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Commonwealth of Independent States - Europe Monitoring Organization



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The Problematic Issues of Access to Justice in Eastern Europe



www.cis-emo.net
e-mail: info@cis-emo.net

About us

Commonwealth of Independent States – Europe Monitoring Organization (CIS-EMO) — is an international non-governmental organization. CIS-EMO performs research and advocacy concerning topics such as human rights, election monitoring, counter-extremism and public diplomacy. The organization was founded in Russia in 2003.

The main activities:

Human Rights

CIS-EMO is monitoring compliance with human rights and freedoms in Europe and the former Soviet Union.

We seek to gather information about the human rights situation with the goal of engaging in advocacy to address human rights violations.

Election Monitoring

CIS-EMO participated in observing several tens of election campaigns in Abkhazia, Azerbaijan, Germany, Estonia, France, Kazakhstan, Kyrgyzstan, Moldova, Poland, Russia, South Ossetia, Transnistria and Ukraine.

Our aim is to assist maintaining and developing the institution of elections and civil control in states with developing systems of democracy.

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CIS-EMO is engaged in research of extremist and the far right movements in Europe and post-Soviet space.

We released a series of expert reports on extremism in Russian and Ukrainian politics, society, media, defense, and law enforcement.

The Problematic Issues of Access to Justice in Eastern Europe

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Translator: Alexey Semenov, CIS-Europe Monitoring Organization

Editor: Stanislav Byshok, CIS-Europe Monitoring Organization

Introduction

Access to justice is of exceptional importance since all other principles of justice are meaningless if the right of citizens to have access to justice is not ensured.

Access to justice and the independence of the judiciary are the fundamentals of the modern concept of justice.

The right of people to free access to justice is enshrined in the Universal Declaration of Human Rights (articles 8 and 10), the Convention for the Protection of Human Rights and Fundamental Freedoms (article 6), the International Covenant on Civil and Political Rights (article 14), and other international legal instruments.

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” – Universal Declaration of Human Rights, article 8.

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” – Universal Declaration of Human Rights, article 10.

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the

interests of justice.” - Convention for the Protection of Human Rights and Fundamental Freedoms, article 6.

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” – International Covenant on Civil and Political Rights, article 14, paragraph 1.

However, the problematic issues of access to justice still exist, in particular in Eastern Europe. This report examines the cases of Ukraine, Latvia, and Estonia.

The cardinal change of power in Ukraine after the 2014 revolution, or coup also known as Euromaidan, caused severe shocks and serious challenges in the law-enforcement and judicial system of the country. The most serious problems of access to justice in Ukraine are related to politically sensitive issues and connected with persecution for political reasons. Political persecution as well as unlawful arrests and detentions of journalists have become a common practice.

One of the main problematic issues of the current Ukrainian justice is the lack of independence of judges and the inability to ensure their bodily integrity and basic security. There are many cases of pressure on judges including threats of physical violence.

In conditions when many judges refuse to take unjust decisions, and the special services of Ukraine do almost nothing to stop the persecution of citizens on political ground, hundreds of prisoners have been in pre-trial detention centers for more than three years now.

Taking into account the situation where courts are under severe undisguised pressure from radical Ukrainian nationalists, judges are forced to massively dismiss from the courts. This also makes access to justice in Ukraine very difficult.

The main problematic issues of the access to justice in Latvia and Estonia are connected with the phenomenon of “non-citizens” and discriminative language state policy of these counties.

Non-citizens in Latvia and Estonia are individuals who are not citizens of Latvia and Estonia, or any other country. Non-citizens do not have voting rights. They cannot serve in the army. They are limited in their professional activities: they cannot work in law enforcement and public service; they cannot work as lawyers, notaries, pharmacists, etc. They are also restricted in social and economic rights: in the acquisition of real estate, in retirement rights, in the right to keep and bear arms, in the right to travel without visas to a number of countries, etc.

The majority of non-citizens are former USSR citizens who lived in Latvia and Estonia and were deprived of the right to receive its citizenship after the collapse of the USSR. Approximately two thirds of them are ethnic Russians, followed by ethnic Belarusians, ethnic Ukrainians, ethnic Poles and ethnic Lithuanians. The number of non-citizens in Latvia is about 252,000 (11,75 percent of the total population), and about 90,000 in Estonia (6 percent).

The Problematic Issues of Access to Justice in Ukraine

Larisa SHESLER, the Chairperson

*The Union of Political Emigrants and Political Prisoners of
Ukraine*

The cardinal change of power in Ukraine caused severe shocks and serious challenges in the law-enforcement and judicial system of the country.

In 2014-2015, the Security Service of Ukraine (SBU) carried out arrests and detentions on political grounds, harassing journalists and accusing citizens of crimes against the state they did not commit.

After the 2014 revolution (Euromaidan), the Code of Civil Procedure of Ukraine and the Criminal Code of Ukraine were amended to exclude the possibility of release from custody on a written undertaking not to leave the place or residence or bail to those who were accused of crimes considered as “politically sensitive”.

At the same time, any call for federalization of Ukraine, i.e. for a greater autonomy of the country's regions from the central government in Kiev, is considered as an “attempt to undermine the territorial integrity of the state” by Ukrainian law enforcement agencies.

Until 2014, there were very few persons in Ukraine who could be called political prisoners. But after the 2014 Euromaidan uprising, thousands of people were persecuted. Political persecution as well as unlawful arrests and detentions of journalists have become a common practice.

Ukrainian journalists Ruslan Kotsaba and Elena Glischinskaya were arrested; later they were released from custody, but they are still not acquitted. Journalist Dmitry Vasilets has been imprisoned for more than one year for being accused of having connections with the media of self-proclaimed Donetsk People's Republic (DNR). More than thirty social network administrators are accused of supporting the civilians of Donbas, a rebel region in the east of Ukraine not controlled by Kiev.

One of the main problematic issues of the current Ukrainian justice is the lack of independence of judges and the inability to ensure their safety and physical security.

Aggressive groups of armed representatives of radical nationalist organizations habitually come to court hearings, and they are not restrained by the police. Judges who are threatened with physical violence are forced to release criminals, as it was in the case with the radical Ukrainian nationalists accused of killing Ukrainian journalist and writer Oles Buzina^{1 2}, or, on the contrary, forced to cancel the decision to change the preventive measure, as it was in the case with Yevgeny Mefedov detained in the case of 2 May 2014 Odessa clashes where 48 people were killed.

Contrary to the court's decision to change the preventive measure to Yevgeny Mefedov and release him from custody, he has been imprisoned for more than three years and is still under arrest, because the Ukrainian radical nationalists, who blocked the trial,

¹ Активисты в поддержку обвиняемых в убийстве Бузины двинулись в прокуратуры (Activists supporting the accused in the murder of Buzina moved to the prosecutor's office). RIA Novosti Ukraine, 19.12.2015. URL: <http://rian.com.ua/kyev/20151219/1002325314.html>

² Два года назад в Киеве убили Олеса Бузину. Дело практически не расследуется, подозреваемые отпущены из-под стражи (Two years ago Oles Buzina was murdered in Kiev. The case is practically not investigated, the suspects are released from custody). Ukrainian News, 16.04.2017. URL: <http://vesti-ukr.com/strana/234638-dva-hoda-nazad-v-kyeve-ubili-olesja-buzinu>

effectively forced the judges to immediately put forward new charges against Mr. Mefedov³ ⁴.

In conditions when many judges refuse to take unjust decisions, and the special services of Ukraine do almost nothing to stop the persecution of citizens on political grounds, hundreds of prisoners have been in pre-trial detention centers for more than three years now. For example, Ignat Kromskoy, a member of a group which opposed the 2014 Euromaidan coup, was arrested in Kharkov (East Ukraine) more than three years ago⁵. Nelly Shtepa, the former mayor of Slavyansk (Donbas region), has been in jail for more than three years, and the terms of her pre-trial detention have been extending time and again⁶. Maksym Nitsenko, an underage, who was framed by a putative provocateur from the SBU (who secretly

³ Судилище над «куликовцами»: Мефедова отпустили, националисты штурмуют суд (The trial of participants in the clashes at Kulikovo Pole square: Mefedov was released, the nationalists storm the court). Kharkov News Agency, 27.05.2016. URL: <https://nahnews.org/779647-sudilishhe-nad-kulikovcami-mefedova-otpustili-nacionalisty-shturmuyut-sud>

⁴ Одесский суд заблокировали из-за решения судей отпустить из СИЗО фигуранта дела 2 мая (Odessa court was blocked because of the decision of the judges to release from the pre-trial detention center the person involved in the case on May 2). Bessarabia Inform, 7.06.2016. URL: <http://bessarabiainform.com/2016/06/odesskij-sud-zablokirovali-iz-za-resheniya-sudej-otpustit-iz-sizo-figuranta-dela-2-maya/>

⁵ Суд Харькова продлил содержание под стражей антимайдановца «Топаз» (The court of Kharkiv extended the detention of “Topaz”, the Antimaidan activist). UNIAN, 7.06.2017. URL: <https://www.unian.net/society/1961901-sud-harkova-prodlil-soderjanie-pod-strajey-antimaydanovtsa-topaza.html>

⁶ Неле Штепе продлили арест за считанные часы до истечения его срока (The detention of Nelly Stepa was prolonged several hours before the expiration of the arrest). RIA Novosti Ukraine, 03.02.2017. URL: <http://rian.com.ua/society/20170203/1021126764.html>

put a dummy of an explosive device in Nitsenko's bag), has been in prison for three years waiting for the trial⁷.

Such extra-long periods of pre-trial detention adversely affect the physical and psychological state of the accused, forcing them to admit their non-existent guilt in order to end the anguish in close and dark places of their detention.

In recent months, some prisoners, who were public figures and took part in protest against the new government, are being sentenced to severe punishments. Yuri Apukhtin, a public figure and scientist from Kharkov (East Ukraine), was sentenced to 6 years in prison for his active dissent, despite his elderly age and serious illness⁸.

Larisa Chubarova, who was engaged in medical support of the Kharkov political protesters, was sentenced to 11 years in prison⁹.

Taking into account the situation where courts are under severe undisguised pressure from radical Ukrainian nationalists, judges are forced to massively dismiss from the courts¹⁰. All this apparently makes access to justice in Ukraine very difficult.

At the moment, Ukrainian courts are staffed by just 50 percent of judges needed to fit the minimum requirements. From June to September 2016, 1,600 people resigned from the judiciary at will.

⁷ Мониторинг судебного процесса над М. Ниценко (Monitoring the trial of M. Nitsenko). Human Rights Online. URL: <http://humanrights-online.org/ru/>

⁸ Один из лидеров харьковского «Антимайдана» осужден на 6 лет колонии (One of the leaders of the Kharkov Antimaidan was sentenced to 6 years in prison). Lenta.Ru, 23.05.2017. URL: <https://lenta.ru/news/2017/05/23/apukhtin/>

⁹ На Украине гражданку России приговорили к 11 годам тюрьмы за помощь ДНР (A Russian citizen was sentenced to 11 years in prison in Ukraine for the help to the DNR). Newsru.com, 30.06.2017. URL: http://www.newsru.com/world/30jun2017/ukr.html?utm_source=rss

¹⁰ Украинские судьи массово увольняются по собственному желанию (Ukrainian judges are massively dismissed at will). UkrLife, 03.03.2017. www.ukr.life/news-ru/ukraine-ru/ukrainskie-sudi-massovo-uvolnyayutsya-po-sobstvennomu-zhelaniyu/

The number of judiciary workers has decreased by one third in just three years. This has never happened in the history of Ukraine. The reasons for the massive retirement are the constant psychological pressure and threats.

The Ukrainian authorities introduced the practice of absentee consideration of cases involving charges for political reasons. For example, charges of high treason against the former president of Ukraine Viktor Yanukovich are considered in absentia. This “innovation” in the Ukrainian justice also adversely affects the possibility of obtaining a fair judicial decision.

However, the Council of Europe (CE) and the European Court of Human Rights (ECHR) have certain requirements on matters of trials in absentia.

“...The CE and the ECHR have repeatedly noted that the application of the institution of trial in absentia ensuring the consideration of a criminal case within a reasonable time is possible only if the following conditions are met:

1) The institute of trial in absentia is used only for minor crimes;

2) The right of the accused to a fair trial is guaranteed, including the right to be present in the proceedings, the right to form a line of defense, the right to speak freely before the court, and the right to appeal a verdict in absentia;

3) In the case of trial in absentia, the right of the accused to legal assistance should not be violated, in particular, the participation of an advocate if the verdict in absentia is appealed¹¹.”

It is quite obvious that politically motivated charges of state crimes absolutely cannot meet the criterion of point 1.

¹¹ Benderskaya, Ekaterina (2009). Позиции европейского суда по правам человека по вопросу заочного разбирательства уголовных дел (The position of the European Court of Human Rights on the issue trials in absentia) // *Законодательство (Legislation Journal)*, No. 12. P. 53-57.

All the accused, in respect of whom trial proceedings begin in absentia, cannot come to Ukraine because of the threat to physical well-being. At the same time, a trial in absentia cannot provide them with the necessary legal protection for confidential communication with a lawyer.

Thus, the current practice of Ukrainian courts does not give grounds for considering them to be functioning within the framework of democratic norms and laws.

The facade of democracy in today's Ukraine and the declarations of Ukrainian authorities, claiming their wholehearted adherence to European values, are only decorations, hiding the dictatorship of radical nationalist groups and the lack of access to justice and due protection for those with dissenting political views.

The Republic of Latvia: Justice Only for the Chosen

Aleksandr GAPONENKO, Doctor of Economics (PhD)

Institute of European Studies (Latvia)

The Constitution of the Republic of Latvia (hereinafter - Constitution) declares: *“All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind”* (Article 91)¹².

The International Covenant on Civil and Political Rights (ICCPR), which Latvia joined on April 16, 1991, proclaims: *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”* (Article 2, point 1)¹³.

Nevertheless, after the adoption of the Constitution and accession to the ICCPR, various levels of people's access to justice depending on their ethnic origin are widely practiced in the Republic of Latvia. These different levels are provided by the existence of special political institutions, special laws, and special law enforcement practices for people of different ethnic origins.

¹² The Constitution of the Republic of Latvia. URL:

<https://www.cvk.lv/pub/public/29171.html>

¹³ International Covenant on Civil and Political Rights. The United Nations.

URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

The political system existing in the Republic of Latvia should be defined as apartheid, treating this concept broadly as the “*a policy or system of segregation or discrimination on grounds of race*”¹⁴.

The construction of the apartheid system began in 1991, when nearly a million Russians and representatives of other national minorities were deprived of their right to citizenship and turned into “non-citizens.” The ethnic Latvians, on the contrary, practically did not lose their rights to citizenship; if they were deprived, it was restored automatically¹⁵.

Non-citizens were deprived of the right to elect and be elected to the Saeima (Parliament), to municipal authorities, and then to the European Parliament, as well as to participate in referendums. Non-citizens have lost the ability to work in the civil service and to engage in many professions. A number of their social and economic rights were infringed¹⁶.

Due to the adoption of the discriminatory laws, non-citizens cannot defend in court their right to be represented in government, to access the jobs, to be engaged in certain professions, to have equal salary for equal work, etc. The courts simply do not accept claims by non-citizens for protection against all forms of discrimination.

In 2012, Russian-speaking activists made an attempt to hold a referendum on the return of the rights to citizenship to non-citizens¹⁷.

¹⁴ Definition of “apartheid” in English. English Oxford Living Dictionaries.

URL: <https://en.oxforddictionaries.com/definition/apartheid>

¹⁵ History of crimes against humanity in Latvia. BaltExpert. URL:

<http://www.baltexpert.com/2017/06/13/>

¹⁶ Buzaev, Vladimir (2007). Non-citizens of Latvia. Latvian Human Rights Committee. URL: http://www.lhrc.lv/biblioteka/Negrazhdane_Latvii.pdf

¹⁷ On the bill “Amendments to the Law on Citizenship” initiated by the voters.

URL: <https://www.cvk.lv/pub/public/30429.html>

The Central Election Commission of Latvia (CEC) blocked this attempt, although according to the Latvian law it did not have the right to do so¹⁸.

The appeal of the initiators of the referendum to the Supreme Court of the Republic of Latvia with a protest against the actions of the CEC had no results¹⁹.

Instead of restoring the equality of rights of all people, regardless of their ethnic origin, the Supreme Court effectively upheld their inequality.

Reluctance of courts to consider issues of ethnic discrimination was due, inter alia, to the fact that all judges in the Republic of Latvia are elected by the Saeima, and non-citizens do not participate in the formation of the Parliament of Latvia.

The Saeima, elected by the Latvian majority of citizens, adopted a number of laws that restrict the rights of Russians and other national minorities both indirectly, through the institution of non-citizenship, and directly.

The State Language Law (Valsts valodas likums) adopted on December 9, 1999, deprived the Russian-speaking people of the right to use their native language²⁰.

Fines could reach hundreds of Euros. The right to fine individuals for the use of their own, “non-state,” language (and, in fact, for

¹⁸ Ibid.

¹⁹ Latvijas Republikas Augstākās tiesas Administratīvo lietu departamenta 2014.gada 12.februāra SPRIEDUMS Lieta Nr.A420577912 SA-1/2014. URL: <http://pravo.perom.eu/nashi-prava/pravo-na-uchastie-v-obshchestvennoj-i-politicheskoi-zhizni-strany/latvija-grazd/item/8-zakonoproekt-popravki-k-zakonu-o-grazhdanstve>

²⁰ Valsts valodas likums. URL: <http://www.vvk.lv/index.php?sadala=134&id=164>

their “non-state” ethnicity) was included in the Administrative Code of Latvia (Latvijas Administratīvo pārkāpumu kodekss)²¹.

Latvian Education Law (Izglītības likums) adopted on 1 June, 1999, deprived the Russian-speaking people of the right to receive education in their native language in educational institutions with state funding²².

Later, in order to restrict the rights to get education in Russian in private schools, amendments were made to this law. These amendments required the loyalty of teachers and administrative staff to the existing political regime²³.

The adoption of these laws did not allow Russian-speaking national minorities to defend in court their rights to use their native language and get education in Russian.

The apartheid-like system in Latvia was fixed at the highest legislative level on 22 July, 2014, by Saeima adopting the Preamble to the Constitution of the Republic of Latvia.

According to the Preamble, *“the State of Latvia, proclaimed on 18 November 1918, has been established by uniting historical Latvian lands and on the basis of the unwavering will of the Latvian nation to have its own State and its inalienable right of self-determination in order to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries,*

²¹ Latvijas Administratīvo pārkāpumu kodekss. URL: <https://likumi.lv/doc.php?id=89648>

²² Izglītības likums. URL: <https://likumi.lv/doc.php?id=50759>

²³ Латвийских учителей оценят на лояльность (Latvian teachers will be appreciated for loyalty). Latvijas Sabiedriskie Mediji. URL: <http://rus.lsm.lv/statja/novosti/politika/latviyskih-uchiteley-ocenjat-na-lojalnost.a142194/>

to ensure freedom and promote welfare of the people of Latvia and each individual."²⁴

So, the Preamble emphasizes that the state of Latvia was created to ensure the existence and development of the Latvian nation (i.e. ethnos), its language and culture, and the state does not recognize the existence and development of representatives of the Russian ethnos and national minorities. Thus, the Preamble has assigned special rights to the Latvian ethnos exclusively.

Access of national minorities to justice in the Republic of Latvia is limited to repressive political institutions, unfair legislation, and through the organization of extrajudicial harassment of human rights activists who tried to restore the rights of the Russians and other national minorities. These persons are subjected to social stigmatization by security services and unreasonably prosecuted. There is a destruction of grass-root non-governmental organizations created by human rights activists²⁵.

Aleksandr Gaponenko, speaker of the "Parliament of the unrepresented," repeatedly appealed to the OSCE with a request to raise the issue of the persecution of the Russian-speaking minority and influence the positions of the Government of the Republic of Latvia, but the organization failed to take these appeals into account^{26 27 28}.

²⁴ Конституция Латвийской Республики, с Преамбулой (The Constitution of Latvia with Preamble). URL:

https://www.cvk.lv/pub/upload_file/krievu/Satversme_RUS.pdf

²⁵ Gaponenko, Aleksandr (2016). Prosecution of Human Rights Activists in the Baltic States. URL:

https://www.academia.edu/28645880/PROSECUTION_OF_HUMAN_RIGHTS_ACTIVISTS_IN_THE_BALTIC_STATES

²⁶ Gaponenko, Aleksandr (2015). Этнический конфликт в Прибалтике, как угроза безопасности Европы (Ethnic conflict in the Baltics as a threat to the security of Europe). Supplementary Human Dimension Meeting, OSCE Contribution to the Protection of National Minorities, 29-30 October 2015. URL: <http://www.osce.org/ru/pc/195361?download=true>

In December 2016, A. Gaponenko sued the General Prosecutor's Office of the Republic of Latvia with a complaint against the leadership of the security police about the commission of a crime of persecution of Russian activists. In May 2017, the Latvian Prosecutor General's Office refused to consider this claim in substance. On this basis, the plaintiff appealed to the Prosecutor's Office of the International Criminal Court (ICC) with a request to initiate a criminal investigation into the persecution of the Russian minority by the extreme nationalist part of the Latvian ruling elite in the Republic of Latvia. Currently, the lawsuit is being examined by the ICC. The plaintiff is collecting evidences and witness statements²⁹.

Thus, nowadays we're witnessing an appalling example of a European country with officially sanctioned elements of apartheid, depriving its considerable Russian-speaking minority of the basic human rights including the right for justice.

²⁷ Gaponenko, Aleksandr, and Sergei Seredenko (2015). Преследование инакомыслящих в Прибалтике (Persecution of dissidents in the Baltics). URL: <http://www.osce.org/ru/odihr/186021?download=true>

²⁸ Speech by A. Gaponenko at the OSCE session. URL: https://imhoclub.lv/ru/material/vistuplenie_agaponenko_na_sessii_obse

²⁹ Давайте попытаемся защитить свое национальное достоинство в Международном уголовном суде (Let us try to protect our national dignity in the International Criminal Court). URL: https://imhoclub.lv/ru/material/davajte_popitaemsja_zaschitit_svoe_nacionalnoe_dostoinstvo_v_mus

The Problematic Issues of Access to Justice in Estonia

Alexey SEMENOV, political analyst
CIS-Europe Monitoring Organization

The Constitution of Estonia (hereinafter - the Constitution) proclaims the equality of people before the law³⁰.

“Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, color, sex, language, origin, religion, political or other views, property or social status, or on other grounds. Incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. Incitement to hatred and violence between social classes or to discrimination against a social class is also prohibited and punishable by law.” – The Constitution of the Republic of Estonia, Chapter II, paragraph 12.

The right to equal access to justice is also enshrined in the Constitution.

“Everyone whose rights and freedoms have been violated has the right of recourse to the courts. Everyone is entitled to petition the court that hears his or her case to declare unconstitutional any law, other legislative instrument, administrative decision or measure which is relevant in the case.” – The Constitution of the Republic of Estonia, Chapter II, paragraph 15.

In general, Estonia provides its citizens with access to justice. However, there are some problematic issues, for example, in the organization of legal aid. In addition, there are problems regarding the independence of the judiciary. Also for a long time there have

³⁰ The Constitution of the Republic of Estonia. URL:

<https://www.president.ee/en/republic-of-estonia/the-constitution/index.html>

been a number of problems that stem primarily from Estonia's policy towards national minorities including the existence of the phenomenon of "non-citizens," as well as discriminative language state policy.

First of all, it should be noted that the Russian language does not have any official status in Estonia, despite the fact that it has a long history in the country and is spoken by a considerable number of Estonia's inhabitants.

After the collapse of the Soviet Union and Estonia's restoration of independence in 1991, the Russian language has been deprived of its official status and is now legally considered a foreign language³¹, although de facto it continues to be widely used in private life, trade, advertising, services, the media, the Internet, education, and also, to a small extent, in the public sector of the country.

According to the 2000 census, Russian is the mother tongue for about 30 percent of the population. According to data for 2015, in Tallinn, the capital of Estonia, the Russian language is native to almost 44 percent of the inhabitants³². The Russian language is used in Estonia as a native language primarily by ethnic Russians living in the republic, and it is also widely used by other Russian-speaking residents of the country (Ukrainians, Belarusians, Jews).

Until recently, the Russian language in Estonian legal proceedings had the same vulnerabilities as in Latvia. The law prescribed to apply to the court only in the state language (Estonian), and judges were allowed to ignore the statements in other languages. The courts did not accept claims filed in Russian for legal proceedings.

³¹ Keeleseadus (The Language Law). §5. Võõrkeel ja vähemusrahvuse keel.
URL: <https://www.riigiteataja.ee/akt/118032011001#para5>

³² Tallinn Arvudes 2015 - Statistical Yearbook of Tallinn 2015. URL:
<http://www.tallinn.ee/est/Tallinn-arvudes-2015-2>

The entire legal and regulatory framework of Estonia is generally available on the Internet, which certainly has a positive effect on access to justice. However, it was available only in Estonian for a long time, making access to justice difficult for ethnic minorities.

A native speaker of the state language living in Estonia could write a suit to the court in his or her native language without a lawyer's help. A Russian-speaking resident of Estonia was practically deprived of such an opportunity. When it came to legal disputes between Russian- and Estonian-speakers, the latter always got the upper hand.

Thus, the Russian-speaking minority constituting about a third of Estonia's population has been outside the legal information field for a long time.

Nevertheless, Estonia is making some efforts to remedy the situation.

On December 15, 2016, the Riigikogu (Parliament of Estonia) after a bitter debate (53 votes in favor, 36 against) adopted, in the third reading, amendments to the State Legal Aid Act³³ and changed the long-standing practice of discrimination of the Russian-speaking population.

The previous version of the law stated that an application for state legal aid can be submitted only in Estonian or, in the form of an exception for residents of other EU countries, in English. Court could return statements, for example, in Russian back to the plaintiff without consideration.

According to the new version of the law, applications in Russian will also be accepted without fail. The court will independently

³³ Суды в Эстонии: равный доступ к правосудию (Courts in Estonia: Equal Access to Justice). DELFI. URL: <http://rus.delfi.lv/news/daily/story/russkij-v-zakone-pochemu-estoniya-boitsya-yazyka-pushkina-menshe-chem-latviya.d?id=48587203&page=2>

translate the text into Estonian, and residents will not have to pay for it.

The purpose of the changes was to increase the availability of legal protection and access to justice for low-income segments of the population.

According to Estonian law, if a person does not have money to pay for a lawyer, for example, in cases of divorce or inheritance, the state can provide him or her with free legal aid, or assistance with installments. But there is a mandatory condition: plaintiff should provide a special petition with a detailed description of the problem and his or her property status.

In practice, for many Russian-speaking residents of Estonia, the formal requirement has become an insurmountable obstacle: it is quite difficult to compile such a document without any help, and low-income groups of the population often don't have enough money to pay for an interpreter's service.

The new version of the Law, which entered into force on January 7, 2017, is expected to finally provide the equal access to justice to all residents of Estonia, regardless of ethnic origin and level of proficiency in the state language.

In addition, the sites of most Estonian ministries and key state institutions now also have Russian-language versions. For comparison, in neighboring Latvia, only four of the thirteen ministries have placed basic information in Russian, and update Russian versions of sites very rarely.

Current versions of the most important laws in Estonia are also now available in Russian on the "Jurist Aitab" website, administered by the Estonian Law Office "Eesti Õigusbüroo OÜ" in cooperation with the Ministry of Justice, which provides free legal assistance to low-income residents of the country³⁴.

³⁴ Jurist Aitab. URL: <http://www.juristaitab.ee/ru>

However, despite the reports of the Estonian media that the current versions of the most important laws in Estonia are available in Russian on the special website, it is not possible to find Russian translations there³⁵.

Welcoming the efforts of the Estonian authorities to ensure access to justice and the trend to expand the official opportunities for using the minority languages, it should be noted that these measures are not sufficient to adequately ensure all the civil rights of the non-Estonian residents of the country.

The number of “non-citizens” in Estonia at the moment is about 90,000 or more than 6% of the country’s population (it should be noted, however, that this figure is gradually decreasing). Despite a number of efforts to improve the situation, the problem of discrimination against national minorities still exists in the country.

³⁵ Riigi Teataja. URL: <https://www.riigiteataja.ee/index.html>