

ESTONIA

CCPR A/51/40 (1996)

99. The Committee considered the initial report of Estonia (CCPR/C/81/Add.5 and HRI/CORE/1/Add.50) at its 1455th and 1459th meetings (fifty-fifth session), on 23 and 25 October 1995, and at its 1471st meeting, on 2 November 1995, adopted the following observations.

1. Introduction

100. The Committee welcomes the initial report of Estonia and expresses its appreciation for the frank and constructive dialogue engaged in with the delegation. The Committee, however, regrets that, although the report provided comprehensive information on prevailing legislation in the field of human rights, no mention was made as to how the Covenant is implemented in practice. The information and the answers given orally by the delegation to the questions raised by members of the Committee covered those deficiencies somewhat and enabled the Committee to obtain a clearer picture of the situation of human rights in the country.

2. Factors and difficulties affecting the implementation of the Covenant

101. The Committee notes that it is necessary to overcome vestiges of the totalitarian past and that much remains to be done to strengthen democratic institutions and respect for the rule of law. It regrets that the Government's efforts to restructure the legal system and to implement the Covenant more effectively have been hampered by lacunae in some existing legislation and that a number of principles set forth in the 1992 Constitution have not yet been given corresponding laws.

102. The Committee notes that at the time of the restoration of independence, a significantly large number of permanent residents in Estonia belonged to minorities. The policy of the Government with regard to naturalization and citizenship has raised a number of difficulties which affect the implementation of the Covenant.

3. Positive aspects

103. The Committee expresses its satisfaction at the fundamental and positive changes that have taken place in Estonia, providing for a better political, constitutional and legal framework for the implementation of the rights enshrined in the Covenant.

104. Estonia's accession to the Covenant and other human rights instruments, soon after its restoration of independence, confirms its genuine commitment to guarantee basic human rights to all individuals under its jurisdiction. The recognition by Estonia of the competence of the Committee to receive and consider communications from individuals under the Optional Protocol is of particular importance for the effective implementation of the Covenant.

105. The Committee expresses its satisfaction that in the new Criminal Code which is being drafted,

no death penalty is provided for, and it welcomes Estonia's intention to accede to the Second Optional Protocol in the near future.

106. The Committee welcomes the adoption by referendum of a new Constitution, which provides in its articles 3 and 123 that universally recognized principles and norms of international law, as well as human rights treaties, including the Covenant, shall be incorporated into the domestic legal order and, upon ratification, be given precedence over inconsistent domestic legal provisions.

107. The adoption of a new Law on Courts and the reform of the "Prokuratura" constitute a step forward towards securing the independence and impartiality of the judiciary.

4. Principal subjects of concern

108. The Committee is concerned at the lack of legislative provisions to implement articles 3 and 123 of the Constitution, which affects the Covenant's effective precedence over any inconsistent legislative act. It also remains unclear whether a provision of domestic law can be declared null and void if it contradicts the Covenant.

109. The Committee notes with concern that no legislation has yet been adopted regarding the right to compensation for citizens whose rights have been violated by the State or by unlawful behaviour of officials.

110. The Committee expresses its concern that a significantly large segment of the population, particularly members of the Russian-speaking minority, are unable to enjoy Estonian citizenship because of the plethora of criteria established by law and the stringency of the language criterion, and that no remedy is available for an administrative decision rejecting the request for naturalization under the Law on Citizenship.

111. Noting that the numerous rights and prerogatives, such as the right to participate in the process of land privatization and the right to occupy certain posts or practise some occupations, are granted solely to Estonian citizens, the Committee is concerned that permanent residents who are non-citizens are thus deprived of a number of rights under the Covenant.

112. The Committee is concerned that the conditions for appointment to or employment in any position in a State or local government agency, in particular the automatic exclusion of persons unable to satisfy the requirements of the written oath of conscience regarding their previous activities (under the former regime), may give rise to an unreasonable restriction on the right of access to public service without discrimination.

113. With regard to article 3 of the Covenant, the Committee regrets that it received only limited information as to the de facto situation of women in Estonia.

114. With regard to article 4 of the Covenant, the Committee notes that, although there are provisions in the Constitution relating to the imposition of a state of emergency, no legislation has yet been adopted in conformity with the requirements of the Covenant.

115. The Committee is concerned that the death penalty can still be imposed in Estonia for crimes that cannot be qualified as "the most serious crimes" under article 6 of the Covenant. Moreover, the Committee notes with concern that, despite the drafting of a new Criminal Code that will abolish capital punishment, recent amendments to the current Criminal Code have added two more crimes to the list of those punished by capital punishment.

116. The Committee notes that the definition of torture in article 114 of the Criminal Code is limited to physical force and does not encompass psychological torture and duress.

117. The Committee is concerned about cases of excessive use of force by law enforcement officials as well as mistreatment of detainees. It is of particular concern to the Committee that punitive measures, such as solitary detention, may be imposed on juvenile detainees. The Committee notes that the law enforcement system will only be able to function properly when a sufficient number of well-trained police and prison officers are appointed.

118. The Committee is deeply concerned that, as confirmed by the State party in paragraph 79 of its report: "Prison facilities are overcrowded and many inmates are subject to unhealthy living conditions". It regrets that it did not receive sufficient information which would have enabled it to examine the extent to which the State party is in violation of articles 7 and 10 of the Covenant, and it notes with concern that it was not provided with information regarding separation of accused persons from convicted persons, as required under article 10, paragraph 2 (a), of the Covenant.

119. The Committee is concerned that, as a result of the lack of domestic legislation and procedures governing the treatment of asylum seekers and the determination of their status, the Government has too often resorted to measures of deprivation of liberty.

120. The Committee expresses concern at limitations to the exercise of freedom of association for long-term permanent residents in Estonia, particularly in the political sphere.

121. The Committee is deeply concerned at the definition of minorities in Estonian legislation, which only encompasses national minorities, thus restricting the application of the Law on Cultural Autonomy for Ethnic Minorities by excluding permanent residents from full participation in minority groups.

5. Suggestions and recommendations

122. The Committee recommends that necessary measures be taken to ensure that all domestic provisions inconsistent with the Covenant are repealed and that laws adopted are in full compliance with the provisions of the Covenant. Regarding the actual application of the Covenant, the Committee requests the State party to indicate in its second periodic report any instances in which the Covenant was directly invoked before the courts, as well as about the related results.

123. The Committee recommends that the State party review and include information in its next periodic report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the Optional Protocol to the Covenant, also bearing in mind the obligations under article 2 of the Covenant.

124. With regard to article 2, the Committee recommends that all provisions in domestic law discriminating against non-citizens be systematically reviewed and brought into line with articles 2 and 26 of the Covenant.

125. The Committee recommends that the State party review the Law on the Implementation of the Constitution with regard to the obligation to take an oath of conscience, with a view to bringing the Law fully into line with non-discrimination provisions and article 25 of the Covenant and providing for the right to an effective remedy against a decision not to appoint or to dismiss a person in case of refusal to take such an oath.

126. The Committee recommends that laws be adopted to enable victims of violation of the rights guaranteed under the Covenant to be effectively compensated under domestic law.

127. The Committee recommends that information on the situation of women be included in the second periodic report and, more generally, that necessary steps be taken to include appropriate programmes in formal and informal education in order to achieve equality between the sexes.

128. The Committee urges the State party to enact legislation in conformity with the provisions of article 4 of the Covenant.

129. The Committee urges the Government to reduce substantially the number of crimes for which the death penalty may be imposed, in accordance with article 6 of the Covenant, pending the adoption of the new Criminal Code that will abolish the death penalty.

130. With regard to article 7 of the Covenant, the Committee strongly recommends that article 114 of the Criminal Code be reviewed so as to ensure its compliance with the broader scope of torture, under the Covenant, and calls the attention of the authorities to its general comment No. 20 (44).

131. The Committee urges the State party to take immediate steps to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person, in conformity with articles 7 and 10 of the Covenant.

132. The Committee emphasizes the need for effective control over the police and prison officials. Intensive training and education programmes in the field of human rights for law enforcement officials and prison officials are recommended to ensure their observance of the Covenant and other international instruments.

133. The Committee recommends that the Government of Estonia adopt domestic legislation governing the treatment of asylum seekers, in compliance with the Covenant. It further recommends that the Government seek assistance from international organizations, including the Office of the United Nations High Commissioner for Refugees, and consider acceding to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

134. With respect to the rights of minorities, the Committee strongly recommends that national legislation be amended to bring all minorities within the scope of the Law on Cultural Autonomy for Ethnic Minorities, in conformity with article 27 of the Covenant, and draws the attention of the

authorities to its general comment No. 23 (50).

135. The Committee recommends that the Covenant, the Optional Protocol and the Committee's comments be widely disseminated in Estonia. It also recommends that human rights education be provided in school at all levels and that comprehensive human rights training be provided to all segments of the population, including law enforcement officers and all persons involved in the administration of justice. In this regard, the Committee suggests that the State party avail itself of the technical cooperation services of the United Nations Centre for Human Rights.

CCPR A/58/40 (2003)

79. Estonia

(1) The 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 (CCPR/C/SR.2077 and 2078), and adopted the following concluding observations at its 2091st meeting (CCPR/C/SR.2091), held on 31 March 2003.

Introduction

(2) The Committee welcomes the second periodic report of the State party and expresses its appreciation for the frank and constructive dialogue with the delegation. It welcomes the detailed answers that were provided to its written questions.

(3) While the report was submitted with some delay, the Committee notes that it provides important information on all aspects of the implementation of the Covenant in the State party, as well as on concerns specifically addressed by the Committee in its previous concluding observations.

Positive aspects

(4) The Committee expresses its satisfaction over several new legislative developments in areas related to the implementation of the provisions of the Covenant that have taken place in the State party since the submission of the initial report.

(5) The Committee welcomes the measures taken by the State party to create the Office of the Legal Chancellor and the addition of ombudsman functions to its responsibilities.

(6) The Committee welcomes the measures and legislation adopted by the State party to improve the status of women in Estonian society and to prevent gender discrimination. It particularly notes article 5 of the Wages Act, which now prohibits the establishment of different wage conditions on the basis of gender, and articles 120 to 122 and article 141 of the new Penal Code, which make domestic violence and marital rape specific criminal offences.

(7) The Committee welcomes the delegation's affirmation that the problem of prison overcrowding is being resolved, through the decreasing number of persons detained owing, inter alia, to increasing resort to alternative forms of punishment and the opening of a new spacious prison in Tartu.

Principal subjects of concern and recommendations

(8) The Committee is concerned that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the State party's Criminal Code may have adverse consequences for the protection of rights under article 15 of the Covenant, a provision which, significantly, is non-derogable under article 4, paragraph 2.

The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant.

(9) While welcoming the additional explanations of the delegation on a case of alleged ill-treatment committed by police officers, the Committee remains concerned that acts of ill-treatment or other forms of violence perpetrated or condoned by law enforcement officials are not prosecuted on the basis of the most appropriate criminal charges but only as minor offences.

The State party should ensure that law enforcement officials are effectively prosecuted for acts that are contrary to article 7 of the Covenant, and that the charges correspond to the seriousness of the acts committed. The Committee also recommends that the State party guarantee the independence from police authorities of the newly created “police control department”, which is responsible for carrying out investigations of abuses committed by the police.

(10) The Committee takes note of the delegation’s acknowledgement that legislation on detention of mental health patients is outdated and that steps have been taken to revise it, including the adoption of a draft Patient Rights Act. In this regard, the Committee is concerned at 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 considers 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.

The State party should ensure that measures depriving an individual of his or her liberty, including for mental health reasons, comply with article 9 of the Covenant. The Committee recalls the obligation of the State party under article 9, paragraph 4, to enable a person detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention. The State party is invited to furnish additional information on this issue and on the steps taken to bring the relevant legislation into conformity with the Covenant.

(11) The Committee is concerned at information that deserters from the armed forces may have been kept in solitary confinement for up to three months.

The State party is under an obligation to ensure that the detention of alleged deserters is in conformity with articles 9 and 10 of the Covenant.

(12) In the light of the State party’s legislation on the use of firearms, the Committee expresses concern at the possibility of the use of lethal force in circumstances not presenting a risk to the lives of others.

The State party is invited to revise its outdated legislation to ensure that the use of firearms is restricted by the principles of necessity and proportionality as reflected in paragraphs 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (articles 7 and 10 of the Covenant).

(13) While welcoming the precise information provided by the delegation on the procedure related to the determination of refugee status, the Committee remains concerned that the application of the principle of “safe country of origin” may deny the individual assessment of a refugee claim when the applicant is considered to come from a “safe” country.

The State party is reminded that, in order to afford effective protection under articles 6 and 7 of the Covenant, applications for refugee status should always be assessed on an individual basis and that a decision declaring an application inadmissible should not have restrictive procedural effects such as the denial of suspensive effect of appeal (articles 6, 7 and 13 of the Covenant).

(14) Regretting that the concerns of its previous concluding observations (CCPR/C/79/Add.59, para. 12) have not been met, the Committee remains deeply concerned at the high number of stateless persons in Estonia and the comparatively low number of naturalizations. While the State party has adopted a number of measures designed to facilitate naturalization, a large number of stateless persons do not even initiate this procedure. The Committee takes note of the different reasons underlying this phenomenon, but considers 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.

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 is 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 is 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).

(15) The Committee is concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.

The State party is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the Covenant).

(16) While welcoming the abolition of the requirement of proficiency in the Estonian language for standing as a candidate in elections and the assertion by the delegation that the use or size of advertisements and signs in other languages is not restricted, the Committee is concerned at 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. It is also concerned that, in those areas where a substantial minority speaks primarily Russian, public signs are not posted also in Russian.

The State party is 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 is also

invited to ensure that legislation related to the use of languages does not lead to discrimination contrary to article 26 of the Covenant.

(17) Taking into account the considerable number of non-citizens residing in the State party, the Committee is concerned about legislation prohibiting non-citizens from being members of political parties.

The State party should give due consideration to the possibility for non-citizens to become members of political parties (article 22 of the Covenant).

(18) The Committee regrets the lack of detailed information about the actual results of the activities of the Legal Chancellor and other bodies, like the Labour Inspectorate, in relation to their competence to receive and deal with individual complaints.

The State party is invited to furnish detailed information on the number, nature and outcome, as well as concrete examples, of individual cases submitted to the Office of the Legal Chancellor and other bodies empowered to deal with individual complaints.

(19) The State party should disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.

(20) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs (10), (14) and (16) above. The third periodic report should be submitted by 1 April 2007.