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REPORT ON CITIZENSHIP LAW: ESTONIA

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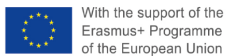
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Report on Citizenship Law

Estonia

Priit Järve and Vadim Poleshchuk

1. Introduction

After the Second World War, under the Soviet regime, people from different regions of the USSR settled in Estonia. By 1991, when Estonia regained its independence, the share of ethnic non-Estonians in the population was up to almost 40 per cent. Estonia's new political leadership considered this a threat to the core ethnic nation and decided to embark upon the restoration of the pre-war Estonian state. This determined the nature of Estonian citizenship policy. In 1992, the 1938 Citizenship Act was re-adopted, which politically 'contained' the Soviet-era settlers by granting automatic citizenship almost exclusively to those who were citizens in 1940 (before the Soviet takeover) and their descendants. As a result, about one third of Estonia's population (mostly ethnic Russians and other Russian-speaking minorities) became (*de facto*) stateless,¹ or in Estonian official terms, 'individuals with undefined citizenship'.² To become Estonian citizens they had to take the path of naturalisation. Alternatively, while residing in Estonia, they could remain 'individuals with undefined citizenship', become citizens of other countries, including the Russian Federation, or leave Estonia altogether. In practice, all these options have been used by the (*de facto*) stateless of 1992.

In 1995, Estonia adopted a new Citizenship Act which established more demanding requirements for naturalisation. Nevertheless, Estonia had to discuss its citizenship issues with international partners (including the EU) and even make changes to its Citizenship Act to bring it into alignment with the country's international obligations and to promote naturalisation. As a result, naturalisation requirements were somewhat softened by the early 2000s. In general, naturalisation has brought new members to the Estonian citizenry, made it ethnically more diverse and moved the country closer to full democratic participation. In 2018, non-citizens made up 15.6 per cent of the whole population (which includes the 5.7 per cent of the population who are (*de facto*) stateless).

In the wake of Estonia's admission to the EU, inputs from international actors ceased to inform the domestic debate on citizenship issues. Since then, this debate has been shaped

¹ In practice, the stateless population of Estonia is considered by Estonian authorities as *de facto* stateless, not as *de jure* stateless. By assumption these people do not wish to regulate their status and become citizens of other states (nearly always meaning Russia as a main successor state to the USSR). Stateless former Soviet citizens can now obtain the citizenship of Russia only by way of naturalisation, for which they will have to pass a test in Russian. However, they are not obliged to reside in Russia permanently (Article 14(1)b of the Federal law 'On citizenship of Russian Federation' (62-FZ) of 31 May 2002). No other post-Soviet country now grants its citizenship to these people. No state considers them as its nationals under operation of its law.

² The term 'individuals with undefined citizenship' (*määratlemata kodakondsusega isikud*) is widely used in Estonian official documents. However, it has never been legally defined.

more than ever before by internal incentives. The majority of Russian-speakers still heavily criticise the naturalisation policy as overly restrictive and a violation of human rights while ethnic Estonians hold that the national citizenship policies are normal and correspond to international standards.

In Estonian, the term ‘nationality’ (*rahvus*) refers to ethnic origin only. There is no formal definition of this term in Estonian law. In practice, for most purposes a person’s ‘nationality’ is based on his or her self-definition. The permanent legal link between the state and an individual is described by the term ‘citizenship’ (*kodakondsus*). Most of relevant issues are covered by the Citizenship Act. Furthermore, in Estonian, the term ‘non-Estonians’ (*mitte-eestlased*) refers to both citizens and non-citizens of minority ethnic origin: the terms ‘Estonian’, ‘Russian’ etc are an indication of a person’s ethnic origin.³

2. History of Estonian citizenship

2.1. Citizenship policy since 1945

The Republic of Estonia was established in 1918. In 1940, it was annexed, under threat of military force, to the Soviet Union as the Estonian Soviet Socialist Republic. As a result, the citizens of the Republic of Estonia were incorporated into the Soviet citizenry. Estonian citizenship was replaced with Soviet citizenship. Between 1941 and 1944, Estonia was occupied by Nazi Germany. In 1944, with the restoration of the Soviet regime, USSR citizenship was once again imposed upon the people of Estonia. Estonian citizenship ceased to exist *de facto*.⁴ Instead, Soviet passports, which were issued in Estonia after the Second World War, included a mandatory line with the ethnic identification of the carrier. ‘Estonian’ became one of many such identifications to be used in Soviet internal passports (Soviet passports for travel abroad did not mention ethnicity). In Estonia everyone was issued Soviet internal passports upon reaching the age of sixteen. These passports, not valid for travel abroad, bore the name of the Estonian Soviet Socialist Republic. They gave the bearers relative freedom to travel within the Soviet Union. The authorities included the carrier’s domicile registration (*propiska*), marital status and information about underage children in the passport.

After its incorporation into the USSR, Estonia experienced all the typical pressures and contradictions of Soviet economic and ethnic policies. The Soviet Union, inspired by the American ‘melting pot’, sought to merge the different ethnic nations and groups living in the country into a new civic identity—the Soviet people. While the Soviet authorities claimed that such an identity was emerging, and some citizens reported that they already regarded themselves as ‘Soviets’, the official registration of different ethnic identities was not discarded. Paradoxically, the Soviet authorities did employ certain affirmative action measures in the interests of ‘titular nations’ and ‘indigenous’ ethnic groups all over the

³ In this report the terms ‘Estonian’, ‘Russian’, etc. designate ethnicity. The term ‘non-Estonians’ refers to all individuals whose ethnic origin is not Estonian, the term ‘non-citizen’ refers to a person who does not have Estonian citizenship.

⁴ Although Soviet law referred to citizenship of the union republic and the 1977 Constitution of the Estonian SSR used the term ‘citizens of the Estonian SSR’, it was merely a synonym for the mandatory Soviet registration of domicile (in Russian: *propiska*).

country by appointing their members to high positions in respective administrative units, who, in turn, started to promote local interests.⁵

In any event, ethnic origin in Soviet passports should not be confused with citizenship. Estonians had the inscription ‘Estonian’ in their passports until the dissolution of the Soviet Union, though this inscription could not be automatically converted into Estonian citizenship after independence. Since 1992, only pre-1940 citizens and their descendants, regardless of their ethnic identification, were entitled to acquire Estonian citizenship by declaration. Those Estonians who settled in Estonia after 1940 and their descendants (even with the inscription ‘Estonian’ in their Soviet passports) could not acquire Estonian citizenship by simple declaration but had to take the path of naturalisation. At the same time, pre-1940 nationals and their descendants of non-Estonian ethnic origin (with ‘Jew’, ‘Russian’, ‘Latvian’, ‘Pole’, etc. in their Soviet passports) could acquire Estonian citizenship by declaration. In new Estonian passports the registration of ethnic identity was dropped.

The debate on citizenship between liberal and conservative camps started in Estonia at the end of the 1980s when the national independence movement was gathering momentum. In 1989, the campaign of registering the citizens of the pre-war Republic of Estonia and their descendants was carried out by the Estonian Citizens’ Committees, voluntary associations established during the *perestroika* era to sustain the idea of the legal continuity of the pre-war Estonian state. On the positive side, this campaign helped restore the awareness of the link between the individual and the state. At the same time, being led by ethno-national conservatives, it firmly introduced the exclusive approach towards Estonian citizenship. The conservatives pointed to drastic changes in the ethnic composition of the population of Estonia due to a considerable influx of Russian-speaking migrants from other regions of the USSR after the Second World War. These settlers had pushed the share of non-Estonians in the population up from around 10 per cent in 1940 to an unprecedented 38.5 per cent in 1989.

By the end of 1991, the conservatives emerged as winners in the debate on citizenship. On 6 November 1991 the Supreme Soviet decided that citizenship would be extended only to the citizens of the pre-war Estonia and their descendants. The final resolution followed in 1992 with the re-enactment of the 1938 Citizenship Act, which remained in effect until 1995. As an immediate consequence of this Act the majority of non-Estonians as well as a small number of Estonians were not granted the right to participate in the national referendum on the country’s new Constitution in 1992 and in the first parliamentary elections after independence later the same year. Estonia’s new political leadership considered the great number of non-Estonians as a threat to the nation. Under these conditions, citizenship became an instrument for the attainment of (ethno-)national homogeneity and for the political containment of Soviet-era settlers. The interests of the Estonian ethnic nation, as then

⁵ Estonians, worried by growing immigration, had already started introducing measures during the pre-Gorbachev era to bring this process under control. Thus, in the early 1980s, the municipality of Tallinn, the capital of Estonia, started to limit the number of workers that industries and other enterprises were allowed to bring to Estonia, charging them considerable fees for every worker who eventually settled in Tallinn. It is interesting that the legality of these improvised methods was not challenged by Moscow, possibly because growing inter-ethnic tension had already sparked public unrest among the youth in Tallinn in the autumn of 1980. However, a more systemic foundation for the immigration policy was laid in 1990, when the Supreme Soviet of the Estonian SSR established the National Migration Board of the Estonian SSR, the predecessor of the Citizenship and Migration Board. This agency’s task was to carry out state control of migration and issue residence and work permits. For that purpose, the Supreme Soviet adopted the ‘Immigration Law of the Estonian SSR’, which entered into force on 1 July 1990. This law established the requirement that any newcomer who wanted to settle in Estonia must apply for a residence permit. The first permits were issued in January 1991.

understood, were given priority over full democratic participation. According to Pettai and Hallik, as regards the adoption of the decision on citizenship

‘[s]overeignty and independence in the interests of protecting the Estonian nation were still the name of the game. However, it was now framed (at least rhetorically) in legalistic-juridical terms that seemed to remove the actual nationalist sting from the process. It was not an ethnic struggle for political dominance; it was the resolution of an international legal issue, in which one state had been illegally occupied by another in 1940, and that state now had a right to restore its sovereignty. What is more, for average Estonians the idea of recreating a citizenry had great appeal, since it was an opportunity to repudiate publicly the legitimacy of the Soviet Union as well as gain a psychological boost of confidence as a free nation’ (Pettai & Hallik 2002: 510–511).

Indeed, in Estonia these exclusionary policies enjoyed relatively wide support as a reaction to the changes in the ethnic composition of the population. A survey of public opinion, carried out in the Baltic States in 1993, showed that the principle of limiting citizenship to descendants of the pre-1940 citizens was supported by 44 per cent of Estonian, 52 per cent of Latvian and 12 per cent of Lithuanian respondents (Rose & Maley 1994: 31–34). These differences among the Baltic respondents correlated very clearly with the demographics of the respective countries: the bigger the share of non-titular groups in a given state, the stronger the reluctance to let them participate in political life.

As argued by Müllerson, ‘*restitutio ad integrum* after more than fifty years of being a part of another state is often more a legal fiction than a reality, and attempts to put this reality into the Procrustean bed of legal fictions are fraught with grave problems’ (Müllerson 1994: 146). The restoration of pre-1940 citizenship caused mass statelessness of non-Estonians, harmed relations between different ethnic communities inside Estonia, caused tensions in relations with Russia (the majority of non-citizens were Russians), and evoked criticism, usually disguised as ‘recommendations’, from prominent international and regional organisations such as the United Nations, the Organization for Security and Co-operation in Europe, the Council of Europe and the European Union. At the referendum on independence in Estonia in March 1991 there were 1,144,309 persons with the right to vote. During the referendum on the Estonian Constitution in the summer 1992, after the adoption of the first Citizenship Act, the reported number of eligible voters was 689,319, or only about 60 per cent of the 1991 figure. Consequently, 454,990 adults had been disenfranchised (Semjonov 2000: 15).

The exclusion of majority of non-Estonians from the formation of state institutions and from the process of adopting crucial legal documents, including the Constitution, enabled Estonians to entrench themselves firmly in all the major public offices, avoiding power-sharing with minorities. It was therefore not surprising that the Parliament elected in 1992 was 100 per cent ethnic Estonian.

According to the data of the Population Registry, in 1992 only 68 per cent of the population were citizens of Estonia (Estonia 2012). In 2018, persons who were not citizens of Estonia (non-citizens) made up 15.6 per cent of the total population: 5.7 per cent were (*de facto*) stateless former Soviet citizens (‘persons with undefined citizenship’), 6.5 per cent were Russian nationals and 3.4 per cent citizens of other countries (Report 2019: 121). Thus, the largest group of foreign citizens in Estonia are citizens of the Russian Federation; these are mostly former Soviet citizens who have adopted Russian citizenship after 1991 while remaining resident in Estonia.

2.2. Restoration of Estonian citizenship

On 26 February 1992, the Supreme Soviet of the Republic of Estonia by its decision put the 16 June 1940 version of the Citizenship Act⁶ of 1938 into force. The main features of this citizenship regulation were the *ius sanguinis* principle and the avoidance of dual citizenship (exceptions were made for citizens by birth). Every person who possessed or whose parents possessed Estonian citizenship before 16 June 1940—the day of the Soviet ultimatum followed by the annexation of Estonia—had a legal claim to Estonian citizenship. About 80,000 non-Estonians thereby acquired Estonian citizenship.⁷

Russians and others who came to Estonia after 16 June 1940, all-in-all almost one third of the entire population in 1992, were excluded from Estonian citizenship. In essence, they were internal migrants who were perceived by many Estonians as colonial settlers with no right to automatic acquisition of Estonian citizenship. The only way for them to acquire it was through naturalisation. As a precondition for naturalisation, the applicant had to have his or her permanent place of residence in the Estonian territory (as proved by *propiska*) for at least two years before and one year after the application date (residence census ‘two plus one’) and had to prove their knowledge of the Estonian language. The earliest date for establishing the permanent place of residence was set at 30 March 1990. The required time period was counted only from that day onwards, so that 30 March 1993 was the earliest date when one could acquire Estonian citizenship by naturalisation. The special law to clarify naturalisation language requirements entered into force as late as February 1993. Thus, a large part of the population, especially Russians, did not have the right to vote or the right to run for office in the parliamentary election of 20 September 1992 and were therefore excluded from political participation, giving rise to further tensions in a situation that was already strained. Non-citizens’ membership in political parties was banned by the 1992 Constitution (Article 48). These tensions were somewhat eased by the right of non-citizens to vote in local elections.

2.3. Citizenship Act of 1995

After some changes to the 1992 Citizenship Act, a new Citizenship Act was passed on 19 January 1995 and entered into force on 1 April 1995.⁸ The new Act integrated all regulations on citizenship and introduced some new conditions for naturalisation (residence in Estonia on the basis of a permanent residence permit issued at least five years prior to the date of written application for Estonian citizenship, and at least one year after the registration of the written application (the later requirement was later gradually abandoned); and a test on the knowledge of the Estonian Constitution and the Citizenship Act). It is widely believed in Estonia that the naturalisation requirements introduced by the 1995 law, especially the written part of the language test (an essay) and the oral part (conversations with no pre-defined topics) were more difficult to fulfil than the previous ones. As a result, the rate of citizenship acquisition

⁶ Riigi Teataja (State Gazette) 1992, 7, 109.

⁷ Citizenship was also granted to persons considered eligible under Articles 3 and 4 of the Citizenship Act of 1938. Primarily it concerned women who had married citizens of Estonia, even in the Soviet period, and their children, who were underage at the moment the marriage was registered (Article 4, Decision of the Supreme Soviet on application of the Citizenship Act).

⁸ Riigi Teataja 1, 1995, 12, 122.

dropped sharply when, starting in 1996, the naturalisation process was switched to this new set of requirements (Table 1). The language requirements have also been modified since.

The 1938/1992 Act included an ethnicity-based privilege: Estonians were not required to take the language test (Article 7 (1)). More than 25,000 people used this simplified procedure (Table 2). However, the new law allows for no such privileges.

Table 1. The number of individuals naturalised in Estonia annually, 1992– September 2019

Year	Naturalised	Year	Naturalised
1992	5,421	2006	4,753
1993	20,370	2007	4,230
1994	22,474	2008	2,124
1995	16,674	2009	1,670
1996	22,773	2010	1,189
1997	8,124	2011	1,519
1998	9,969	2012	1,340
1999	4,534	2013	1,331
2000	3,425	2014	1,615
2001	3,090	2015	899
2002	4,091	2016	1,781
2003	3,706	2017	880
2004	6,523	2018	766
2005	7,072	2019 (January-September)	481
Total		162,824	

Source: Estonian Police and Border Guard Board

The Estonian political elite deemed that the initial non-inclusion of Soviet-era settlers into the citizenry served the interests of the survival of the Estonian ethnic nation and its culture. According to a statement by a former Estonian minister, the ultimate hope for the future of the non-Estonians was ‘that a third or so will become Estonian citizens, a third may remain here with Russian citizenship, and at least a third will leave’ (Lieven 1993: 377). By 2000, these hopes had only partially materialised, mainly because the formation of a persistent contingent of residents ‘with undefined citizenship’ had not been anticipated. The results of the population censuses of 1989 and 2000 showed that 29 per cent of the non-Estonians of 1989 had become Estonian citizens by 2000 and 14 per cent had obtained Russian citizenship, while the total number of non-Estonians had decreased from 602,381 to 439,833, or by 27 per cent between the two censuses (SOE 2001: 14). According to the 2011 census, the total number of non-Estonians dropped to 391,908 (30.3 per cent of all population). Among them, 52 per cent were Estonian citizens, 23 per cent citizens of the Russian Federation and 21 per cent remained residents ‘with undefined citizenship’.⁹

⁹ Authors’ calculations on the basis of data provided in SOE 2019.

Estonia was regularly encouraged by international actors to speed up naturalisation to reduce the proportion of non-citizens in the population, especially during the country's accession to the European Union. Estonia had to discuss its citizenship issues with international partners and even had to make changes to its Citizenship Act to bring it into alignment with the country's international obligations and to promote naturalisation. Several international and regional organisations, foreign embassies in Estonia, and international NGOs not only participated in the debate but also provided necessary know-how and financial assistance to their Estonian interlocutors.

In 1997, international partners persuaded the Estonian authorities to launch a policy of integration for non-Estonians. A special government agency (Bureau of the Minister of Population Affairs¹⁰) and a special foundation for the integration of non-Estonians¹¹ were established, which started to work out and to implement integration programmes and action plans to resolve, inter alia, the problem of statelessness.¹²

Within the period from 1992 to September 2019, a total of 162,824 persons acquired Estonian citizenship through the various facets of the naturalisation process. The majority did so in the course of the 1990s (more than 110,000 people between the years 1992 and 2000) (Table 2). By January 2019, the number of stateless residents with valid residence permits or rights of residence had fallen to 77,872; there were also 90,092 citizens of the Russian Federation.¹³ The total percentage of non-citizens in the registered population was about 15 per cent (Report 2019). In 2019, the percentage of non-Estonians in the whole population was 31 per cent (SOE 2019). In other words, about half of all the minority population still do not have the citizenship of their country of residence.

¹⁰ This body was abolished in 2009. Societal integration was made the responsibility of the Ministry of Culture.

¹¹ Now Integration Foundation; see www.meis.ee.

¹² In 2000, the government of Estonia adopted the state programme 'Integration in Estonian Society 2000–2007'; in 2008, the government adopted the second state programme, 'Estonian Integration Strategy 2008–2013'. The third program 'Integrating Estonia 2020' covered the period of 2014–2020.

¹³ Data provided by the Estonian Police and Border Guard Board on request.

3. The current citizenship regime

3.1. The main modes of acquisition and loss of citizenship

Ius soli vs. ius sanguinis

Acquisition of Estonian citizenship is covered by Chapters 2 and 3 (Articles 5 to 15) of the 1995 Citizenship Act. This includes acquisition of citizenship by birth, by naturalisation and for achievements of special merit. Citizenship by naturalisation (including for achievements of special merit) shall be granted by a decision of the Estonian government.

In general, in Estonian citizenship law the principle of *ius sanguinis* dominates. According to Article 5, citizenship is acquired by birth if at least one of the child's parents holds Estonian citizenship at the time of the child's birth. Citizenship is also acquired by birth if the child is born after the death of his or her father and if the father held Estonian citizenship at the time of his death. If a child of unknown parents is found in Estonia, a court can declare that the child has acquired Estonian citizenship by birth upon application by the guardian of the child or a guardianship authority, unless the child is proven to be a citizen of another state. On the written application of an adoptive parent who is an Estonian citizen, an alien minor may be deemed to have acquired Estonian citizenship by birth as well. In fact, the right to receive Estonian citizenship by birth is not limited by any other conditions.

For a minor under 15 to acquire Estonian citizenship by naturalisation, an application by his or her parents, or by a single or adoptive parent of Estonian citizenship, accompanied by specific documents, is required. After the amendments to the Citizenship Act, which entered into force on 12 July 1999, a minor's stateless parents and stateless single or adopting parent(s) also had the right to apply for citizenship by naturalisation for a minor. Some elements of *ius soli* could be found only in special provisions concerning naturalisation of stateless minors.

According to the initial version of the 1995 Citizenship Act, children of stateless parents born in Estonia could not acquire Estonian citizenship by birth. This was interpreted as a violation of the International Covenant of Civil and Political Rights (Article 24(3)) and the Convention on the Rights of the Child (Article 7(1)), both of which Estonia has ratified. These provisions proclaim the right of the child to acquire a citizenship. This controversy triggered a heated discussion. Some politicians and lawmakers saw the danger of compromising the governing principle of citizenship acquisition (*ius sanguinis*) by adding the *ius soli* principle to it.

After political and academic debates, in which the role of recommendations issued by international actors should not be underestimated, an amendment to the Citizenship Act was finally adopted in December 1998, which entered into force on 12 July 1999.¹⁴ Pursuant to this amendment, children under the age of fifteen born on Estonian territory after 26 February 1992 could acquire Estonian citizenship in a simplified naturalisation procedure if their parents are stateless and have been legal residents of Estonia during the previous five years. This regulation did not include children between the ages of fifteen and eighteen who are under the protection of Article 1 of the Convention on the Rights of the Child and children born before 26 February 1992. Thiele (1999: 19) argues that this domestic regulation was not

¹⁴ Riigi Teataja, I 1999, 111, 1827.

fully in line with Estonia's international obligations.

In 2013, the Commissioner for Human Rights of the Council of Europe Nils Muižnieks recommended amendments aimed at automatic granting of Estonian citizenship to stateless children born in the country (Muižnieks 2013: 106). As from January 2016 the Citizenship Act was accordingly amended, with the children obtaining citizenship of Estonia automatically, not upon application of parents.¹⁵ The naturalisation procedure itself became simpler and quicker. The age limitations (up to 15) were, however, retained. On the basis of these amendments 973 children obtained Estonian citizenship in 2016, 175 in 2017 and 170 in 2018.¹⁶

Naturalisation: residence requirements

Articles 6 to 15 establish conditions for acquisition of Estonian citizenship by naturalisation and for achievements of special merit. An alien¹⁷ who is at least fifteen years of age and wishes to acquire Estonian citizenship by naturalisation shall have the so-called 'residence permit of a long-term resident' or the right of permanent residence; have lived in Estonia on the basis of a residence permit or the right of residence for at least eight years prior to the date on which he or she submits an application for Estonian citizenship and permanently for at least the last five years; have a registered place of residence in Estonia (Article 6). The requirement of having a residence permit or the right of permanent residence does not apply to persons who settled or were born in Estonia before 1 July 1990 (Article 33). In fact, this is the only privilege established in Estonian naturalisation procedure for Soviet-era settlers.

Foreigners who had to work for a long time outside Estonia could face problems with the term of residence requirement. In 2008, the Supreme Court did not find it possible to count the time they spent abroad as a part of the period necessary to gain citizenship. In the same decision the Supreme Court stated clearly that naturalisation is a privilege, not a fundamental right.¹⁸ However, the rules regarding permanent residence were considerably simplified in 2017.¹⁹

¹⁵ Riigi Teataja I, 03.02.2015, no. 1.

¹⁶ Data by Police and Border Guard Board provided on request.

¹⁷ Estonian law uses the term 'alien' rather than 'foreign national' to categorise a person who is not an Estonian citizen (Article 3 of Aliens Act). The category of 'aliens' also applies to stateless persons who form a large group among Estonia's non-citizens. The Estonian identification document issued to a stateless person is called an 'alien's passport' which many stateless persons who were born in the country consider inappropriate, if not insulting. In Estonian political discourse the stateless persons are characterised as individuals 'who have undefined citizenship'.

¹⁸ Decision of the Administrative Law Chamber of the Supreme Court of 20 October 2008 in case no. 3-3-1-42-08, section 28, Riigi Teataja, III 2008, 42, 288. The case concerned a sailor.

¹⁹ Riigi Teataja, I, 03.01.2017, 1. Before these changes permanent residence in Estonia meant staying in Estonia for at least 183 days a year. There is now no reference to the number of days either in the Citizenship Act or in the Aliens Act.

Naturalisation: language requirements

Applicants for citizenship must have knowledge of the Estonian language and of the Constitution of the Republic of Estonia and the Citizenship Act. Any person who has completed basic, secondary or higher education in the Estonian language shall not be required to take the language examination. Individuals born before 1 January 1930 do not have to take its written part but do have to take a written test in the Constitution and the Citizenship Act (Article 8 (5), Article 34 (1)). Since 2000, the tests for various categories of employees (special tests must be taken by all public and many private sector employees) were counted as equivalent to the citizenship test. The tests address listening and reading comprehension, and the ability to speak and write in the language. Minimal naturalisation requirements were somewhat softened following these changes.

Estonian citizenship can also be acquired, without naturalisation tests, for achievements of special merit to the Estonian state, which are defined as ‘achievements which contribute to the international reputation of Estonia in the areas of science, culture, sports or in other areas’ (Article 10). Proposals for the granting of citizenship for achievements of special merit may be submitted by members of the Estonian government. The government is required to approve the granting of citizenship for achievements of special merit. According to the amendment which entered into force in November 1995 (seven months after the Citizenship Act entered into force), Estonian citizenship for achievements of special merit may be granted to not more than ten persons per year. Surprisingly, this provision has not been used since 2012.

No simplified naturalisation procedure is established for spouses of Estonian citizens. No requirements other than a minimal age and residence period are set for adults with restricted legal capacity (Article 35(1)). Procedures are also relaxed for certain groups of people with disabilities: the persons who are unable to comply with naturalisation conditions for health reasons are now exempted from them; those who, for health reasons, are unable to fully comply with the requirements shall pass the examination in such manner as his or her state of health allows on the basis of a decision of a special expert committee (Article 35(2)–(3), (6)). In 2019 the Supreme Court emphasised that upon taking a decision the expert committee should consider all available evidence; furthermore, secondary law requires the person to be excused from the tests when it is appropriate.²⁰

It is widely believed that the language requirements are an obstacle to naturalisation for many non-citizens in Estonia. From 1992 until September 2019, the majority of all persons naturalised on the basis of the previous and new citizenship acts did so by simplified procedure without a language test (Table 2).

²⁰ Decision of the Administrative Law Chamber of the Supreme Court of 7 June 2019 in case no. 3-16-2061/50, section 17. The case concerned a person with a complete hearing impairment.

Table 2. Naturalisation in Estonia 1992 – September 2019

Basis	Period (granting of citizenship)	No	%
On general conditions (with a language certificate or diploma)	1993–...	72,336	44.4
Minors under 15 years of age	1996–...	37,938	23.3
For achievements of special merit	1992–...	741	0.5
Aliens who have a certificate for supporting in 1990 the pro-independence Congress of Estonian Citizens (the so-called ‘green card’)	1992–2001	24,102	14.8
Ethnic Estonians	1992–1999	25,293	15,5
Disabled persons	1996–...	1.014	0.6
Stateless children who received citizenship as of 1 January 2016	2016	766	0.5
Stateless children who received citizenship as of the moment of birth	2016–...	634	0.4
Total		162,824	100.0

Source: Estonian Police and Border Guard Board

From the early 2000s the Estonian administration took measures aimed at stimulating the process. The cost of the Estonian language training is fully reimbursed in certain circumstances since January 2004 (Article 8-1 of the Citizenship Act). A possibility of partial reimbursement existed previously in the framework of several projects implemented as a part of the national programme ‘Integration in Estonian Society 2000–2007’.

Dual citizenship

According to the general rule, an Estonian citizen shall not simultaneously hold the citizenship of another state (Article 1 (2) of the Citizenship Act). Furthermore, ‘when submitting the application for the acquisition of Estonian citizenship, the applicant must prove that he or she has been or will be released from his or her previous citizenship in relation to his or her acquisition of Estonian citizenship or that he or she has been declared a stateless person.’ (Article 12 (2)).

However, the regulation regarding dual citizenship of Estonian citizens by birth is anything but clear. Article 3 of the Citizenship Act demands that persons who as minors acquire the citizenship of another state in addition to Estonian citizenship shall renounce either their Estonian citizenship or their citizenship of the other state within three years of attaining the age of 18 years. Article 29 addresses the loss of Estonian citizenship upon

acceptance of citizenship of another state or renunciation of Estonian citizenship. It stipulates that a person is deemed by the government agency authorised by the Estonian Government to have ceased being an Estonian citizen upon acceptance of the citizenship of another state or upon renunciation of Estonian citizenship in favour of the citizenship of another state. Nevertheless, Article 8 of the Constitution and Article 5 (3) of the Citizenship Act stipulate that no person may be deprived of Estonian citizenship acquired by birth. Several Estonians holding dual citizenship have been members of the Estonian Government and elected to Parliament.

Interestingly, the previous 1938/1992 Citizenship Act provided for the loss of Estonian citizenship upon acceptance of the citizenship of another state (Article 23). Initially, in 1992 (when the 1938/1992 Citizenship Act was reintroduced) the Supreme Soviet decided not to apply this provision at all. In 1993, however, it was decided not to apply this provision solely to Estonian citizens by birth.²¹

Loss of citizenship

Conditions and procedures for the loss of Estonian citizenship are set out in Chapter 6 of the 1995 Citizenship Act (Articles 22–30). According to these stipulations, a person shall cease to be an Estonian national 1) through release from Estonian citizenship; 2) through deprivation of Estonian citizenship; and 3) upon acceptance of the citizenship of another state (Article 22).

According to Article 26, release from Estonian citizenship may be refused if: 1) the person would become stateless as a result; 2) he or she has unfulfilled obligations towards the Estonian state. Decisions on release from Estonian citizenship shall be taken by the government.

According to Article 28 (1), a person shall be deprived of Estonian citizenship by an order of the Estonian Government if he or she 1) as an Estonian national, enters the state public service or military service of a foreign state without permission from the Estonian Government; 2) joins the intelligence or security service of a foreign state or foreign organisation which is armed or militarily organised or which engages in military exercises; 3) forcibly attempts to change the constitutional order of Estonia; 4) upon the acquisition of Estonian citizenship by naturalisation or upon resumption of Estonian citizenship submits false information and thereby conceals facts which would have precluded the granting of Estonian citizenship to him or her or which would have precluded him or her from resuming Estonian citizenship; 5) is a citizen of another state but has not been released from Estonian citizenship.

Article 28 (3) establishes an important difference between nationals by birth and by naturalisation. It stipulates that the reasons for deprivation of citizenship listed in Article 28 (1) do not apply to persons who acquire Estonian citizenship by birth. It means that these reasons apply only to citizens by naturalisation and resumption—they can be deprived of their newly obtained citizenship even if it results in that person's statelessness.

The deprivation of the citizenship shall be executed by order of the Government (not by a court decision). It is prohibited to deprive a person of his or her citizenship solely

²¹ Riigi Teataja, 1993, 13, 204.

because of that person's beliefs (Article 28 (2)). Also, Estonian citizenship cannot be lost solely due to the fact that a person resides abroad.

3.2 Specific rules: Exclusion from naturalisation

In some cases, naturalisation is ruled out. According to Article 21 (1) of the 1995 Citizenship Act, Estonian citizenship shall not be granted to or resumed by a person who:

1. submits false information upon application for Estonian citizenship;
2. does not observe the constitutional order and laws of Estonia;
3. has acted against the Estonian state and its security;
4. has committed a criminal offence for which a punishment of imprisonment of more than one year was imposed and whose criminal record has not expired or who has been repeatedly punished under criminal procedure for intentionally committed criminal offences (exceptions are possible from July 2006);
5. has been employed or is currently employed by foreign intelligence or security services;
6. has served as a professional member of the armed forces of a foreign state or who has been assigned to the reserve forces thereof or has retired there from, nor shall Estonian citizenship be granted to or resumed by the spouse of such a person.

Article 21(1) point 6 clearly targets those non-Estonians who are not Estonian citizens by birth and who remained in Estonia after they retired from the Soviet Army. At present less than 10,000 Soviet/Russian military servicemen and their family members (mostly elderly people) live in Estonia. Their right to residence was guaranteed by the so-called 1994 July Agreement between Estonia and Russia.²² As long as former Soviet/Russian military servicemen posed no threat to Estonia's security they were entitled to residence permits on the grounds of Article 2(1) of the July Agreement. Their pensions and health insurance are normally paid by the Russian Federation. Many of them are also citizens of the Russian Federation. Until 2006, before the new EU regulations were enacted, Estonia provided Soviet Army retirees with temporary residence permits. Now, they enjoy the right to a long-term residence permit as third-country nationals who have legally resided in an EU Member State for five years or more. Paradoxically, after Estonia was fully integrated into the Schengen area in 2008, those permanent residents who hold a Russian passport can travel without a visa from the Pacific Ocean to the Atlantic Ocean, while Estonian citizens still need a visa to travel to Russia.

However, Article 21(2) of the Citizenship Act offers former military servicemen one possibility of acquiring Estonian citizenship. It stipulates that Estonian citizenship may be resumed by, or granted (through the naturalisation procedure) to a person who has retired from the armed forces of a foreign state if the person has been married for at least five years to a person who acquired Estonian citizenship by birth and if the marriage has not been terminated by divorce.

²² Riigi Teataja, II 1995, 46, 203.

The stateless Estonian resident and former Soviet military serviceman Vjatšeslav Borzov (who had married a naturalised Estonian citizen) filed a complaint against these rules with the UN Human Rights Committee. However, the Committee did not find in his case the alleged violation of Article 26 of the ICCPR (Borzov claimed discrimination based on his social origin and on the civil status of his spouse).²³

No exception is possible in case of former secret service agents. In 2008, the Supreme Court found that the relevant provisions of the Citizenship Act are in line with the Constitution. The case concerned a woman who had worked in the late 1970s for less than thirteen months for the KGB as a secretary and argued that the ban on naturalisation led to discrimination against former technical staff.²⁴

4. Current debates on citizenship

Estonian policy on citizenship has remained conservative ever since independence, without major ‘home-made’ debates after the Citizenship Act of 1992 was adopted. Instead, the mainstream political parties have regularly declared prior to national elections that, regardless of the election results, the Citizenship Act and the corresponding policies will not be changed.²⁵ In the late 1990s to early 2000s the liberalisation of naturalisation requirements for some groups (such as the disabled, older people, and stateless children) was normally a result of pressure from the international community (Poleshchuk 2001), mostly the OSCE and CoE whose recommendations were openly or covertly supported by the European Commission.²⁶ According to Dimitry Kochenov, in the case of Estonia and Latvia, ‘for the first time the naturalisation policies of the candidate countries were influenced by the pre-accession pressure of the EU, which has only limited powers in this domain’ (Kochenov 2006: 24).

Estonia interpreted the admission to the EU as the ultimate international approval of its citizenship policies. The EU and other international actors virtually stopped issuing recommendations on how Estonia should develop its citizenship policy. Only Russia has not dropped the problem of statelessness in Estonia from its political agenda. In the wake of Estonia’s admission to the EU, inputs from international actors have ceased to inform the domestic debate on citizenship issues. Since then, this debate has been shaped more than ever before by internal incentives.

According to the study *Integration Monitoring 2008*, while 65 per cent of ethnic Estonians held that the national citizenship regime was ‘normal and adequate to international standards’, 76 per cent of Russian-speaking respondents regarded it as ‘overly restrictive and violating human rights’ (Nimmerfeldt 2008: 138). From the very inception of Estonian citizenship policy in 1992 to today, the approaches of Estonians and Russian-speakers to the issue of citizenship have been opposed to each other. This is definitely one of the most important characteristics of the ongoing domestic debates on citizenship. Furthermore,

²³ *Vjatšeslav Borzov v. Estonia*. CCPR/C/81/D/1136/2002. UN Human Rights Committee (HRC). 25 August 2004.

²⁴ Decision of the Supreme Court *en banc* of 3 January 2008 in case no. 3-3-1-101-06, Riigi Teataja, III 2008, 3, 23.

²⁵ Nevertheless, some mainstream parties have included promises regarding liberalisation of the naturalisation procedure in the pre-election materials.

²⁶ Importantly, in the Accession Partnership 1999 for Estonia the issue of ‘integration’ of non-citizens was already explicitly raised among short and mid-term priorities.

according to the *Integration Monitoring 2017*, people with ‘undefined’ citizenship indicate the following three main reasons why they are not applying for Estonian citizenship: absence of citizenship does not prevent them from living in Estonia (48 per cent), the citizenship exam is too complicated (43 per cent); they cannot learn the Estonian language (41 per cent). For citizens of Russia the respective figures were 37, 49 and 39 per cent (Kallas and Kaldur 2018: 7). Hence the requirements presented in the process of naturalisation are regarded (at least subjectively) as relatively high by quite a large group of non-Estonians.

The by far most controversial and influential input into the public debate on citizenship, integration and inter-ethnic issues in Estonia was the so-called April crisis of 2007. On 27 April 2007, just two weeks before the Russians traditionally celebrate the anniversary of the victory over Nazi Germany, the Estonian government clumsily relocated a Soviet-era war memorial (‘the Bronze soldier’) from the centre of Tallinn, provoking street riots by mostly Russian-speaking youths who felt insulted (Poleshchuk 2009). Importantly, the Estonian government in this context decided to simplify the procedures aimed at *deprivation* of Estonian citizenship. On 15 June 2009 the parliament voted to amend the Citizenship Act in order to deprive naturalised Estonian citizens of their citizenship in cases where the individuals have been convicted for intentional offences against the state, though these offences do not necessarily pose a threat to the security and stability of the state. However, these amendments (alongside other amendments to various Estonian legal acts,²⁷ the so-called ‘Bronze nights’ laws²⁸) were not promulgated by the President of the Republic of Estonia for not being in line with the Constitution. As regards the Citizenship Act, the President decided that ‘depriving people of citizenship for an action that does not threaten the security of the state conflicts with the principles of a democratic state based on the rule of law and, more specifically, the principle of proportionality’ (President 2009).

Table 3. What citizenship would you like for yourself, % of stateless respondents, Integration Monitoring 2000, 2002, 2005, 2008, 2011, 2015 and 2017

	2000	2002	2005	2008	2011	2015	2017
Estonian citizenship	60	65	74	51	60	57	55
Russian citizenship	5	6	11	19	12	7	8
Citizenship of another country	7	9	5	14	7	9	8
Do not want any citizenship	16	14	7	16	16	18	18
Difficult to say	12	6	3	-	5	10	11
N	170	109	102	105	127	115	143

Source: *Integration Monitoring 2017* (Kallas and Kaldur 2018: 6)

²⁷ Karistusseadustiku, avaliku teenistuse seaduse, välismaalaste seaduse, kodakondsuse seaduse, kohaliku omavalitsuse volikogu valimise seaduse ja kriminaalmenetluse seadustiku muutmise seadus [Law Amending the Penal Code, Public Services Act, Aliens Act, Citizenship Act, Local Government Council Election Act and Code of Criminal Procedure] (Draft law no. 416, XI Riigikogu).

²⁸ Ken-Marti Vaher, Chair of the Riigikogu Legal Affairs Committee and the MP responsible for the Draft law no. 416, published an article ‘The Law against Bronze Night’ (‘Bronze night’ is an euphemism for the April disorders) just before it was formerly initiated in the parliament. In this article he openly recognised the direct link of the proposed legislative changes with the April riots and the so-called Simm’s treason case. See ‘Ken-Marti Vaher: Pronksiöövastane seadus [The Law against Bronze Night]’, 22 January 2009. www.delfi.ee.

In recent years, the topic of citizenship was mainly discussed in the context of the problem of statelessness, dual citizenship and the issues related to descendants of people who could accept citizenship by option before the Second World War. The interest to Estonian citizenship as a gateway to the rights of an EU citizen has increased considerably in Russia and other post-Soviet countries, which also provoked some political tensions. In recent years, Estonia also witnesses an influx of guest workers from Ukraine that resembles mass migration under the Soviet rule and evokes powerful emotions among both the political class and ordinary persons.

For many years the Center Party, which was in opposition, has come up with various initiatives in the field of citizenship. The party's leaders retained interest in this topic even after joining the government, since a significant part of its electorate are non-Estonians. After the national elections of 2019, the Center Party secured mentioning of some citizenship reforms in the coalition agreement.²⁹ An open-minded attitude towards citizenship issues was also demonstrated by the leaders of the Social Democratic Party of Estonia.

As part of the implementation of the coalition agreement, in September 2019, the government submitted the Draft law no. 58³⁰ that will allow Estonian citizenship to be granted to stateless children from mixed families (even if one of the parents is a citizen of a foreign state; children's (grand)parents should have resided in Estonia before 20 August 1991), as well as the Draft law no. 57,³¹ which aims to simplify the naturalisation process for school graduates.³² Although draft laws do have important symbolic meaning, in practice they affect only a few thousand non-citizens.

5. Conclusions

The current naturalisation process in Estonia is a politically sensitive and cautious inclusion of non-citizens in which international 'supportive pressure' has played an important role. Naturalisation has brought new members to the Estonian citizenry, made it ethnically more diverse and moved the country closer to full democratic participation. According to the Population Registry, in 2018 non-citizens made up 15.6 per cent of the whole population (which includes the 5.7 per cent of the population who are *de facto* stateless). This means that sustained practical efforts to promote integration and naturalisation will still be needed in Estonian society for years to come.

Estonia is also an interesting case because it initially limited access to citizenship for 'unwanted' groups by making recourse to arguments of international law. It all amounted to an attempt to legitimise the restrictive policy of citizenship in the eyes of world community and Estonia's own population. That line of conduct merits even more attention because the issue of access to citizenship was in no way a legal issue, it was political – after regaining independence Estonia was entitled to adopt any decision on composition of its citizens, also because it has not joined relevant international treaties dealing with citizenship issues, such as the European Convention on Nationality. The policy of citizenship of the Estonian authorities

²⁹ *Basic principles of the Government coalition of the Estonian Centre Party, the Conservative People's Party of Estonia, and Isamaa for 2019–2023*, p. 11-12, on: www.valitsus.ee.

³⁰ Kodakondsuse seaduse muutmise seadus [Law Amending Citizenship Act] (Draft law no. 58, XIV Riigikogu).

³¹ Kodakondsuse seaduse ning põhikooli- ja gümnaasiumiseaduse muutmise seadus [Law Amending Citizenship Act and Basic School and Upper Secondary School Act] (Draft law no. 57, XIV Riigikogu).

³² All draft laws are available on the official website of the Parliament: www.riigikogu.ee.

mellowed with respect to stateless children under concerted action of international law and international pressure. The problem of mass statelessness has nonetheless persisted until now. The potential increase in numbers of immigrants is a new challenge.

Steps should also be taken in developing legal instruments and standards concerning citizenship and statelessness. While Estonia has signed and ratified the majority of international instruments aimed at combating racial and ethnic discrimination, it has so far failed to sign and ratify a number of international treaties dealing with issues of citizenship and statelessness, such as the UN Convention of the Status of Stateless Persons (1954); the UN Convention on the Nationality of Married Women (1957); the UN Convention on the Reduction of Statelessness (1961); the Convention of the International Commission of Civil Status to Reduce the Number of Cases of Statelessness (1973); and the European Convention on Nationality (1997).

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