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Topic 5, November 25, 2015: ***“Elimination of fundamental reasons for discrimination during the administration of justice”***

SPEECH

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Dear Chairman!

Dear organizers and participants of the Forum!

My name is Larissa Semjonova and I am representing the Legal Information Centre for Human Rights (Estonia). I am grateful for this opportunity to participate and deliver a speech at this important and distinguished event.

My organization supports the draft Recommendations at large. Our recommendations accompanied by the explanatory note have been prepared on the basis of the said draft and submitted to the Secretariat of the Forum.

However, in the course of ongoing hearings I find it necessary to provide additional explanatory remarks to draw the attention to the gravity of the problem.

Estonia is a multinational and multicultural state. A lot of measures have been taken for developing and diversifying the cultural heritage. Nevertheless, in light of the topic being discussed here, Estonia lacks state institution monitoring the observance of national, ethnical, linguistic and religious minority rights in all spheres of life, including the system of criminal justice.

National minorities constitute one third of the country's population while their representatives amount to slightly more than 3 % in the public sector, including the Ministry of Justice and its subordinated bodies administering justice. And this happens while almost 60 % of prisoners speak Russian as their native language.

There are practically no non-governmental organizations monitoring non-discrimination and equal treatment during the administration of criminal justice in Estonia. Given that it can hardly be estimated whether current situation in jails is caused by criminalization of national minorities, unfair treatment during the administration of justice, or both.

Additionally, there are practically no independent organisations that receive complaints as to discrimination and unfair treatment in the criminal justice and penitentiary systems in Estonia. My organization receives such complaints from places of detention; however, we only deal with them as regards improper conditions of detention, but not the violations in the process of administration of criminal justice. Yet the number and content of the complaints shows that unfair treatment and discrimination in the administration of justice are probable. Estonian mass media publish stories of national minority's representatives who got stricter punishment, as compared to Estonians, for the same crimes. Apart from that, Russian-speaking minorities file a huge number of complaints against bailiffs.

All the above mentioned and absence of free access to legal information in the languages of minorities, primarily – in Russian, hampers the discovery and elimination of reasons for national, ethnical, linguistic, and religious discrimination and unfair treatment during the administration of justice.

Thanks you for your attention.

RECOMMENDATIONS AND EXPLANATORY NOTE OF THE LEGAL INFORMATION CENTRE FOR HUMAN RIGHTS, ESTONIA.

I. RECOMMENDATIONS

Estonian authorities are obliged to comply with all recommendations delivered by the competent UN, CoE and OSCE international bodies in regard of respect for national, ethnical, linguistic and religious minorities' rights within the criminal justice and penitentiary systems. Estonian authorities should:

1. Reconcile national legislation with the said recommendations and International Law as a whole.
2. Reconcile the definition of genocide contained in the Estonian legislation with the wording commonly accepted in International law based on the European Court on Human Rights' (ECHR) decision dated October 20, 2015. Require submission of more grounded evidence of the threat of national, ethnical or religious group elimination during future judicial estimations.
3. Support independent civil society institutions active in the sphere of national, ethnical, linguistic and religious minorities' rights and involved in:
 - Due and professional monitoring of criminal justice procedures and detention conditions (including those during pre-trial and trial) for representatives of national minorities with the aim of discovering cases of unfair treatment and discrimination of the said representatives.

- Providing of legal aid to representatives of minorities claiming that they were discriminated by law enforcement and judicial bodies, penitentiary institutions and places of detention with the aim to ensure the equal access to justice for everyone.
4. Facilitate and support constant dialog with the civil society institutions providing legal aid to representatives of national, ethnical, linguistic or religious minorities and monitoring the situation in the criminal justice and penitentiary systems without a threat to be persecuted by the state law enforcement authorities.
 5. Organize a constant training for all actors of the national criminal justice and penitentiary institutions based on the International Law and best international and regional practices, including those of other states.
 6. Implement the EU Framework Decision 2008/913 and reconcile Art. 151 of Criminal Code of the Republic of Estonia (Incitement of hatred) with the said document.
 7. Publicly condemn the speeches and statements of political leaders, ministers, and state officers where such speeches and statements are directed to incitement of hatred and hostility, and boldly connect religion, nationality, language, race or ethnical origin with the illicit behavior, illegal migration or terrorism. Public disapproval is needed to constrain provoking racial rhetoric and eradicate stereotypic, racial, hostile or discriminatory images as to the specific national, ethnical, linguistic or religious minorities, their culture and religion.
 8. Undertake strict measures in relation to state and private mass media as well as other sources of information which contribute to the creation of common negative stereotypes as to the representatives of national minorities or communities and, furthermore, to the discriminatory approach based on the well-rooted prejudice. With this aim to adopt by law Codes of Ethic and Behavior and make them available in Russian as it is a mother tongue for the most of national minorities' representatives.
 9. Ensure that representatives of national minorities can access information in, among others, publicly or state-held mass media, in their mother tongue (inter alia, in Russian) with the aim to raise the awareness of society as to the crimes and functioning of justice.

II. EXPLANATORY NOTE

1. Starting from 2009 Legal Information Centre for Human Rights (hereinafter – “ICHR”) annually get approximately 60-80 petitions from imprisoned in all five jails in Estonia. In their petitions they ask for the information about their rights and

possibility to defer their situation to international organizations, request to estimate actions of the prison administration, and notify about poor conditions of imprisonment and violations of law by jails' officers. ICHR assembled a report "Analysis of Situation in Estonian Prisons" in December 2010 (<http://www.lichr.ee/home/wpcontent/uploads/2014/05/Estonian-prisons-final.pdf>).

Situation with the cruel treatment in Estonian jails is still acute. Concern and disturbance is caused by signals coming from prisons and evidencing racism, xenophobia and other types of discrimination, as well as engraining of racial stereotypes mainly as to persons of non-Estonian origin who belong to national minorities. In accordance with the official data, Russians and Russian speakers constitute 2/3 of prisoners in Estonian jails while they constitute only around 1/3 of the country's population.

In April 2013 ICHR availed itself of the opportunity to submit its Observations in relation to the implementation of the UN Convention against Torture by Estonia (http://www2.ohchr.org/english/bodies/cat/docs/ngos/LICHR_Estonia_CAT50.pdf). ICHR's remarks dealt with the following: investigation of complaints as to police violence in April 2007; use of special security equipment in prisons; use of Russian for communication with prison staff and "labeling" of prisoners on the grounds of their Estonian language proficiency.

The UN Committee Against Torture adopted its Concluding observations on the 5th periodic report of Estonia on May 30, 2013 (<http://www.refworld.org/docid/51dfe0564.html>). The Committee is concerned that prisoners' name badges include information about their proficiency in the Estonian language (letters "A", "B" and "C"). The Committee recommended Estonia to put an end to any discrimination against prisoners on the basis of their proficiency in the Estonian language and ensure that prisoners are not penalized with regard to administrative or disciplinary matters if they do not have a sufficient understanding of the language. Translation services should be provided for prisoners with an insufficient knowledge of the Estonian language.

This "labeling" is perceived by many of the prisoners as discriminatory and humiliating. Now UN Committee Against Torture is unequivocally condemning about this practice and urge to stop the unfair treatment of prisoners on the basis of their native language or skills to learn languages. Nevertheless the labeling continues.

Lack of opportunity for prisoners to influence their individual rehabilitation plans is another particular concern. Notably, plans include mandatory Estonian classes at intermediate level regardless of the fact that prisoner's command of language is much higher.

The document also points out that definition of torture in Estonian Criminal Law is restrictive and does not include the infliction of mental pain. The penalty for acts of torture in Estonia is up to five years of imprisonment, which in the opinion of the Committee is not commensurate with the grave nature of the crime.

In its Concluding observations the Committee Against Torture expressed its concern as to the inadequate investigation conducted by authorities in relation to allegations of excessive use of force by law enforcement personnel in April 2007. The government received a number of recommendations as to the future investigation of similar allegations.

The Committee is also worried by information suggesting that conditions in some prisons and police arrest houses are unacceptable and by critical information reported by the Chancellor of Justice. The Committee is of opinion that Estonia should take immediate steps to improve the material conditions in all prisons and police arrest houses, including recently built ones.

European Court of Human Rights delivered three dozens of rulings confirming Estonia's violations of the Convention. As least three decisions deal with the conditions of detention: unlawful confinement to restraint beds, the size of cells in the Tallinn jail is below permitted minimum, use of pepper spray against prisoners in a confined space.

During the last months, my organization discovered cases of lengthy – from 9 months to 400 days – detention in the punishment cell, which undoubtedly can be seen as cruel treatment.

Obtaining information in the language known by prisoners constitute an acute problem. Internet is the most popular and accessible source of information for everyone, including prisoners. Access is governed by the Imprisonment Act. Under Art. 31(1) prisoners can access public legislation databases and register of judicial decisions under the supervision of the prison service. It should be noted that the above-mentioned databases contain information only in Estonian. Prisoners cannot connect to the web sites containing legislation and information on the most up-to-date problems in Russian, which are developed and administered by the Ministry of Justice.

In cooperation with the Tallinn City Council ICHR published a brochure in Russian for prisoners. It contains explanations of the most important pieces of legislation, requirements for complaints, translation of application forms for state legal aid and other information contributing to the improvement of legal awareness and protection of Russian-speaking prisoners in Estonia.

Lack of the necessary legal information in Russian preserves the vicious circle of social tension, as the number of Russian-speaking prisoners significantly exceeds the number of Estonian-speaking while Russian-speakers constitute only around 1/3 of the country's population.

2. ICHR is concerned about the discrepancies in construction of certain legal notions, specifically, the notion of genocide in Estonia differs from the one accepted in International law.

ICHR noticed this in connection with the decision of the European Court on Human Rights (hereinafter - ECtHR). In October 20, 2015 ECtHR delivered the decision in the case Vytautas Vasiliauskas against the Republic of Lithuania and ruled that KGB 's actions against Lithuanian partisans do not equal with genocide. In this case ECtHR found that Lithuania violated the European Convention on human rights as no one shall be held guilty of any act which did not constitute a criminal offence under national law at the time when it was committed.

ECtHR assessed the decisions of national Lithuanian Court and concluded that Mr. Vasiliauskas was sentenced in Lithuania based upon legal provisions that were in force in 1953 neither in domestic nor international law, and prosecution of Mr. Vasiliauskas is not justified by international law.

ECtHR stated that genocide is defined as acts committed to destroy a national, ethnical, racial or religious group, while in Lithuania this notion includes actions against social or political group.

Estonian legislation also contains the definition of crimes to be qualified as genocide, such as killing a member or members of a national, ethnical, racial or religious group, a group resisting occupation or any other social group; torturing him/her/them or causing health damage; imposing coercive measures preventing childbirth within the group. Statute of limitation is not applicable to these crimes.

Estonia has already witnessed cases, similar to the case of Mr. Vasiliauskas, where KGB officials were found guilty in genocide for their actions on the territory of Estonia. Many participants of those events have already deceased. There are no similar criminal cases in Estonia at the moment.

3. Estonia does not adhere to the EU Framework Decision 2008/913 in part of reconciling Art. 151 of Criminal Code of the Republic of Estonia (Incitement of hatred) with the said Decision. This resulted in willful legislative exclusion from criminal and administrative prosecution the acts of xenophobia, nationalism and racism. Recently it was once again demonstrated by scandal caused by unabashed racist statements of Mr. Reitelman, press secretary of the paramilitary organization Kaitseliit, which were never condemned.

The European Commission against Racism and Intolerance (ECRI) in its report criticizes statements of Estonian politicians, including Mr. Jürgen Ligi and Mr. Mart Helme. In particular, the Commission supports the continuous critique from Estonian state authorities towards the racist statements of Estonian politicians, followed by dismissal of Mr. Ligi from the position of Minister for Finance in October 2014. However, on April 9, 2015, Mr. Ligi was appointed as ... the Minister for Education.

Along with that neither Mr. Jürgen Ligi nor Mr. Mart Helme consider the conclusions of the Commission grounded. On his Facebook page Mr. Ligi wrote that “making reports for their own sake and reprimanding random people are the best conditions for racism and xenophobia”. Mr. Helme regards the report as highly hypocritical because, in his opinion, authors of the report urge to start discriminating politicians with whom they disagree.

4. The legislation on the administrative misdeeds is a part of Estonian Criminal Law. Given this ICHR believes it is important to put emphasize on the language requirements on the job market as non-compliance with them leads to the administrative liability in the form of fine.

The language requirements on the job market are often excessive and may result in discrimination of Russian-speaking population. Moreover, these requirements obviously hamper EU free movement of workers, therefore, may contradict EU law. The system of testing the command of language is also questionable. Numerous international experts note that the requirement of Estonian language proficiency should be compatible with the legitimate aim pursued.

The Language Inspectorate is an authority that controls the observance of language requirements and tests language proficiency. According to the reports for the year 2014, 127 proceedings on misdeed were initiated due to non-adherence to the language requirements. The amount of fines reached 7723 Euro. Apart from that, the sum of 8500 Euro was charged as a penalty payment (sunniraha).

The industries continuously and regularly checked by the Language Inspectorate include education, and precisely, the control of Estonian language proficiency of subject teachers in Russian schools. Thus, 1131 teachers were tested and 938 of them failed in 2014. Most of the schools that were checked by the Language Inspectorate are situated in the regions densely populated by Russian-speaking population. For instance, in the town of Narva in North-Eastern Estonia, where Russian-speaking population constitutes 96% and of the rest 4% only half speak Estonian fluently, Estonian language proficiency of teachers of Russian schools and gymnasiums as well as members of the Narva City assembly is constantly tested.

Recently taxi drivers became another professional group under the strict language control. Thus, taxi drivers of Narva expressed their disagreement with the applicable language requirements and submitted to the European Parliament their petition on November 17, 2015. Taxi drivers of Narva are obliged to know Estonian at B1 level, which is a ridiculous obligation for fully Russian-speaking town. 434 persons – not only taxi drivers but also other worried citizens of Narva who are using cheap but qualitative taxi services, signed the petition. Authors of the petition request the European Parliament to influence Estonian authorities with the aim to stop violations of Estonian and EU laws and get the language requirements re-considered.

On November 17, 2015 the office of Yana Toom, European Parliament member representing Estonia who sent the request to European Commission back in June 2015, received the official notification of the start of procedure determining the compatibility of Estonian language requirements and European law. Under this procedure Estonia has 10 weeks to justify its position. After that, European Commission has 10 weeks to decide on the compatibility of Estonian rules and European law. The negative decision leads to change of Estonian law and practice. In this case, people persecuted by the Language Inspectorate will be able to challenge in court fines imposed by the Language Inspectorate, which amount usually constitutes around 640 Euro.

5. Existence of so-called “black lists” raises great concerns as people outside Estonia are not aware of its existence and of the fact that they are included there. Justifying its actions by the issues of national security and state secret which may lead to criminal charges, Estonia significantly limits free movement and free speech with the aim to preclude the dissemination of ideas and opinions contradicting the official position. The on-going court proceedings illustrate that persons whose rights were limited in the interests of national security are not able to access the evidence of their guilt presented by the state and marked as a state secret. Thus, they are deprived of possibility to comment on or deny the commitment of the actions that the state perceives as a threat to its security. In cases of Schengen visa annulment, people are deprived even of the right to judicial remedies. Appealing the visa annulment to the same authority that took the decision leads to easily predictable results. At the same time, authorities are referring to the Schengen rules and giving reasons for neither visa annulment nor decision on appeal. As the result of this, people are not only unable to defend their rights but also are unaware of the reasons for the sanctions.

On October 12, 2014 Estonian guard detained on the border and deported Prof. Valery Tishkov, citizen of Russian Federation. On December 15, Mr. Giulietto Chiesa, citizen of Italy, journalist and European Parliament member, was detained in hotel and deported. Both came to meet with the audience within the international media club Impressum.

On March 31, 2015, after his meeting with readers in the club Impressum, writer German Sadulaev was stopped at the border and his Schengen visa was annulled. Protests and outrage in mass media had no effect. In all cases the authorities referred to national security as the opinions of these people are allegedly threatening the public order in Estonia. No evidence was presented.

On August 13, 2015 at the Luhamaa border crossing Estonian border guards stopped Mr. Andrey Yakovlyev, redactor of information portal BaltNews.lv, who was going with his family on vacation to Russia. Estonian border guards informed Mr. Yakovlyev that from July 22 and for 5 years onwards he is not entitled to enter Estonia. Mr. Yakovlyev has no official information on the prohibition of entry and legal basis for it.

On September 14, 2015, Estonian border guards denied entry to Marina Perekrestova, deputy director of the Directorate of multimedia programs International information agency Rossiya Segodnya. The Embassy of Russian Federation in Estonia commented on this fact and perceived it as an “attempt to restrict the freedom of speech, use double standards in relation to undesirable mass media and limit the access of population of Estonia to opinions other than those dominating the local information field”.

On the basis of decision of the Ministry of Internal Affairs dated July 22, 2015, Mr. Victor Guschin, member of the World Coordinative Council of Compatriots, was refused entry into Estonia while he was traveling from Saint-Petersburg to Latvia by international bus.

Recently ICHR's lawyers have helped to file with the Estonian courts 6 lawsuits against Estonian authorities which denied the entry to persons whose actions or opinions pose a threat to national security. Two lawsuits were already heard in the first instance and were not upheld. In both cases Court formally approached the case and ascertained the right of authorities to refuse entry (this was never denied by plaintiffs). Court opted not to check the genuineness of the allegations and the necessity of state-imposed limits in the democratic society, and thus, refused to deal with the freedom of speech issue.