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Department for Conference Services

At the request of the OSCE High Commissioner on National Minorities, the attached letter dated 28 October 1996 to the Minister for Foreign Affairs of the Republic of Estonia, Mr. Siim Kallas, as well as the letter of reply, dated 10 December 1996, by the former Acting Minister of the Republic of Estonia, Mr. Riivo Sinijärv, are being distributed to all OSCE delegations.

OSCE
High Commissioner
on National Minorities

His Excellency
Mr. Siim Kallas
Minister for Foreign Affairs of the Republic of Estonia
Ravala 9
TALLINN EE 0100
Republic of Estonia

Reference No:
1084/96/L

The Hague
28 October 1996

Dear Mr. Minister,

During my recent visit (9-11 October) to Estonia I was informed about the efforts presently being undertaken to increase the effectiveness of the Presidential Round Table on inter-ethnic relation. I welcome this development, because I am convinced that inter-ethnic dialogue can help to remove

misunderstanding and to identify problems which need to be resolved. I also welcomed the assurance of the Minister of Education, Mr. Aaviksoo, that he gives a high priority to efforts to enhance the teaching of the Estonian language to non-Estonians. Thus, the process of integration can be stimulated. Moreover, such language training can also be of considerable help for non-Estonians applying for Estonian citizenship, who have to pass a language test.

As regards the language tests, I welcome the news that elderly applicants (born before 1 January 1930) are now exempt from the written test. I would recommend that, taking into the difficulty elderly people have in learning a language, the oral test will also be abolished.

As regards the process of providing residence permits and alien passports to non-citizens, I have noted that there are still considerable delays. I therefore welcome the decision of your Government to continue to recognise the old Soviet internal passport beyond the expiry date of 30 November as an internal identification document as long as the document have not been distributed. Still, the need to complete the process of issuing new documents is evident. One aspect which has to be considered in this context is, in my view, the probability that any further delay, with resulting uncertainty and confusion amongst non-citizens, will further increase the number of persons who, while determined to stay in Estonia, decide to apply for Russian citizenship. In this respect, according to information provided by the Embassy of the Russian Federation in Tallinn, the number of persons applying for Russian citizenship has now exceeded 110,000 and continues to rise.

I do not underestimate the many problems which have to be overcome in the process of providing non-citizens with alien passports and residence permits. I do hope, however, that everything possible will be done to speed up the process. In this connection, I recall that in the beginning of October 113,818 persons had applied for alien passports, but the same time only 18,008 had actually been printed.

Permit me, Mr Minister, to raise also another subject relating to non-citizens in Estonia. From my conversation with the Prime Minister on 11 October I have understood that Parliament will soon be asked to ratify the Council of Europe's Framework Convention for the Protection of National minorities, but that this convention will not only apply to non-ethnic-Estonians who are Estonian Citizens.

I should like to make the following observations. The Framework Convention was drafted with the aim to transform to the greatest possible extent the political commitments adopted by the CSCE into legal obligations, (pursuant to Appendix II of the Vienna Declaration of 9 October 1993). It is also relevant to recall that Estonia, on acceding to the CSCE in September 1991, has not made any reservations regarding the political commitments relating to national minorities in the various CSCE documents. As far as the Framework Convention itself is concerned, article 6(1) does explicitly refer to all persons living on the territory of a state (The Parties shall encourage a spirit of

tolerance and inter-cultural dialogue and take effective measures to promote mutual respect and understanding and cooperation amongst all persons living on its territory irrespective of those person's ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and media). Finally, I recall the UN Declaration of 13 December 1985 on the Human Rights of Individuals who are not Nationals of the Country in which they live, and especially its articles granting individuals who are not citizens of the state in which they are living certain rights, within the framework of the domestic law of the state, such as articles 5.1 sub. f (the right to retain their own language, culture and tradition) and 5.2 sub. b (freedom of expression).

I am making these remarks in order to make clear that many articles of the Framework Convention have a close resemblance to CSCE Commitments (especially the 1990 CSCE Copenhagen Document on the Human Dimension) while several resemble articles in the UN Declaration of 1985. Against this background there is in my view a risk that making the intended reservation to the Framework Convention without some clarifying remarks might lead to fears and concerns about an intended change of Estonia's policies regarding non-citizens living in Estonia, which, I would hope and expect, are in reality unfounded. I would therefore recommend that your Government would make it clear that the intended reservation does not signify that the Government intends to restrict the existing rights of non-citizens living on its territory.

These were the recommendations I wanted to submit you, Mr. Minister. I am looking forward with great interests to your reply.

Yours sincerely,

[signature]

Max van der Stoel

OSCE High Commissioner on National Minorities

***Ministry of Foreign Affairs
Republic of Estonia***

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November 27, 1996 No1/19028

Tallinn

Dear Mr. van der Stoel,

In reference to your letter of October 28, 1996, regarding the recommendations you kindly submitted upon the completion of your visit to Estonia, I wish to provide further explanation regarding the questions of concern to you.

As regards the policy of exempting citizenship applicants born before January 1, 1930, from the written language test, this is not a new policy but has been in legal force since April 1, 1995, as specified in the "Law on Citizenship".

As regards alien passports, distribution has been slowed by the need to ensure the accuracy of information provided by applicants; many instances have occurred of alien passport applications from individuals who already hold Russian passports. It has been difficult for Estonian authorities to achieve any progress in this area as the Russian authorities refuse to release information regarding individuals who have received Russian citizenship. Estonia would be very thankful if you could intercede and suggest to the relevant Russian authorities that the list of Russian citizens be delivered to the authorities concerned.

The large discrepancy between the number of applications for alien passports and residence permits and the number actually printed is also due in part to technical considerations, such as the poor quality of the blank passports and an outdated informational database. Concrete steps, however, have been taken to alleviate the situation; 100,000 blank passports ordered in the summer will be delivered at the end of November and a competition to design a new database program has been publicly announced. It is anticipated that these steps should speed the distribution process.

That individuals living in Estonia continue to apply for Russian citizenship should not be a cause for concern. As you yourself have emphasised, the main goal should be to decrease the number of stateless individuals. The granting of Estonian citizenship depends in large part on the willingness of the applicant him- or herself to complete the naturalisation requirements a factor which is difficult for the government to influence. The decision by some individuals to take Russian citizenship until such time as they are ready to decide to apply for Estonian citizenship, and take the requisite tests, should not be viewed as a negative development.

As regards the ratification of the Framework Convention for the Protection of National Minorities, Estonia has added a declaration, rather than a reservation. The declaration does not contradict the convention itself, including the article cited in your letter (Article 6(1)), nor does it restrict the existing rights of non-citizens living in Estonia. Please refer to the enclosed "Comments on the Declaration to Accompany the Ratification of the Framework Convention for the Protection of National Minorities of

01.02.1995", an internal opinion prepared by Ministry for Foreign Affairs staff, for a more detailed explanation. The Convention was ratified by parliament on November 21, 1996.

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

I would also like to use this opportunity to address an issue which has been discussed in your correspondence with my predecessor, and which has currently become due to the welcome progress of the peace process in Chechnya. I refer to your letter of February 14, 1995 to Foreign Minister Luik in which you stated that there was a potential role for the HCNM in Chechnya "in a post-conflict situation relating to questions like the building of a new constitutional order as far as minority issues are concerned." I would like to confirm our continuing support for your efforts up to the present, and hope that serious consideration will be given to proposed involvement of the HCNM in Chechnya, now that open warfare has been halted.

Yours sincerely,

[signature]

Riivo Sinijarv

Minister,

Acting Foreign Minister of the Republic of Estonia

Comments on the Declaration to Accompany the Ratification of the Framework Convention for the Protection of National Minorities of 01.02.1995

1. As to the nature of the text proposed.

According to international law, the two terms may be distinguished as follows

- reservation - an indication of certain provisions which will be excluded or modified for the purpose of implementing the text, i.e. a modification of the norm system laid down in the text;
- declaration - a statement specifying how certain terms will be understood for the purpose of implementing the text.

It is admittedly not always easy to draw a clear distinction. But in the present situation it is evident that all the provisions of the Framework Convention will be fully applicable without any restriction as to their substance, that there will be no modification of the norms laid down in the Convention and that the text proposed only identifies the direct beneficiaries of the provisions without altering the norms laid down in the Convention. It is significant in this context that two Member States of the Council of Europe, at the moment of their signature of the Framework Convention, submitted similar interpretative declarations.

2. As to the term "national minority" in general.

There is at present no settled definition of the term in international law.

The problem was acute already before the World War II. Article 8 of the Polish Minorities treaty (2B.06.1919), which between the wars served as a model, stated that Polish nationals belonging to a minority group shall enjoy the same treatment and security in law and in fact as the other Polish Nationals. - See also the Advisory opinion of the Permanent Court of Justice in the case of minority schools in Albania (06.04.1935). But the League of Nations never adopted a generally valid and applied definition.

Neither have the United Nations. Thus, the Covenant of Civil and political Rights, in its Article 26 dealing with minorities, does not contain a definition. In his important study of the principles of law and fact underlying this Article, the Special Rapporteur, prof. Capotorti, suggested that the term "minority" could be taken to refer to "a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their cultures, traditions, religion and language." (United Nations 1991)

Prof. Capotorti states expressly that foreigners are excluded from the definition of a national minority. Their case is different from those who possess the nationality of the country in which they live. They will be covered by the notion of rights of aliens. Reference is also made to later attempts in the 1980s to arrive at a definition based on the so-called Deschines study (which referred to a minority as "a group of citizens").

This unofficial definition has been considered to be the closest to a definition valid for all, even if it has never been officially designated as such.

It should also be noted that the recent Declaration on the Rights of Persons belonging to national or ethnic, religious and linguistic minorities (sponsored in the third Committee of the UN General Assembly by, inter alia, Estonia) does not contain any definition - (GA/Res 47/13518.12.1992).

It is clear that many States take the view that the rights in the Declaration are only for nationals or citizens of the state in which the minorities live. Thus, as an example, in an explanation of its vote, the Federal Republic of Germany made it clear that "minority rights belong to the nationals of the State where they live" UN-E/CBN 4/1992, SR 38, p. 30). Also Austria stated that since "international law did not define the concept of minorities it was for the States to develop their concept in that respect "(LIN - E/CN 4/1992, SR 17, p. 12).

It is also worth mentioning that in 1993 the Assembly presented to the Committee of Ministers a proposal for an additional protocol to the Human Rights Convention on national minorities in which the term was defined as a group of persons ---" residing on the territory of the State and are citizens thereof".

It follows that there are many and persuasive examples of limiting minority rights to citizens.

3. As to the term " national minority" in the context of the Framework Convention:

The Convention does not contain a definition of "national minorities" either. Indeed, according to para 12 of the Explanatory Report it was decided "to adopt a pragmatic approach based on a recognition that at this stage it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States". It follows that the Convention does not lay down any generally applicable definition but leaves it to the Contracting Parties to define the exact scope of its application. As stated above, two Member States of the Council of Europe have already done so.

It is, moreover, stated in para 26 that the reference in the Convention to work done at UN level and to texts elaborated in this context "does not extend to any definition of a national minority which may be contained therein". Indeed the Explanatory Report states in para 13 that the implementation of the principles shall be achieved through national legislation and appropriate governmental policies. This obviously opens

possibilities for governments to indicate by an interpretative declaration their understanding of the legal situation.

4. It should be observed that the Copenhagen document from the conference on the Human Dimension of the CSCE (June 1990) does not solve the problem of the definition of the concept of national minorities. Moreover, the OSCE commitments (apart from the fact that Estonia did not participate in the Copenhagen conference) are of a strictly political nature. Although the CSCE agreements sometimes reflect existing international legal norms and principles, this is not necessarily the case, and, if so, violations of the political commitments by participating states have generally been condemned as serious offences unacceptable to the partners.

As stated, the Council of Europe has aimed at translating the political commitments of the CSCE into legally binding norms. This does not mean a wholesale translation of the Copenhagen document, nor has it meant the establishment of a precise definition or of a strict rule of application to specific beneficiaries. Indeed, in para 27 the Explanatory Report merely states that the Document has provided "guidance" for the drafting of the Framework Convention.

5. The purpose of the Declaration to be made is to specify the beneficiaries of the Convention and to align the implementation on existing Estonian legislation. In doing so, Estonia is following the examples set by the Federal Republic of Germany, in its letter to the Secretary General of 11.09.1995, and by Luxembourg, in its letter of 20.07.1995. The former specifies that are considered national minorities Danes of German nationality, Sorbes of German nationality, Friesians of German nationality and Sintis and Romas of German nationality. It follows that the Convention will not apply to non-German citizens. The latter limits the definition of national minority to groups of persons "having Luxembourg nationality": It therefore also excludes non-citizens.

The same restriction has been made in Art. 7 of the Austrian State Treaty of 1955 which limits the enjoyment of minority rights by the Slovene and Croat minorities to those who are Austrian citizens. Likewise, the minority rights in South Tyrol are guaranteed only to "German-speaking citizens" of Italy, see Peace Treaty of 10.02.1947, and the Law on Autonomy Status for the region of Alto-Adige of 1972, art 2.

Attention is also drawn to the publication by the Venice Commission on Protection of Minorities, 1994, according to which the term "minority" is interpreted as applying only citizens in Albania (p.84), Austria (p.87), Greece (p. 101), Hungary (p. 167-68), Russia (p. 244) and Slovakia (p.262).

It follows that Estonia is far from the only country to define a national minority as suggested and that other Member States of the OSCE have done so in similar terms.

6. As regards Article 6 of the Framework Convention

It is true that this article refers to all persons living on the territory but the encouragement by the Government of "a spirit of tolerance of intercultural dialogue" and the taking of measures "to promote mutual respect and understanding and cooperation" is a policy already pursued by the Estonian State authorities under the Constitution and ordinary legislation.

It is in any event the expression of the concerns stated in Appendix III to the Vienna Declaration of 1993 on combating racism, xenophobia, anti-Semitism and intolerance, is an action which has the full support of the Estonian Government. It is true that the second paragraph of article 6 is inspired by the Copenhagen document, but both the constitution and ordinary legislation provide the protection required.

In this context it is relevant to point out that Article 9 of the Constitution stipulates that " the rights liberties and duties of everyone and all persons, as listed in the Constitution, shall be equal for Estonian citizens as well as for citizens of foreign states and stateless persons who are sojourning in Estonia". In this context reference should also be made to Articles 12 (equality before the law), 37,4 (right to education), 44 (freedom of information), 45 (freedom of the media), 50 (right of ethnic minorities to establish institutions of cultural self government) and 51 (use of minority language for administrative purposes). All these rights will remain unaffected by the declaration accompanying the ratification of the Framework Convention, see Article 123 of the constitution. Any fear or concern in this respect is from a legal point of view wholly unfounded. The difference is that for citizens there will be a monitoring "remedy under Section IV of the Framework Convention in addition to those available under the constitution and the Human Rights Convention to citizens and non-citizens alike.

It follows that the proposed declaration does not affect the constitutional rights granted to foreigners such as those listed in Articles 5,1,f and 5,2,b of the UN Declaration of 13. 12, 1985 on the Human Rights of Individuals who are not Nationals of the Country in which they live.

7. Conclusion

The declaration, as included in Estonian law of ratification of the Framework Convention for the Protection of National Minorities is in full conformity with international law and practice.