

ESTONIA

Follow-up - State Reporting

Action by Treaty Bodies, Including Reports on Missions

CCPR A/59/40 vol. I (2004)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

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260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State party</u>	<u>Date information due</u>	<u>Date reply received</u>	<u>Further action</u>
...			
<i>Seventy-seventh session (March 2003)</i>			
Estonia	3 April 2004	16 April 2004	Next report due by 1 April 2007.

**Follow-up - State Reporting
Action by State Party**

CCPR CCPR/CO/77/EST/Add.1 (2004)

Comments by the Government of Estonia on the concluding observations of the Human Rights Committee

[16 April 2004]

Answers to the Human Rights Committee on the International Covenant on Civil and Political Rights (ICCPR)

1. The Human Rights Committee considered the second periodic report of Estonia (CCPR/C/EST/2002/2) at its 2077th and 2078th meetings, held on 20 and 21 March 2003. In its concluding observations the Committee invited Estonia to provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs 10, 14 and 16.

2. Taking into account the aforementioned request we would like to inform the Human Rights Committee of the following.

3. In the concluding observations No. 10 the Committee was concerned about some aspects of the administrative procedure related to the detention of a person for mental health reasons, in particular the patient's right to request termination of detention, and, in the light of the significant number of detention measures that had been terminated after 14 days, the legitimate character of some of these detentions. The Committee considered that a period of 14 days of detention for mental health reasons without any review by a court is incompatible with article 9 of the Covenant.

4. The Committee recalled that measures depriving an individual of his or her liberty, including for mental health reasons, should be ensured and comply with article 9 of the Covenant. According to article 9, paragraph 4 a person detained for mental health reasons should be enabled to initiate proceedings in order to review the lawfulness of his/her detention.

5. This is true that at the time of consideration of the second periodic report section 11 (1) of the Mental Health Act read as follows: a person is admitted to the psychiatric department of a hospital for emergency psychiatric care without the consent of the person or his or her legal representative, or the treatment of a person is continued regardless of his or her wishes only if all of the following circumstances exist:

(a) The person has a severe mental disorder which restricts his or her ability to understand or control his or her behaviour;

(b) Without inpatient treatment, the person endangers the life, health or safety of himself or herself

or others due to a mental disorder; and

(c) Other psychiatric care is not sufficient.

According to article 13 (3) it was possible to keep a person in involuntary treatment for up to 14 days.

6. The Government would like to inform the Committee that, following the Committee's recommendations, in 2003 the Legal Chancellor carried out constitutional review proceedings with regard to sections 11 (1) and 13 (3) of the Mental Health Act.

7. The Legal Chancellor's analysis concluded that section 13 (3) and accordingly also section 11 (1) of the Mental Health Act are not in conformity with articles 20 and 21 of the Estonian Constitution.

8. Articles 20 and 21 of the Constitution protect everyone's physical freedom against arbitrary detention. The above articles of the Constitution cover the same area as article 9 of the Covenant. Article 20 of the Constitution stipulates everyone's right to liberty and security of person, which includes physical freedom and safety, thus providing everyone with the protection in the case of deprivation of liberty either in the form of detention, taking into custody or imprisonment which are effected by and the responsibility for which lies with public authorities. The first sentence of article 21 of the Constitution requires that everyone who is deprived of his or her liberty should be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and should be given the opportunity to notify those closest to him or her. The same article establishes a prohibition to hold a person in custody for more than 48 hours without a specific authorization of a court, and provides for the judicial review of the deprivation of liberty. The guarantee of judicial protection is also provided for in paragraphs 3 and 4 of article 9 of the Covenant. The aim of judicial proceedings is to prevent arbitrary deprivation of liberty and to ensure that detention in custody would be legal and as short as possible or absolutely necessary.

9. The Legal Chancellor in his analysis concluded that in the current wording sections 11 (1) and 13 (3) of the Mental Health Act do not meet the aim of the protection of persons' rights as ensured in articles 20 and 21 of the Estonian Constitution.

10. Articles 20 and 21 of the Constitution. The Legal Chancellor found that the right of persons with mental disorders to have a judicial guarantee and that a principle that the detention should be for as short a period as possible or absolutely necessary has not been ensured. Placing a person under treatment for up to 14 days with the decision of two psychiatrists and without court permission is contrary to the regulation and meaning of the relevant provisions of the Constitution.

11. The Legal Chancellor did not use his right to make a proposal to the Parliament for the elimination of this contradiction and for bringing the relevant provisions of the Mental Health Act in conformity with the Constitution as the Ministry of Justice had already prepared the draft law which will amend the Mental Health Act with regard to the issues of arbitrary deprivation of liberty

and ensuring of judicial protection and will eliminate the contradiction with the pertinent provisions of the Constitution and with article 9 of the Covenant.

12. The following is an overview of the amendments to the Mental Health Act through the draft Code of Civil Procedure and Code of Enforcement Procedure Implementation Act, which will revise the regulation of placement of persons with mental disorders in hospital and will ensure the protection of the rights of persons to be placed in hospital.

13. The Code of Civil Procedure and Code of Enforcement Procedure Implementation Act will introduce the following changes in the Mental Health Act:

(a) The initial decision for the application of involuntary treatment is made by a doctor and, on the basis of the doctor's decision, a person can be generally detained up to 48 hours. For keeping a person detained in hospital for more than 48 hours, a court authorization must be sought for the provision of emergency psychiatric care or for the continuation of treatment;

(b) Previous court authorization is not needed if in the case of failure to provide inpatient treatment the person would endanger the life, health or safety of himself or herself or others due to a mental disorder. In such a case the court authorization for the placement of a person in an inpatient facility or for the application of preliminary measures should be sought no later than the following working day after the admission of the person in the psychiatric ward. The application for court authorization will be made by the chief doctor of the psychiatric hospital;

(c) If both psychiatrists declare the admission for treatment or continuation of treatment of the person to be justified, the person shall be kept in involuntary treatment until the court decision on legality of the detention is made, but no longer than for up to 10 days;

(d) The chief doctor of the hospital will immediately inform the court of the termination of involuntary treatment if treatment was applied on the basis of a court ruling;

(e) The term for the notification of those closest to the person has been reduced from 72 hours to 24 hours.

14. In addition, the draft Code of Civil Procedure regulates the court procedure for the placement of a person in a closed facility, including the placement of persons with mental disorders in a psychiatric hospital for involuntary emergency assistance.

15. According to the draft law, the court may secure the placement of a person in a closed institution with a court ruling or it may apply preliminary legal protection on its own initiative if:

(a) There is reason to assume that the conditions for the application of a measure are fulfilled and delaying a measure would entail a danger, and;

(b) There is a doctor's certificate concerning the person's condition, and;

(c) A representative has been assigned to the person, and;

(d) The person, his or her close ones and the local government unit have been personally heard.

16. The court ruling for the placement of a person in a closed institution will contain the name of the person with regard to whom the measure is applied; the description of the measure; time when the application of the measure will end unless it is extended; and the description of the possibility of appeal against the ruling.

17. A person with regard to whom the measures have been applied, his or her close ones, as well as the local government unit may file an appeal against the ruling for the application of measures for the placement in a closed institution or the ruling to deny the application of a measure, the ruling to end the application of a measure or to deny the ending of the application of a measure, or the ruling for the application of a preliminary measure.

18. The above draft legislation will regulate the involuntary placement in hospital of persons with mental disorders in a manner that ensures the protection of human rights in conformity with the Covenant.

19. Therefore, the Government is of the opinion that the issue raised by the Committee is now solved.

20. In the concluding observations No. 14 the Committee was concerned about the high number of stateless persons in Estonia and the comparatively low number of naturalizations. The Committee considered that this situation has adverse consequences in terms of the enjoyment of the Covenant rights and that the State party has a positive duty to ensure and protect those rights.

21. The Committee concluded that the State party should seek to reduce the number of stateless persons, with priority for children, inter alia by encouraging their parents to apply for Estonian citizenship on their behalf and by promotion campaigns in schools. The State party was invited to reconsider its position as to the access to Estonian citizenship by persons who have taken the citizenship of another country during the period of transition and by stateless persons. The State party was also encouraged to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion (articles 24 and 26 of the Covenant).

22. The Government would like to note that, since 1992, 124,651 persons have been granted Estonian citizenship (as at 31 December 2003).

23. In recent years, through the amendment of various laws the obtaining of citizenship has been simplified. In 2001, 3,090 persons acquired citizenship through naturalization, in 2001 the number was 4,091 and in 2003 3,706 persons. There are 160,275 persons with an alien's passport in Estonia. The total population of Estonia is about 1,370,000.

24. According to the Citizenship Act, a minor under 15 years of age shall acquire Estonian

citizenship by naturalization if Estonian citizenship is applied for the minor by his or her parents who are Estonian citizens, or by one parent who is an Estonian citizen, with the notarized agreement of the parent who is not an Estonian citizen, or by the minor's single or adoptive parent who is an Estonian citizen.

25. The Citizenship Act also stipulates that a minor under 15 years of age shall acquire Estonian citizenship by naturalization together with his or her parent or adoptive parent who is applying for Estonian citizenship on the application of the minor's parents or single or adoptive parent.

26. By 31 December 2003, 3,237 under 15-year-old Estonian-born children of stateless persons had received citizenship by way of simplified naturalization.

27. Activities aimed at raising the awareness of acquiring citizenship and being a citizen have been carried out with financing from the State budget, also funding from foreign assistance projects has been used for implementing such activities. Raising awareness and creating possibilities for participation in society, as well as development of skills and motivation is one of the main aims of youth work in Estonia.

28. On the Citizen's Day celebrated on 26 November 2003, the Minister of Education and Research and the Minister for Population Affairs delivered a public address, calling all local governments, schools and social organizations to actively inform upper secondary school students about the possibilities created by the Estonian State for acquiring citizenship.

29. Under the leadership of the Integration Foundation Centre for Educational Programmes, an Internet-based quiz for pupils from Estonian-language as well as Russian-language schools was carried out in connection with the Citizen's Day in 2003, the funding for the activity was provided from the State budget. Questions in the quiz dealt with the issues of citizenship and were aimed at raising civic awareness.

30. In the framework of the foreign assistance project "Integrating Estonia 2002-2004" (supported by Finland, Norway, Great Britain and Sweden), the following events have been planned until the end of 2004: informing of workers in Ida-Virumaa County about the issues concerning Estonian citizenship through different media channels, holding of information days, organizing of events or debates and publishing of relevant information brochures aimed at Russian-language, Estonian-language or bilingual schools.

31. In the future, it is planned to distribute citizenship related information to non-Estonian parents through teachers and leaders of pupils' organizations at schools.

32. It is sufficient to have 10 pupils interested in citizenship issues in order that the officials of the Examination and Qualification Centre would go to the respective school both for consultations as well as administering examinations, also providing pupils with all the necessary materials for examinations. The first examination to be carried out in this manner took place on 27 March in schools in Tallinn and in Ida-Virumaa County. It is planned that 2,300 pupils will take the exam this

year.

33. A positive step was taken in 2002 to simplify the naturalization of young graduates from upper secondary schools and vocational educational institutions. It is now accepted that those who have passed the school exam in civics are exempted from the corresponding exam in the naturalization procedure (the procedure for taking the exam was also simplified and the percentage of correct answers required for passing the exam was reduced). The approximation of relevant Estonian language examinations took place already in 2001. Thus, upper secondary school leavers who have passed both examinations successfully will no longer have to sit any additional exams for obtaining citizenship.

34. In February 2004 the Parliament passed a bill that speeds up the procedures necessary for acquiring Estonian citizenship. Certain procedures must be completed in 6 or 3 months instead of 12 or 6 months as prescribed at present. These provisions will hopefully advance the naturalization process.

35. Consideration is also given to the proposal made by the Council of Europe Commissioner for Human Rights Alvaro Gil Robles that the interpretation of the Citizenship Act be modified so that the registration of a newborn child of non-citizens would be automatically considered as an application for Estonian citizenship, unless the parents of the child declare in writing that they have applied for citizenship of another State, under which laws the child is entitled to acquire citizenship of that country.

36. However, it must also be considered that acquiring of citizenship must be voluntary and it cannot be forced on anyone. It should also be noted that social and economic rights of stateless persons and citizens are practically equal, there are only certain differences in political rights.

37. In the concluding observations No. 16 the Committee was concerned about the practical implementation of Estonian language proficiency requirements, including in the private sector, and the effect this may have on the availability of employment to the Russian-speaking minority. The Committee was also concerned that, in those areas where a substantial minority speaks primarily Russian, public signs are not posted also in Russian.

38. The State party was invited to ensure that, pursuant to article 27 of the Covenant, minorities are able in practice to enjoy their own culture and to use their own language. It also invited the State party to ensure that legislation related to the use of languages does not lead to discrimination contrary to article 26 of the Covenant.

39. The Estonian language proficiency is regulated by the Language Act. The use of Estonian by companies, non-profit associations and foundations, by employees thereof and by sole proprietors is regulated if it is in the public interest, which means public safety, public order, general government, public health, health protection, consumer protection and occupational safety. The establishment of requirements concerning proficiency in and use of Estonian shall be justified and in proportion to the objective being sought and shall not distort the nature of the rights which are

restricted.

40. It should be stressed that the amendments to the Language Act and the implementing decrees were drafted in close cooperation with the Office of the High Commissioner on National Minorities of the OSCE who has stated that the amended text of the Language Act was in conformity with Estonia's international obligations and commitments.

41. In his statement of 15 June 2000, Max van der Stoep, High Commissioner on National Minorities of the OSCE, said that analysis of the amended text of the Law on Language led him to the conclusion that the text of the Law was largely in conformity with Estonia's international obligations and commitments.

42. Amendments to the Language Act were also welcomed by the European Commission in its statement of 16 June 2000, noting that Estonia has thus followed its recommendations made in the framework of Accession Partnership of October 1999.

43. The Language Act provides for the use of languages of national minorities in State agencies. The Act was amended at the beginning of 2002 and thereby the use of languages of national minorities in communication with different administrative agencies was extended.

44. According to the Language Act, in oral communication with servants or employees of State agencies and local governments, and in a notary's office, bailiff's office or certified interpreter's or translator's office, by agreement of the parties, a foreign language which the servants or employees understand may be used.

45. In regions where the majority of the population are Russian speakers there are no obstacles for them to use their mother tongue.

46. Under Estonian law it is legally possible for municipalities to make a request to use minority language as their administrative language in parallel with Estonian if more than 50 per cent of the local population are minority language speakers. However, in practice, it is estimated that 10-12 municipalities use Russian as a working language. Russian is used in the administration and in the courts in areas where Russian-speakers represent a majority of the local population. In such areas also signs, announcements, etc., conveying public information, may be in the language of a national minority alongside Estonian.

47. In 2002, on the initiative of the Phare Estonian language study programme, a survey on the "Necessities of Estonian language study of non-Estonian population" was carried out. The survey also revealed information about the extent and frequency of the use of Estonian for communication in comparison with Russian as the language of the largest national minority community living in Estonia. According to the people surveyed, 40 per cent of them have daily exposure to the Estonian language; 55 per cent of people aged 41 or older and 48 per cent of 25-40-year-old and 51 per cent of under 24-year-old non-Estonians have little exposure to the Estonian language. The survey shows that more than half of non-Estonians in their daily life are more often in a Russian-speaking

environment and use Russian as a language of communication.

48. All persons who legally reside in Estonia have legal possibilities to cultivate their national culture. The State has promoted the creation of cultural societies of national minorities and has constantly supported their activities. In 2002, 2.09 million Estonian kroons and in 2003 2.5 million kroons were allocated for this through the Ministry of Culture. Also local governments, in particular the city of Tallinn, support cultural activities of national minorities from their budgets. Cultural societies and art collectives of national minorities can also apply for assistance on equal terms with Estonian societies and collectives in addition to support specifically allocated for national minorities - such additional assistance is available from the Ministry of Culture, the Cultural Endowment as well as other State and private funds that support culture.

49. The Ministry of Culture has provided extensive assistance to the development of ties of national cultural societies with their motherlands in order to promote the preservation of national cultural traditions and passing them on to the young generation - this includes the exchange of art collectives, inviting folk dance and music instructors, handicraft masters, language teachers to Estonia, etc.

50. In the field of culture, national minorities living in Estonia use their mother tongue to the extent they wish without any State restrictions. Within the available means, the State supports national cultural societies and Sunday schools that operate under them and where the instruction of the mother tongue is provided.

51. In 2003 the Government adopted a decree providing the establishment of necessary conditions for secondary education students whose mother tongue is not Estonian to study their own mother tongue and national culture. The school offers secondary education students at least two hours a week of optional language and culture study, if a written application has been submitted to the school director by the parents (or guardians) of at least 10 students with the same mother tongue. Combined groups of students of different age groups as well as students from different schools can be formed. The study is financed through the Ministry of Education and Research.

52. Several national minorities issue publications in their own national languages, there are also regular radio programmes in Ukrainian, Belarusian, Jewish and Armenian. Radio 4 which is financed from the State budget and is broadcasted all over Estonia offers a programme in Russian 24 hours a day.