

Tallinn, July 1, 1993

His Excellency
Mr Lennart Meri
President of the Republic of Estonia

Dear Mr President,

With great interest I read the communiqué issued by your office on June 25. Please permit me to express my great appreciation for your decision to create a round table of non-citizens and ethnic minorities. In my view this round table could be an important instrument for promoting harmony between the various population groups in your country and for removing misunderstandings about governmental policies and intentions. It is also essential that it develops into a channel for drawing attention to specific concerns and problems facing non-citizens and ethnic minorities. Your announcement also opens the way to forward a number of problems for examination to the Council of Europe and the csce. As csce High Commissioner with a mandate to promote dialogue and mutual understanding between various population groups I am of course ready to help the round table in any way I can.

I was also very pleased to learn that you have decided to apply to the Council of Europe, the csce and other organizations for an expert opinion, in order to obtain an unbiased professional assessment of the law on aliens before taking a decision in favour or against the promulgation of this law. I see this as another indication that Estonia is trying to ensure that its legislation is in conformity with international norms.

I am aware that no state can do without a law on aliens. As you will undoubtedly agree, however, it is also important to keep in mind that the law raises a number of questions which are fundamental for the future of hundreds of thousands of residents in Estonia. Please allow me to make a number of comments on this aspect of the law. Knowing that other international organizations will give their expert opinion, I have not tried to give detailed consideration to various other aspects.

In my view, it is necessary not only to analyze the law on its purely legal merits, but also to consider its psychological effects on the Russian-speaking population of Estonia. Most of those belonging to this group have lived in your country for many years and have established their roots in Estonia. They prefer to continue to live in your country, and many of them have expressed their attachment to it by voting for its independence in the referendum. They were citizens of the former Soviet Union, living in Estonia. Now, under the new law, they would be considered to be aliens. This in itself inevitably causes emotions and concerns among them about what the future may bring, even to such an extent that it could lead to a destabilization of the country as a whole.

In my letter to Minister Velliste of April 7, 1993, containing a number of recommendations, I made a plea for a deliberate policy of facilitating the chances of acquiring Estonian citizenship for those who express such a wish, and of assuring full equality with Estonian citizens for them. My hope is that you would use the first meeting of the round table to emphasize that non-Estonians who have legally resided in your country for more than two years and who want to acquire Estonian citizenship

will be free to do so. Fears that the language requirement would be so high that only a restricted number of persons would be able to pass the test, could be laid to rest by making it clear that the ability to conduct a simple conversation in Estonian will be considered sufficient. In addition, I hope that the Government will announce concrete steps to implement the recommendations nos. 2-7 I made in my letter to Mr Velliste on April 7. It is my firm conviction that such a policy statement would be the best method to convince especially the Russian residents of Estonia that the Government of Estonia does want to offer the hand of friendship and cooperation to them, and does not intend to begin a process of expelling a large number of them, as many apparently fear. Such a statement would in my view be a logical complement to the assurance of the Estonian Government, in its comments to my recommendations, that it is in favour of a dialogue which will promote the full integration of the non-citizen population into Estonian society.

Turning to the text of the law itself, as adopted by the Riigikogu on June 21, I should like to stress at the outset that quite a number of its provisions can be found in the legislation of other csce states, such as those provisions denying residence permits to persons who have committed serious crimes or who are employed or have been employed by the intelligence services of another state. However, there are other articles that must be reconsidered, taking into account the fact that so many non-citizens have lived in Estonia for a considerable number of years. I should like to mention the following points:

1. Article 8, paragraph 4, in its present form leaves open the question whether for instance a Russian resident of Estonia has to prove that he or she has not managed in obtaining the passport of his or her country of origin before he or she can apply for an alien's passport. It seems preferable to formulate the article in such a way that any resident who has the right to residence permit in Estonia and who is not a citizen of another state can receive an alien's passport.
2. Article 9, paragraph 5, states that any alien who is lawfully sojourning in Estonia shall have the right to appeal a decision to refuse to extend or to prematurely terminate his or her residence permit. However, this right to appeal is not granted when the authorities refuse to issue a residence permit. I would hope that the right of appeal would also be granted in such cases. Also an appeals procedure seems to be justified to determine whether the conclusion of unlawfully sojourning is justified.
3. Article 12, paragraph 3, mentions "employment or other lawful income sufficient to support himself or herself" as one of the conditions for receiving a permanent residence permit. This article has already led to serious concerns among the Russian population in Estonia, especially in areas where there is a high rate of unemployment. It could be interpreted as opening the door for expulsion of those who are unemployed and are no longer receiving unemployment benefits. There are even doubts whether unemployment benefits can be considered as "lawful income". I express the hope that the law will be amended in such a form that these fears are laid to rest.
4. Article 12, paragraph 4, subparagraph 2, stipulates that a residence permit will not be issued to any alien "who does not respect the constitution system and does not observe Estonia's legal acts". No reference is made to any article of the Penal code; nor is it made clear that a court has to establish whether or not a person has not been

respecting the constitutional system or has not observed Estonia's legal acts. It seems preferable, therefore, to delete this subparagraph, even more so because Article 12, paragraph 4, subparagraph 4, already contains a provision concerning criminal offences. Article 14, paragraph 2, subparagraph 2, would then also have to be deleted.

5. Article 12, paragraph 4, subparagraph 3, states that a residence permit shall not be issued to any alien "who with his or her actions has compromised Estonia's national interests or international reputation". This subparagraph, which does not mention specific criteria to be used, nor the need for a court to establish whether Estonia's national interest or international reputation has been compromised, and which seems to provide too much room for arbitrary decisions, ought, in my view, not to be maintained, at any rate not in its present form. Article 14, paragraph 2, subparagraph 3, would have to be adapted accordingly.

6. Article 12, paragraph 4, subparagraph 7, stated that a residence permit shall not be issued to any alien "who has served in a career position in the armed forces of a foreign state or has entered the reserve forces or retired from a career position in the armed forces of a foreign state, nor to his or her family members, who have entered Estonia in conjunction with the service or retirement of a member of such armed forces". This subparagraph seems to open the door for the expulsion of a great number of Russians presently residing in Estonia. I, therefore, make a plea for reconsideration of this article. One formula would be to restrict its application to officers and their families who have been demobilized in Estonia after 1991. Article 14, paragraph 2, subparagraph 5, would then also have to be reformulated.

7. Article 20 deals with residence and employment permits for aliens who settled in Estonia prior to July 1, 1990. It seems, however, not clear which conditions, under Article 12 and 13, would apply for giving such permits to those persons. While, for instance, a requirement to have a lawful income in order to receive a residence permit may well be imposed for new immigrants, it is important to make clear that a person, who settled in Estonia prior to July 1, 1990, will not risk expulsion for the reason of being unemployed or for not being able to meet the criteria for Estonian citizenship.

8. Article 21 gives a key role to the local government in implementing the law. It seems desirable that measures are taken to ensure a uniform interpretation of the law.

In conclusion, I should like to repeat that I fully understand the need for a law on aliens. The main purpose of my comments is to suggest amendments, which, in my view, without affecting the structure and many of the provisions of the law, would help considerably to remove the tensions which have arisen about its contents. Against this background, I would appeal to you to decide not to promulgate the law in its present form.

Yours respectfully,

[signature]
(Max van der Stoel)