratic Institutions and Human Rights' Report on Estonia states: "It appears that what could indeed be considered liberal (the revised Estonian Citizenship Law) under conditions of continued statehood does not fully meet the requirements of a society whose ethnic composition has dramatically changed during fifty years of Soviet rule. The mission noted with some concern the expectation voiced by Estonian officials that a considerable share of the Russian-speaking population in their country would probably remain stateless for a long time..."¹²¹ Before Estonia passed its citizenship law in February 1992, a December 1991 Council of Europe Report on Estonia noted: "However, if substantial parts of the population of a country are denied the right to become citizens, and thereby are also denied for instance the right to vote in Parliamentary elections...the question could be raised whether in such a situation the elections to the

¹¹⁶The second highest category in the Estonian Language Categories. "A," the lowest category, demands an extremely basic knowledge; "E," the highest, requires "the ability to communicate in Estonian outside of one's occupation, the ability to compose documents and to provide explanations for the same."

¹¹⁷Interview with Varul' Anelya, Narva, August 23, 1993.

¹¹⁸Figures provided by Ms. Anelya; Category "E" also allows one not to take the Citizenship Language Test.

¹¹⁹"Finances break School Reform," *The Baltic Independent*, November 30-December 7, 1992, p. 6.

¹²⁰Interview with Erika Lindsalu, Language Inspector, National Language Board, Johvi, August 25, 1993.

¹²¹Report of the CSCE ODIHR Mission on the Study of Estonian Legislation invited by the Republic of Estonia. December 1992, p. 5.

legislature would sufficiently ensure the free expression of the opinion of the people, as required by Article 3 of the First Protocol to the Convention (European Convention on Human Rights)."¹²²

By all accounts, the vast majority of non-citizens consider Estonia their home. Helsinki Watch consistently encountered this opinion in its interviews with non-citizens. The fact that living standards are three times higher in Estonia than in Moscow, not to speak of the situation in the provinces or in Ukraine,¹²³ undoubtedly contributes to this attitude. Eldar Efendiyev, a former Popular Front activist and director of Narva's Historical Museum, commented that, "All Estonian politicians talk about the need to integrate into the European Community. But is it possible to integrate into the EC if only one-half of the inhabitants are citizens?"¹²⁴

Ms. Merle Krigul, the MP for northeastern Estonia, a heavily Russian region, did not seem troubled by the fact that of the 300,000 inhabitants of her district only roughly 30,000 are citizens.¹²⁵ She stated that it was not her concern whether or not non-citizens in her district became citizens. Although we have no reason to believe that Ms. Krigul will not fulfill her promise of equally representing both citizen and non-citizen, the fact that she is expected to represent people who cannot vote for her contradicts the principle of representative democracy. Others in the Estonian government seem to understand the need to integrate fully the non-citizen population. In a February 8, 1993 meeting with a visiting U.N. human rights mission, Foreign Minister Velliste stated that his government has the political will to integrate Estonia's non-citizens.¹²⁶ Mr. Toivo Klaar, Director of the Political Department of the Estonian Foreign Ministry, told Helsinki Watch that he would like "as many people as possible, all" of the non-citizens to become citizens.¹²⁷

Meanwhile, the Russian-speaking population of Estonia is badly represented at the national level. The vast majority of Russian-speakers, some forty percent of the population, are not citizens and cannot vote in national elections. The Riigikogu, the Estonian parliament of 101 deputies, has no ethnically Russian deputies. Nor are there parties that support interests of the Russian-speaking community, though the Center Party is more sympathetic to issues that affect the non-citizen population and was a major critic of the Law on Foreigners. Under article 48 of the Estonia Constitution, only citizens have the right to form political parties; non-citizens may form "non-profit associations and leagues."¹²⁸

¹²²Hough, p. 61n. See also Council of Europe Report-Estonia, December 1991.

¹²³Sergei Chugayev, "My predlozhili ne ubegat' ot dozhdy, a bezhat' skvoz' nego," *Izvestiya*, May 26, 1993, p. 5.

¹²⁴Interview with Mr. Efendiyev in Narva, August 23, 1993.

¹²⁵Interview with Ms. Merle Krigul, Foreign Ministry Building, August 26, 1993; figures are Ms. Krigul's estimates.

¹²⁶*RFE/RL Baltic Report*, February 9, 1993.

¹²⁷Interview with Mr. Toivo Klaar, August 26, 1993.

¹²⁸Republic of Estonia, Constitution, unofficial translation from the *Riigi Teataja*. In the Russian language edition of the Constitution, the article reads, *Kazhdyi imeet pravo vstupat' v nekommercheskiye obshchestva i soyuzi. V partiyakh mogut sostoyat' tol'ko "grazhdane Estonii."* *Konstitutsiya Estonskoi Respubliki*, Tallinn, Izdatel'stvo Estonskoi Entsiklopedii *Olion*, 1992.

Local Government Council Electoral Law and the October 17, 1993 Local Elections

Local elections for municipal councils were held on October 17, 1993.¹²⁹ The Local Government Council Electoral Law of May 19, 1993, allows non-citizens who have resided in Estonia at least five years the right to vote in municipal elections. Only citizens, however, may be elected {Article 3 (3)}. Furthermore, the law states that "confirmation that the candidate has a sufficient command of the Estonian language to participate in the work of a local government council shall be included with the application {Article 18 (13)}." To vote in local elections, non-citizen must have registered by the end of August 1993; about half of eligible non-citizens did so.

In areas like Narva and Sillamae, the pool of those who have the right to be elected is extremely small—the vast majority of the population are not citizens.¹³⁰ Not being citizens, the present leadership of many areas, like the Narva City Council, is not able to run in the October 17 local elections.¹³¹ The Narva City Council has been an extremely vociferous critic of Estonian legislation concerning non-citizens, organizing a July 16/17 referendum on local autonomy in violation of the Estonian Constitution. Helsinki Watch knows of one case where a mayor of a town, an ethnic Russian who is a citizen, does not plan to run for office in the October local elections because of language difficulties.¹³² Recently the Estonian government cancelled local elections in Paldiski because no candidates had registered to run; in addition, it was reported that police and Russian officials had not given Estonian officials the residency lists necessary to determine who had the right to vote.¹³³

Draft Law on Cultural Autonomy for National Minorities

Although the overwhelming majority of Estonia's non-citizens are either Russian, Ukrainian, or Belorussian, they will not fall under the protection of the draft law "On Cultural Autonomy for Ethnic Minorities."¹³⁴ Article 50 of the Constitution assures ethnic minorities "the right, in the interest of their

¹²⁹These elections were held as this report was going to press, and therefore, Helsinki Watch has incomplete information concerning the results. Helsinki Watch has been informed that the Estonian government granted thirty-five non-citizens citizenship to allow them to participate in the local elections, a step Helsinki Watch applauds. According to Estonian Information and Press Department Reports, parties representing the Russian-speaking community took twenty-seven of sixty-four seats on the Tallinn City Council.

¹³⁰In Sillamae, which until recently was a closed city, there are only 525 Estonian citizens in a population of 20,000. See Sheehy, September 24, 1993, p. 24.

¹³¹Helsinki Watch met with the Narva City Council on August 21, 1993 in Narva, Estonia.

¹³²Juri Andreyev, mayor of Narva-Joesuu, interview with Helsinki Watch, August 22, 1993.

¹³³*RFE/RL Daily Report*, October 6, 1993, p. 8. Paldiski was until recently a closed military city that contains a naval base and academy and two nuclear reactors.

¹³⁴This law is a reworking of the 1925 Law on Ethnic Minorities, which at the time was considered to be one of the most liberal in Europe. The draft law guarantees a member of an ethnic minority "the right to preserve his or her

national culture, to establish institutions of self-government in accordance with conditions and procedures established by the Law on Cultural Autonomy for Ethnic Minorities." Article 1 of the draft law on ethnic minorities cited above limits the power of the law only to "citizens of Estonia who are not members of the principal ethnic group and are thus members of a national minority." Article 8 addresses non-citizens and stateless persons, stating that, "Stateless persons and citizens of foreign states resident in the Republic of Estonia who belong to the respective ethnic group may participate in the activities of the national minority's cultural and educational institutions and religious congregations, but they may not be elected nor appointed to the directive bodies of institutions of cultural self-government."

National minorities—i.e., ethnic minorities who are also citizens—gain representation through the "Association of National Cultural Societies." Thirty organizations, including nineteen ethnic groups, comprise the "Association." Mr. Ants-Enno Loehmus, an MP from the Center Party and an ethnic Swede, presently chairs the "Association;" before that Mr. Hagi Shein, who is of Jewish descent and presently Director of Estonian Television, was its head. Mr. Shein commented that, "practically at all stages of discussing laws that somehow affect national minorities, we had the opportunity to express our point of view."¹³⁵ Again, the large non-Estonian/non-citizen minority are not considered national minorities under Estonian law and thus do not enjoy the representation of the "Association of National-Cultural Societies."

Representative Assembly

On January 30, 1993, the Representative Assembly (*Predstavitel'naya Assambleya*) had its founding congress. The Representative Assembly serves as an umbrella organization, uniting disparate Russian groups, like the Russian Democratic Movement of Estonia and the Narva Trade Union Center.¹³⁶ Helsinki Watch had the opportunity to speak with two representatives of the Representative Assembly, Hanon Barabaner and Aleksei Semjenov.

The main goal of the Representative Assembly is to represent the forty percent non-citizen population and—when possible—to influence legislation that affects it. It was Mr. Semjenov's opinion that the Estonian government became more interested in the Assembly after the political situation became heated during the passage of the first draft on the Law on Aliens: "The authorities did not register us for about six months (after the founding congress on January 30)...it occurred recently, when all these excesses happened, this spring, when the Laws on Foreigners and on Local Elections were passed. Rallies started to occur, there were calls for the Narva Referendum,¹³⁷ there was a lot of separatist talk, and the

cultural identity" and to organize cultural, educational, and religious institutions and to publish periodicals and literature.

¹³⁵Interview, Tallinn, August 19, 1993.

¹³⁶"Yelena Visens, Interesy Negrazhdan budet zashchishchat' legitimnyi organ." *Nezavisimaya Gazeta*, January 28, 1993, p. 3.

¹³⁷On July 16 and 17, 1993, in Narva and Sillamae a referendum was held on autonomous status for Narva. This action is prohibited under the Estonian Constitution, which proclaims Estonia a "unitary", rather than a federal state. The referendum was a protest against the Law on Foreigners.

government realized that dialogue is impossible without a partner, and we were quickly registered...After these crises, contacts [with the government] became more intensive through the government's initiative. Until then the initiative was ours, and everything was tough and proceeded slowly...everything went more quickly after the government expressed a desire [to meet with us]."¹³⁸

Round Table

The Representative Assembly forms part of the "Round Table," a group that Estonian President Lennart Meri formed on June 25, 1993. Both the CSCE Mission in Estonia and the United States Embassy were proponents of creating a "round-table" organization. The goal of the Round Table, which also includes representatives from the Association of National-Cultural Minorities and Members of Parliament, is to discuss issues that affect the non-citizen and ethnic minority communities.¹³⁹ In July both the Swedish and United States governments offered to help fund the Round Table. The first meeting was held on July 10; the second, on July 23; the third meeting on August 12, 1993; a fourth on August 26; and a fifth meeting on September 9, 1993. The August 12th meeting worked on statutes for the group; a draft underscored the idea that the Round Table was not a legal "entity", but a group of individuals.¹⁴⁰

The Round Table adopted statutes for its operation at its September ninth meeting. The Round Table will meet "not less than once a month {Article 8}." Its activities will include "solving the problems concerning the aliens and non-citizens permanently residing in Estonia," "supporting applicants for Estonian Citizenship," and "solving the problems related to the study and use of the Estonian language {Article 7 (2-4)}." Finally, the president's representative may present the proposals and recommendations of the Round Table to the Parliament and government, as well as make proposals concerning the draft laws under discussion to the parliament committees."¹⁴¹

Two members of the Round Table from the Representative Assembly had mixed views as to its efficacy. Aleksei Semjenov commented that,

The Round Table was formed, but its work so far as been rather sluggish because very few people from the Estonian side know how to relate to it. On the one hand, obviously you need dialogue; on the other hand, many of the Estonians equate dialogue as a means of letting off steam, and not as a constructive partnership...This is such a new idea, it is not at all written in Estonia's Constitution, nowhere is the existence of such a body mentioned. Therefore people don't understand how the Round Table's advice and recommendations

¹³⁸Interview with Aleksei Semyenov and Hanon Baraboner, Tallinn, August 20, 1993.

¹³⁹The round table consists of fifteen individuals: five from the Representative Assembly; five from the leading Parliamentary factions; five from the Association of National-Cultural Associations.

¹⁴⁰FBIS-SOV-93-155, August 13, 1993, p. 70. In an interview with Helsinki Watch, MP Merle Krigul, a member of the round table, also stated this idea.

¹⁴¹Statute of the Round Table, Office of the President of Estonia, September 22, 1993.

should be realized.¹⁴²

Hanon Barabaner stated that, "It should be required that recommendations of the Round Table be discussed in Parliament...it doesn't mean passed, just simply discussed."¹⁴³ Ultimately Mr. Semjenov thought the Round Table would be successful only if both the Estonian and the Russian/non-citizen sides were prepared to compromise:

On the one hand, I think that Estonia's politicians are slowly gaining experience. You have to concede the fact that these are young politicians, it's a young state, until now they haven't had real responsibility—they've been in opposition...but now they see that you cannot rule a society where more than one-third of the population doesn't participate...On the other hand, Russians are just beginning to learn democratic processes, and they are beginning to realize that democracy is a process, and this process is long, and if you put forth a demand, it does not mean that it will be instantly approved.

RECOMMENDATIONS

Helsinki Watch calls on the Estonian Government to take the following steps:

- * Amend the present Citizenship Law taking into consideration the long-term residency in Estonia of the vast majority of non-citizens. Helsinki Watch favors a "zero option;" short of that, we recommend an amendment that would include reducing the language requirement to a minimum for all those who had lived in Estonia for an extended period of time before March 30, 1990, and *completely abolishing a language requirement for citizenship for all non-citizens born before 1940.*
- * Amend the Language Law and allow individuals who have failed the language test for employment to continue to work.
- * Abolish the exclusions in the Citizenship and Aliens Law and treat every case individually.
- * Better explain government actions to the non-citizen population. Such measures could include the mailing of small brochures about laws concerning non-citizens directly to non-citizens. Such actions could prevent rumors and misinformation.
- * Continue the work of the Round Table.
- * Give applicants for citizenship an unlimited time and number of tries to pass the language exam.
- * Work actively to reduce the number of non-citizens.

¹⁴²Interview Tallinn, Estonia, August 20, 1993.

¹⁴³Interview, August 20, 1993, Tallinn, Estonia.

Helsinki Watch calls on the Narva City Council to work constructively within the system to hasten the integration of Estonia's non-citizen population and to refrain from acts that clearly contradict Estonian Law and the Estonian Constitution.

Helsinki Watch calls on the international community, especially on the Nordic Council and the European Community, to increase funding for language instruction and for community outreach in Estonia.

Helsinki Watch calls on the Russian government to refrain from inflaming the debate on the situation of non-citizens in Estonia through heightened rhetoric and hyperbole.

APPENDIX

Helsinki Watch Policy Statement on Citizenship Legislation Adopted or Under Consideration in Former Soviet Republics

Helsinki Watch views with concern various laws and proposals under consideration in states of the former USSR¹⁴⁴ that could exclude from citizenship in the state in question many individuals with significant links to that state. Those excluded are individuals who, while the Soviet Union was a unified state, migrated to a republic that did not coincide with his or her ethno-national identity. We believe that most individuals who migrated within the country could not have foreseen the change in the Soviet Union's political status, and that they lived in any given republic with the expectation that their residence would not be interrupted by the issue of their citizenship. This policy statement addresses the effects of new citizenship laws on the rights of only these individuals, and not the rights of new immigrants (i.e., people who applied for citizenship after the republic's declarations of independence or after the dissolution of the Soviet Union).

Our concern with respect to citizenship entitlements is twofold: first, citizenship entitles individuals to basic rights such as voting and residence. Denying citizenship to deserving individuals would therefore violate their voting rights guaranteed in Article 25 of the International Covenant on Civil and Political Rights. Second, the allocation of property and other social and economic rights often hinge upon citizenship. Citizenship laws that exclude otherwise deserving individuals would create categories of people who would be the victims of systematic discrimination, banned by Article 27 of the International Covenant.

We believe that principles of international human rights must be used to evaluate the proposed citizenship laws. This policy statement identifies some of the considerations that we urge all ex-republics to take into account in fashioning their laws.

¹⁴⁴The terms "states" or "former Soviet republics" are used in this Policy Statement without implying any position on the legitimacy or desirability of any past, present, or future form of political affiliation of the former republics with each other, with the former Soviet Union, or with the Commonwealth of Independent States. This Policy Statement applies to legislation proposed for adoption and enacted by former Union republics, and would apply *mutatis mutandis* to such legislation considered by other political units within the former USSR, such as autonomous republics.

A. General Considerations

1. Applicability of International Human Rights Law in All Territories Formerly Under Soviet Control

The requirements of customary international human rights law are fully in force with the effect of law in all territories that have been under the control of the USSR. In addition, the USSR had ratified and accepted many of the major human rights treaties and other international documents. A number of the new states that the republics have become have either expressly acceded to them or acknowledged their applicability, and we urge the remaining states to do so. All of the former republics (except Georgia) have formally accepted the CSCE human rights agreements.

2. The Need to Strengthen Rather Than Diminish Protection of Human Rights in the Former Soviet Republics

It is a moral, political, and legal obligation of each of the former Soviet republics to protect human rights within its territory. In no event should the establishment or re-establishment of independence serve as a pretext for cutting back on the rights to which former Soviet citizens are entitled under international human rights law.

3. The Obligation to Ensure Protection of the Rights of All Persons Subject to Governmental Authority, Whether or Not They Are Formally "Citizens"

Most aspects of international human rights law apply to "everyone" or to "all persons," regardless of citizenship or nationality. A government's obligations do not end with ensuring the rights of only its citizens.

4. The Obligation to Minimize Statelessness

Because citizenship is the principal mechanism through which people take part in governmental affairs, it is incumbent on the former republics to develop and implement their citizenship laws in a manner that avoids rendering individuals stateless. This is especially crucial for individuals who are of a nationality that has no corresponding territorial unit in the former USSR empowered to extend citizenship. We therefore urge the new states of the former Soviet Union to ratify the 1961 Convention Relating to the Status of Stateless Persons.

5. Obligations With Respect to Persons Who May Also Have Links to Another State or Republic

Avoidance of statelessness does not exhaust the responsibilities of the new states with respect to persons who may have links to more than one republic or state. If proposed citizenship legislation would adversely affect an individual's human rights, objection on human rights grounds is warranted even if he or she qualifies for citizenship (or another status such as permanent residence or asylum) in another state.

6. Prohibition of Arbitrary Deprivation of Citizenship

Under Article 15 of the International Covenant, a person may not be arbitrarily deprived of

citizenship (nationality). Since under international law Soviet citizens could not have been deprived of their citizenship on arbitrary medical, political or other grounds, these same individuals cannot be denied citizenship for similar grounds.

B. Specific Considerations

1. Claims Based on Duration of Residence and Reasonable Expectations

In the context of the dissolution of the USSR, claims based on a reasonable expectation of continuing residence deserve special attention. Disrupting expected residence may impose serious hardships on individuals whose jobs, families, and other relationships depend upon being able to continue living where they have been living. International human rights principles safeguard the reasonable expectations of individuals who, as citizens of the former USSR, have been living in one of the former republics that has now established or re-established independence. The rights of those individuals to continue in their habitual residence should not be impaired because of political changes in the world around them.

Two sets of citizenship requirements would therefore be preferable: one applicable to people who settled in the former republic before the establishment or re-establishment of independence and one applicable to those migrating to it thereafter. This arrangement prevents imposing a hardship on those residents who could not have reasonably foreseen a change in their legal status.

Persons with established ties of residence to a former republic should be presumptively eligible for citizenship in the state the republic has become, whether or not other criteria for citizenship (such as *jus soli* or *jus sanguinis*) would be met. This principle applies regardless of (1) whether one views the Soviet presence in the former republic as an illegal occupation; and (2) whether a person moved to the republic on his or her own free will or was forced to do so by the Soviet government. Accordingly, Helsinki Watch will oppose any proposed citizenship laws that would mandate excessively long periods of residence or other restrictive conditions as a qualification for citizenship for persons who were Soviet citizens with a settled place of residence in the former republic at the time of independence.

Persons with a reasonable expectation of continued residence who do not elect or qualify for citizenship of that state should be allowed to remain in their place of habitual residence in any event, and to return there after temporary absences. Helsinki Watch will oppose any bills or laws that would require involuntary change of residence, whether or not the affected persons are "citizens."

2. Claims Based on Family Ties

International human rights law, e.g. Article 23 of the International Covenant on Civil and Political Rights, protects the family as a social unit and the right of persons to marry and found a family. Proposals that give greater weight to an individual's ancestry or ethnicity than to his or her present circumstances could disrupt family life by allocating citizenship entitlement to one but not both spouses, to a child and one parent but not to the other parent, or on other similarly arbitrary lines. For the reasons previously suggested, political changes extraneous to an existing family unit should not impair the rights or expectations of the members of that unit. Accordingly, Helsinki Watch will oppose citizenship proposals that would have the effect of arbitrarily dividing a family into citizens and non-citizens.

3. Proposed Disqualifications on Grounds Such as Medical Needs, Criminal Status, or Political Affiliation

Certain citizenship proposals would deny eligibility for citizenship in a former republic to persons who have been convicted of a crime or who were under criminal prosecution, have received treatment for alcoholism or drug addiction, or who belong or have belonged to certain political groups such as the Communist Party apparatus.

a. Denying citizenship to previously convicted criminals effectively adds an additional, *ex post facto*, and heavier penalty to the convicted person's punishment. Imposing penalties heavier than those that applied at the time a crime was committed violates Article 15 of the International Covenant.

b. Excluding persons who have received treatment for alcoholism or drug addiction is a cruel punishment that would discourage people from seeking needed treatment. Article 7 of the International Covenant, which prohibits "inhumane or degrading treatment or punishment," protects individuals against this exclusion. Denying citizenship on these grounds creates a new penalty that represents an attempt to criminalize an individual's past act of having registered at a clinic for substance abuse. Finally, it creates categories of people who are targets of discrimination on the basis of status or state of being that is beyond their control. This kind of discrimination is forbidden by Article 26 of the International Covenant.

c. Excluding categorically persons who worked for the USSR Communist Party, KGB, or any other institution, on the grounds that they perpetrated grave abuses of human rights, collectively punishes individuals and violates the International Covenant's Article 22 (on freedom of association). Before such a person is denied citizenship, he or she should be individually proven culpable in a court of law for specific crimes that were outlawed at the time of the acts in question. The record of each citizenship applicant should be judged individually, with the appropriate recourse to judicial institutions.

Even though similar political and medical tests are or have been used as criteria for immigration or naturalization eligibility in various countries (including the United States), Helsinki Watch believes that a fundamentally different situation is presented when such criteria are applied not to determine eligibility for admission of new entrants into a given state, but rather to determine how citizenship entitlements should be allocated when an existing state (such as the USSR) fragments into smaller units. Persons falling into the above medical, political, or similar categories were already citizens of the USSR; by virtue of falling into these categories, they could not have been involuntarily expatriated by the USSR. They should not be worse off by virtue of political developments occurring in the territory of the former USSR.

Helsinki Watch will oppose eligibility tests such as those suggested above, to the extent that they are applied to deny citizenship to persons whose ties with the former republics would otherwise qualify them for citizenship.¹⁴⁵

¹⁴⁵Because different equitable considerations are at issue, this Policy Statement does not address whether any of the above criteria would be legitimate if applied to admission of new entrants (i.e., to immigrants, or to naturalization of persons who would not otherwise qualify for citizenship).

4. Language Requirements

Helsinki Watch generally opposes language requirements for people who lived in the state before the establishment or reestablishment of independence. However, if citizenship requirements include a language proficiency examination, a citizenship law should also provide *gratis* language instruction to individuals who resided on the territory of the former republic before the establishment or reestablishment of independence. Special consideration should be granted to the elderly, who may have particular difficulties learning a new language.

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This report is based on field research that Rachel Denber and Christopher Panico, Helsinki Watch research associates, conducted in Estonia. Christopher Panico wrote the report; Jeri Laber, Executive Director of Helsinki Watch edited it. Lydda Ragasa, Rachel Denber, Alexander Petrov, and Erika Dailey assisted in preparing the report. Helsinki Watch would also like to thank the Estonian Foreign Ministry, the Estonian U.N. Mission, CSCE Ambassadors to Estonia Klaus Tornudd and Timo Lahelma, the staff of the CSCE mission in Tallinn, and all those who agreed to be interviewed for this work.

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Helsinki Watch was established in 1978 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. The chair of Helsinki Watch is Jonathan Fanton and the vice chair is Alice Henkin. Jeri Laber is executive director; Lois Whitman is deputy director; Holly Cartner and Julie Mertus are counsel; Erika Dailey, Rachel Denber, Ivana Nizich and Christopher Panico are research associates; and Christina Derry, Ivan Lupis, Alexander Petrov and Isabelle Tin-Aung are associates.

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