EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 29295/22
Elmi ABO
against Estonia

The European Court of Human Rights (Third Section), sitting on 17 September 2024 as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva*, judges*,

and Milan Blaško, *Section Registrar,*

Having regard to the above application lodged on 7 June 2022,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Elmi Abo, was born in 1948 and lives in Kehra, Estonia. She was represented before the Court by Ms K. Turk, a lawyer practising in Tallinn.

2. The Government were represented by their Agent, Mr T. Kolk, Representative of Estonia to the European Court of Human Rights.

THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in the village of Sulevi in Abkhazia, Georgia.

4. In 1920, prior to the applicant's birth, her paternal grandmother, L.A., had, in accordance with the Tartu Peace Treaty concluded on 2 February 1920 between the Republic of Estonia and Soviet Russia (see paragraphs 19-20

below), applied for Estonian citizenship for herself and her children (one of whom later became the applicant's father). According to data held by Estonian National Archives, L.A. was born in 1885 in the village of Livonia in Kuban Oblast and lived there at the time she applied for citizenship. L.A.'s father, P.K., was born in Haapsalu County (*Haapsalu kreis*) in the Estonian Governorate (*Eestimaa kubermang*), which at the time was part of the Russian Empire.

5. In July 1920 the Estonian authorities issued L.A. and her children with a citizenship certificate (*kodakondsuse tunnistus*) and an Estonian passport of limited validity (also referred to as a *välispass* or travel passport). Persons who had opted for Estonian citizenship in that manner were known as "optants" (*optandid* or *opteerujad* in Estonian). It is undisputed that the applicant's ancestors never subsequently resettled in Estonia.

6. In 1998 the applicant moved to Estonia. Her son was already living there. In the same year she applied for and was issued with a temporary Estonian residence permit. In the residence permit application, she marked her citizenship as "Georgian" and stated that her (then valid) Georgian passport had been issued in 1998 by the Georgian consulate in Moscow. As regards the reason for moving to Estonia (*Eestisse elama asumise põhjus*), she marked the box "Estonian" (*eestlane*, referring to ethnic origin). In her submissions to the Court, she denied having subsequently renewed her Georgian identity documents.

7. She received an Estonian long-term residence permit in 2003 and renewed it in 2013 and 2018.

8. On 15 January 2020 the applicant applied to the Police and Border Guard Board (*Politsei- ja Piirivalveamet* – hereinafter "the PBGB") to be issued, for the first time, with an Estonian citizen's identity document (*Eesti kodaniku isikutunnistus*). She wished to prove that she had acquired Estonian citizenship by birth, referring to her father and paternal grandmother, who, according to her, had been Estonian citizens.

9. On 18 June 2020 the PBGB dismissed her application. It reasoned that under the Tartu Peace Treaty, "optants" had had to resettle in Estonia as a prerequisite for finalising the citizenship procedure and obtaining Estonian citizenship. In that connection, a citizenship certificate and a temporary passport in themselves were not sufficient to consider the applicant's ancestors to have obtained Estonian citizenship. The temporary passport, generally valid for only three months, had served the sole aim of allowing its holder to travel to Estonia. In reaching that conclusion, the PBGB referred to several archive documents, the Supreme Court's judgment in case no. 3-16-1810 (see paragraphs 31-35 below) and a report by researchers of the University of Tartu (see paragraphs 39-42 below). Since the applicant's paternal grandmother and father had never resettled in Estonia, they had never obtained Estonian citizenship. Therefore, the applicant could not be considered to have acquired Estonian citizenship by birth. She appealed against that decision.

10. On 15 January 2021 the Tallinn Administrative Court dismissed the applicant's appeal. The court stated that the key issue in the case was to determine whether Article IV of the Tartu Peace Treaty had provided an obligation to leave Russia and to resettle in Estonia as a prerequisite for obtaining Estonian citizenship. The answer to that question would determine whether the applicant's grandmother could be considered an Estonian citizen despite the fact that she had never left Russia. The court found, using historical and teleological methods for interpreting Article IV of the Tartu Peace Treaty and referring, *inter alia*, to the Supreme Court's judgment in case no. 3-16-1810 (see paragraphs 31-35 below) and the report by researchers of the University of Tartu (see paragraphs 39-42 below), that the Article in question had provided for a conditional right to obtain citizenship. It stated that in order to finalise the procedure for opting for Estonian citizenship, a person had had to resettle to Estonia. The issuance of a citizenship certificate could not be taken to mean that the person had been granted citizenship, regardless of how thorough the background check had been before he or she had obtained the certificate.

11. The Tallinn Administrative Court excluded the interpretation suggested by the applicant, according to which the obligation of "optants" to leave Russia had been relevant only in relation to their property rights (see, for the wording of Article IV of the Tartu Peace Treaty, paragraph 20 below). As to the applicant's claim that an international treaty could not directly impose rights or obligations on individuals as the latter were not considered to be subjects of international law, the court responded that the parties to the Tartu Peace Treaty had clearly intended to give individuals a right to opt for either Estonian or Russian citizenship.

12. The Tallinn Administrative Court also explained that, besides the Tartu Peace Treaty, there had been no other domestic legislation providing persons who had lived in Russia with the right to opt for Estonian citizenship. The 1918 decision of the Estonian Provincial Assembly (*Maanõukogu*) on Estonian citizenship had not provided for the possibility of obtaining citizenship on the basis of an international treaty. The Citizenship Acts of 1922 and 1939 had provided that Estonian citizens were persons acknowledged as such on the basis of the international treaties concluded by the Republic of Estonia. Since the internal legislation had not provided for the right to opt for Estonian citizenship, such a right could only have been derived from the Tartu Peace Treaty.

13. The Tallinn Administrative Court asserted that the Tartu Peace Treaty had not, as such, laid down an obligation to move to Estonia. This had merely been a condition for obtaining citizenship. The court admitted that there had been discussions in political and diplomatic correspondence about whether "optants" who had not resettled in Estonia could nonetheless be considered Estonian citizens. However, no legislation had been passed to this effect. The fact that "optants" who had resettled in Estonia after the one-year period specified in the treaty had been accorded Estonian citizenship could not be

interpreted as meaning that the obligation to leave Russia had ceased altogether.

14. The court also acknowledged that the administrative practice of recognising as Estonian citizens the successors of such optants who had not resettled in Estonia had varied over the years. Nevertheless, the applicant could not request that the earlier incorrect interpretation of the law be applied to her case, even when invoking the principle of non-discrimination.

15. Lastly, the Tallinn Administrative Court stressed that the State did not deny the applicant's social identity as an Estonian (*"...[r]iik ei eita kaebaja sotsiaalset identiteeti eestlasena*") and stated that Article 36 § 3 of the Constitution protected every Estonian's right to move to Estonia (see paragraph 22 below). Referring to sections 9(1)(1) and 30(2) of the Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), the court explained that the law did not allow for the imposition of an entry ban on aliens of Estonian origin (*eesti rahvusest välismaalase suhtes*). Aliens of Estonian origin who had no legal grounds for staying in Estonia were ordered to apply for a residence permit by being issued with a precept to legalise (*seadustamisettekirjutus*) rather than being ordered to leave the country by being issued with a precept to leave (*lahkumisettekirjutus*) (see paragraphs 26-27 below). The applicant appealed against that judgment.

16. On 30 June 2021 the Tallinn Court of Appeal dismissed an appeal lodged by the applicant. The appellate court stated that the right to opt for Estonian citizenship had only been provided for in the Tartu Peace Treaty and not in any internal legislation. The court added that the Tartu Peace Treaty could not be applied selectively, that is to say only as regards the right to opt for Estonian citizenship, but not as regards the condition for resettlement. The fact that the applicant's grandmother had been issued with a temporary passport was irrelevant, as that passport had not served as a substitute for the resettlement obligation, but had rather made it possible to return to Estonia. Taking into account the administrative practice at that time, but also the difficulties that persons wishing to leave Russia might have encountered back then, the Tallinn Court of Appeal acknowledged that the applicant's grandmother and father could have had a legitimate expectation of being granted Estonian citizenship had they resettled in Estonia even after the one-year period had expired. However, the fact remained that they had never resettled. Since the condition for resettlement had not been met, this legitimate expectation could not be extended to the applicant.

17. On 7 December 2021 the Supreme Court refused to examine an appeal on points of law lodged by the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. TARTU PEACE TREATY OF 1920

18. Estonia declared its independence on 24 February 1918.

19. Following the Estonian War of Independence, the Tartu Peace Treaty (*Tartu rahuleping*) was concluded on 2 February 1920 between the Republic of Estonia and Soviet Russia. The instruments of ratification were exchanged in Moscow on 30 March 1920 and it entered into force.

20. Article IV of the Tartu Peace Treaty reads as follows:

> "For one year from the date of ratification of [this] Treaty, persons of non-Estonian origin living in Estonia who are aged eighteen years or over shall have the right to opt for Russian citizenship; women and children under eighteen years of age shall follow the citizenship of the husband or father, unless there is an agreement between spouses to the contrary. Persons opting for Russian citizenship shall leave Estonian territory within one year of the date of opting, but shall retain their rights to immovable property and may take their personal property with them. Similarly, persons of Estonian origin living in Russia may opt for Estonian citizenship within the same period and under the same conditions.
>
> Each of the two contracting governments reserves the right to refuse to grant citizenship.
>
> Note. In case of doubt ... persons of Estonian origin are understood as those who themselves or whose parents were registered in a rural or urban community or in any 'class' in the territory which now constitutes Estonia."

II. RELEVANT NATIONAL LAW

A. The Constitution

21. Article 8 §§ 1 and 3 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) provides as follows:

> "Every child with a parent who is an Estonian citizen has the right to Estonian citizenship by birth.
>
> ...
>
> No one shall be deprived of Estonian citizenship acquired by birth."

22. Article 36 provides as follows:

> "No Estonian citizen shall be expelled from Estonia or prevented from entering Estonia.
>
> No Estonian citizen shall be extradited to a foreign State, except in the cases prescribed by an international treaty and pursuant to the procedure provided by such treaty and by a law. Extradition shall be decided by the government of the Republic. Everyone who is subject to an extradition order has the right to contest extradition in an Estonian court.
>
> Every Estonian has the right to settle in Estonia."

B. Citizenship Act

23. Section 5(1)(1) of the Citizenship Act of 1995 (*kodakondsuse seadus*) provides that a child, at least one of whose parents holds Estonian citizenship at the time of his or her birth, acquires Estonian citizenship by birth.

24. Under section 34(1) in conjunction with section 8(2)(4), applicants for Estonian citizenship who are at least 65 years of age are exempt from the requirement to compose a written text as part of the language examination.

C. Aliens Act

25. Section 241 of the Aliens Act (*välismaalaste seadus*) lists various grounds on which a long-term resident's residence permit may be revoked (for example, if the alien submitted false information or resorted to fraud when applying for the long-term residence permit or is considered a threat to public order or national security) or must be revoked (for example, if the alien has lived outside Estonia for six consecutive years or has obtained a long-term residence permit in another European Union member State).

D. Obligation to Leave and Prohibition on Entry Act

26. Section 9(1)(1) of the Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*) provides that aliens of Estonian origin who have no legal grounds for staying in Estonia are issued with a precept to legalise obliging them to apply for a residence permit in accordance with the established procedure in order to legalise their stay in Estonia (*seadustamisettekirjutus*).

27. Section 30(2) of the Act does not allow for the imposition of an entry ban on aliens of Estonian origin (*eesti rahvusest välismaalase suhtes*).

III. RELEVANT DOMESTIC CASE-LAW AND ADMINISTRATIVE PRACTICE

A. Opting for citizenship

28. Until 2003 the Estonian authorities did not consider as Estonian citizens optants (or their descendants) who, after opting for Estonian citizenship, had not resettled in Estonia and therefore had not completed the relevant procedure for obtaining citizenship.

29. In a judgment of 31 December 2002 in case no. 3-1196/2002 the Tallinn Administrative Court found that, under Article IV of the Tartu Peace Treaty, opting for Estonian citizenship and being issued with a citizenship certificate had been sufficient to consider the person as having acquired Estonian citizenship. The fact that a person had not left Russia and had not resettled in Estonia had had no bearing on this and had not resulted in the loss

of that citizenship. The Citizenship and Migration Board did not appeal against that judgment and it became final. As a result, from 2003 to 2015 optants who had not resettled in Estonia (and their descendants) were considered Estonian citizens.

30. In 2015 the Ministry of the Interior and the PBGB decided to revert to the pre-2003 administrative practice. Optants who had not resettled in Estonia and therefore had not completed the process of acquiring citizenship were again not considered Estonian citizens, and consequently neither were their descendants.

31. The Supreme Court's judgment of 2 March 2018 in case no. 3-16-1810 concerned a challenge to the PBGB's refusal (in 2016) to recognise the applicant in that case as an Estonian citizen and issue her with Estonian citizen's identity documents. The refusal made reference to the fact that the applicant's ancestor, who had opted for Estonian citizenship in 1920, had not resettled in Estonia as required by Article IV of the Tartu Peace Treaty.

32. In that case, the Supreme Court explained that citizenship had to be seen as an institution defined by law (*normatiivselt määratletud õigusinstituudile*). The circle of citizens of a State had to be determined by a legal act which clearly defined who was to be considered a citizen of that country and under which conditions.

33. The Supreme Court found that Article IV of the Treaty laid down two conditions for acquiring Estonian citizenship. Firstly, opting for Estonian citizenship, which the Estonian government had had the right to refuse, and secondly, leaving Russia and resettling in Estonia. Therefore, in the court's opinion, opting for Estonian citizenship had to be seen as a process which had not ended with the issuance of the certificate of Estonian citizenship. Unlike the citizenship certificate issued to those who had acquired citizenship by naturalisation on the territory of Estonia on the basis of the Citizenship Act of 1922, the certificate of Estonian citizenship issued to optants had not contained the same unequivocal indication that the person holding the certificate was already considered an Estonian citizen. The certificate issued to an optant only gave the person certainty that after settling in Estonia he or she would become an Estonian citizen.

34. The Supreme Court explained that if the persons named on the citizenship certificate had not themselves finalised the procedure for obtaining Estonian citizenship, their children, in turn, had not acquired Estonian citizenship by birth. In such circumstances, the children could not finalise the citizenship procedure themselves.

35. The Supreme Court asserted that the purpose of the Tartu Peace Treaty could not have been the establishment of a significant Estonian citizenry on the territory of a foreign country (Russia). The court explained that it was aware of the historical context regarding opting for Estonian citizenship and regarding resettling (or not) in Estonia. The reasons for not resettling in Estonia could have been linked to the improved economic conditions in

Russia at the time, but could also have been related to factors beyond the persons' control. Indeed, it was known that even optants who had not resettled in Estonia until the 1930s had been considered as Estonian citizens after their arrival. Nonetheless, these isolated examples could not serve as a basis for drawing far-reaching conclusions about the interpretation of Article IV of the Tartu Peace Treaty. It was important to consider the purpose of that Article.

36. For the sake of legal clarity, the Supreme Court explained the situation of persons who, according to the administrative practice followed between 2003 and 2015, had been erroneously recognised as Estonian citizens and issued with Estonian citizen's identity documents despite the fact that their ancestors had not resettled in Estonia after opting for Estonian citizenship. The court held that the Citizenship Act did not allow such persons (whose ancestors had been erroneously recognised as Estonian citizens) to be considered anything other than Estonian citizens.

B. Principle of equal treatment

37. In a judgment of 4 October 2017 in constitutional review case no. 5-17-22, and in a judgment of 27 November 2006 in administrative case no. 3-3-1-59-06 the Supreme Court held that the constitutional principle of equal treatment was not violated if the authorities did not repeat in a person's favour an error previously made in respect of another.

IV. RELEVANT EUROPEAN UNION LAW

38. Council Directive 2003/109/EC of 25 November 2003, OJ 2004, L 16, p. 44, concerning the status of third-country nationals who are long-term residents, sets out the conditions for acquiring and withdrawing long-term resident status and the rights attached to that status. Article 11 contains a list of areas in which long-term residents are to enjoy equal treatment with nationals of a member State (including access to employment and self-employment, education and vocational training, social security, social assistance and social protection as defined by national law, tax benefits and so forth) and sets out areas in which member States may restrict equal treatment with nationals. For example, under Article 11 § 4, member States may limit equal treatment in social assistance and social protection to core benefits. Article 12 deals with the protection of long-term residents against expulsion.

V. OTHER MATERIAL

39. In 2018 the University of Tartu prepared a report based on an agreement between it and the Ministry of Interior entitled "Analysis of law and administrative practice between 1918 and 1940 concerning the acquisition of Estonian citizenship by way of opting for it" ("*Aastatel*

1918-1940 opteerimise teel Eesti kodakondsuse omandamise küsimusi käsitlenud õiguse ja halduspraktika analüüs").

40. The report analysed, among other things, the notion of opting for citizenship as understood in international law, the regulation of the procedure for obtaining Estonian citizenship before the conclusion of the Tartu Peace Treaty, the negotiations concerning the drafting of Article IV of the Tartu Peace Treaty, and the adoption and application of that Article. In its summary, the report noted that the Tartu Peace Treaty had given persons the right to opt for Estonian citizenship, but had also given the Contracting States the right to refuse to recognise that choice. Among those opting for Estonian citizenship were those who already resided in Estonia and those who resided outside Estonia. It was therefore relevant to distinguish between the so-called internal and external functions of the citizenship opted for. The internal function included the right to come to Estonia and exercise the rights of an Estonian citizen, such as voting and being elected. In terms of its internal function, the decision of the relevant committee (*kontroll-opteerimise komisjon*) – which operated in Moscow as a foreign representation under the control of the Ministry of Foreign Affairs – to issue a citizenship certificate was to be seen as a conditional granting of citizenship. Only after subsequent checks and approval (once the person had arrived in Estonia) did such a decision give the person a right to obtain Estonian identity documents. If during such checks it was found that the person had received the citizenship certificate by mistake, the certificate was revoked and he or she could be returned to Russia or had to apply for a separate right to stay in Estonia. In order to obtain citizenship, he or she had had to submit a new application to the Ministry of the Interior. Such optants could also be expelled to Russia on political and ideological grounds. The citizenship certificate did not therefore grant a direct right to settle in Estonia and to obtain identity documents. Only upon receiving such identity documents could the optant start exercising his or her rights as a citizen.

41. Despite being obliged to leave Russia with a view to resettle in Estonia under the Tartu Peace Treaty, a large number of optants decided to remain. These persons had no ability to exercise rights as Estonian citizens, nor were they subject to the obligations arising from citizenship (military service, taxes and so forth). For them, the citizenship certificates had the so-called external function. Both the optants who remained in Russia and the Estonian authorities hoped that such citizenship certificates could spare people from Soviet mobilisation, taxes or the nationalisation of their property. Efforts were made to maintain this external function even if and when the holders of the citizenship certificates obtained Soviet citizenship without renouncing their Estonian citizenship. This, however, did not mean that these persons could exercise the internal functions of Estonian citizenship without first passing additional checks. The references in the correspondence between the various Estonian authorities (as of 1922 onwards) that even optants who remained in Russia should be treated as citizens were linked to the hope that

these persons would retain the right to their property and claims against the Soviet Union.

42. The authors of the report stressed that the understanding of the concept of citizenship in the period in question had been different from that of citizenship in the present day and that, therefore, the solutions then resorted to could not directly be applied to the present legal reality.

COMPLAINTS

43. The applicant complained that the refusal to recognise her as an Estonian citizen and issue her with an Estonian citizen's identity document had violated her rights under Article 8 of the Convention, taken alone, and under Article 14 in conjunction with Article 8.

THE LAW

I. COMPLAINT UNDER ARTICLE 8 OF THE CONVENTION

44. The applicant complained that the refusal to recognise her as an Estonian citizen and issue her with an Estonian citizen's identity document had violated her right to respect for private and family life under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' arguments

1. The Government

45. The Government argued that the complaint was incompatible *ratione materiae* with the provisions of the Convention, which did not guarantee the "right to nationality" or the right to acquire or retain a particular nationality. The mere fact of being refused citizenship did not automatically in itself violate Article 8.

46. The Government asserted that the applicant had not, either in the domestic proceedings or in the proceedings before the Court, presented any specific and individualised arguments or proof that the refusal to issue her with an Estonian citizen's identity document had had any negative effect on her private or family life, including her "social identity" (that is to say her relationship with others). She had not complained about her inability to participate in the parliamentary elections in the domestic proceedings, and

had raised that issue for the first time before the Court (see paragraph 56 below). Moreover, several elections had taken place since her arrival in Estonia without her having attempted to have her citizenship officially recognised in order to participate. Her son was not a party to the present proceedings and the theoretical effects on him of the refusal to recognise her as an Estonian citizen (see paragraph 57 below) were therefore outside the scope of the case and irrelevant.

47. In any event, even assuming that the refusal to recognise the applicant as an Estonian citizen could have had some consequences for her private or family life, these consequences could not be regarded as crossing the threshold of seriousness so as to amount to an interference with Article 8 of the Convention. The refusal to recognise her as an Estonian citizen had not affected the legal basis for her stay in Estonia. She remained a lawful long-term resident with all the ensuing rights. As an Estonian by origin, she enjoyed the right to settle in Estonia under Article 36 § 3 of the Constitution (see paragraph 22 above). The law protected her against expulsion from Estonia and against a ban on entry (see paragraphs 26-27 above). She had not lost any entitlement to benefits. She continued to enjoy social rights, to receive a pension and to have health insurance. She continued to enjoy family ties with her son, who lived in Estonia, and could pay her respects to her late husband, who was buried there. The applicant was not stateless before the refusal, nor did she become stateless as a result of it.

48. The Government questioned the applicant's assertion that she had always felt like and identified as an Estonian citizen. She had arrived in Estonia in 1998, having renewed her Georgian passport in Moscow shortly before. She had applied for an Estonian residence permit as a Georgian citizen (this was noted on the residence permit application form), whereas Estonian citizens did not need a residence permit to live in Estonia. The applicant had not denied her Georgian citizenship in the proceedings before the Court. It was only in 2020, after renewing her Estonian residence permit twice, that she had started to claim that she was an Estonian citizen.

49. The Government argued that the applicant could not have "social identity" as a citizen of Estonia (in addition to having identity as an ethnic Estonian). The Estonian authorities had in no way implied that the applicant was an Estonian citizen. Citizenship was a legal status and not merely a subjective state of mind. An identity as a citizen of Estonia could not be created without official legal recognition of that citizenship. In any event, the refusal had not deprived the applicant of her Estonian identity (which had to be distinguished from the legal concept of citizenship).

50. Lastly, the Government pointed out that the applicant could acquire Estonian citizenship by naturalisation through a simplified procedure. She was exempted from the written part of the language examination (see paragraph 24 above) and, in their view, appeared to meet all the other conditions.

51. The Government further argued that the applicant's complaint was manifestly ill-founded, since the refusal to recognise her as an Estonian citizen – even if it had led to an interference with her rights under Article 8 – had not been arbitrary.

52. The refusal had been based on an interpretation of section 5(1)(1) of the Citizenship Act read in conjunction with Article IV of the Tartu Peace Treaty. The issue of the citizenship of the applicant's ancestors was a matter of interpretation and application of domestic law. Although the applicant was unhappy with the change in administrative practice in that regard (see paragraphs 28-30 above), such a change was not precluded under the Convention. Moreover, it had not occurred randomly, but had been based on a thorough analysis of archive material (even if that particular analysis had not been comparable in all its aspects to the study later undertaken by the University of Tartu) and on the views of the Estonian Internal Security Service. The Supreme Court's judgment of 2 March 2018 (see paragraphs 31-35 above), which had validated the substantive conclusions of both the pre-2003 and post-2015 administrative practice, had already existed before the applicant had applied to the PBGB. That case-law had remained unchanged even in the face of the subsequent research report prepared by the University of Tartu.

53. The courts in the applicant's case had thoroughly examined her arguments and evidence, including the argument concerning the issuance of passports to her ancestors and the claim that new information had been revealed by the aforementioned academic study. Their reasoning could not be considered arbitrary or superficial.

2. The applicant

54. The applicant asserted that her complaint was admissible.

55. The questions pertaining to citizenship had to be considered in a broader context and fell under the notion of "private life". She contended that she had been born into an Estonian family (albeit outside Estonia's borders) and had had a connection with Estonia all her life. She claimed to have lived her entire life with the knowledge that she was an Estonian citizen by birth.

56. The applicant asserted that, as a non-citizen, she could not participate in the parliamentary elections. She further argued that, as a person with a long-term residence permit, she did not have the same social and economic rights in Estonia as Estonian citizens. In that regard, she referred in general terms to Directive 2003/109/EC of 25 November 2003 (see paragraph 38 above). She also argued that a long-term residence permit could be revoked (see paragraph 25 above) and that Article 36 § 3 of the Constitution did not prevent her from being expelled from Estonia.

57. The refusal to recognise her as an Estonian citizen had also had a negative impact on her family life, since her son could not be recognised as having acquired Estonian citizenship by birth. As a result, her son only had

an alien's passport, could not vote or run in parliamentary elections, could not apply for public office or join the Estonian Defence Force, could not benefit from diplomatic protection abroad and could not enjoy the rights and freedoms conferred by European Union citizenship.

58. The applicant concluded that the refusal to issue her with an Estonian citizen's identity document had constituted deprivation of her Estonian citizenship and of her national and social identity. This interference with her rights under Article 8 of the Convention had been serious and arbitrary. It had not been based on law, but on an erroneous interpretation of the Tartu Peace Treaty.

59. The applicant asserted that the Tartu Peace Treaty, as an international treaty, could not be directly applicable to individuals and therefore could not directly impose obligations on individuals. In any event, Article IV of the Tartu Peace Treaty was not sufficiently clear and comprehensive to have been directly applicable. Therefore, the State itself had had to lay down specific rules to render the Treaty applicable to individuals. It had not done so.

60. The applicant submitted that neither Estonian domestic law at the time nor the Tartu Peace Treaty had established an obligation to leave Russia or resettle in Estonia as a prerequisite for obtaining citizenship. Instead, leaving Russia had simply been something that had had to be done in due time after the decision on granting Estonian citizenship to a person had entered into force, without the act (or not) of leaving Russia having any bearing on the acquisition or retention of citizenship.

61. The applicant argued that the decision to issue a citizenship certificate, which had normally been taken after a thorough background check, had been an administrative act by virtue of which optants had definitely acquired Estonian citizenship. The law and administrative practice at the time had not recognised the concept of "conditional citizenship". The applicant also distinguished her circumstances from those referred to in the Supreme Court's judgment in case no. 3-16-1810 (see paragraphs 31-35 above), pointing out that, in that case, the person's ancestors had never obtained an Estonian passport, but only a certificate of citizenship.

62. The applicant contended that there had been no legal act that had deprived her grandmother and father of the Estonian citizenship they had already obtained. Citizenship could not have been lost automatically in any way. They had therefore retained their Estonian citizenship. The applicant stated that her ancestors had been included in the list of optants who had had to travel to Estonia by train, but that they had been removed from that list for unknown reasons. Referring to archive documents, the applicant stated that there had often been practical and logistical obstacles to returning to Estonia.

B. The Court's assessment

1. General principles and approach to be taken

63. The Court reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which embraces multiple aspects of a person's physical and social identity (see *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011, and *Ramadan v. Malta*, no. 76136/12, § 62, 21 June 2016). Although neither the right to citizenship nor the right to renounce citizenship is guaranteed as such by the Convention or its Protocols, the Court has held in a number of cases that the following actions may, in certain circumstances, raise an issue under Article 8 because of their impact on the private life of the individual: arbitrary denial of citizenship (see *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II; *Ahmadov v. Azerbaijan*, no. 32538/10, §§ 42-45, 30 January 2020; and *Hashemi and Others v. Azerbaijan*, nos. 1480/16 and 6 others, §§ 45-46, 13 January 2022); arbitrary refusal of a request to renounce citizenship (see *Riener v. Bulgaria*, no. 46343/99, § 154, 23 May 2006); and revocation or deprivation of citizenship (see *Ramadan*, cited above, § 85; *K2 v. the United Kingdom* (dec.), no. 42387/13, § 49, 7 February 2017; and *Alpeyeva and Dzhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 108, 12 June 2018).

64. According to settled case-law, the Court applies a two-pronged test in citizenship-related cases to determine the applicability of Article 8 or interference with the rights protected by that Article, and to decide whether Article 8 has been violated. In that connection, the Court examines the possible negative consequences of the impugned measure for the applicant and analyses whether the measure was arbitrary.

65. The Court observes that in a number of citizenship-related cases where the above-referred consequence-based test was used, it was applied in the context of analysing the merits of the case to establish whether there had been an interference with the applicant's rights. This assessment of consequences on a case-by-case basis, combined with the arbitrariness analysis, led the Court to find that the Convention had been violated in those cases (see *Usmanov v. Russia*, no. 43936/18, §§ 58-71, 22 December 2020; *Emin Huseynov v. Azerbaijan (no. 2)*, no. 1/16, §§ 51-66, 13 July 2023; and *Hashemi and Others*, cited above, §§ 47-58).

66. By contrast, in a number of cases relating to the revocation of citizenship in a terrorism-related context, the Court first ascertained whether the impugned measures were arbitrary and then considered the impact of the deprivation of nationality on the applicants' private life (see *Ghoumid and Others v. France*, nos. 52273/16 and 4 others, § 44, 25 June 2020; see also *Laraba v. Denmark* (dec.), no. 26781/19, §§ 16-26, 22 March 2022, and *Adam Johansen v. Denmark* (dec.), no. 27801/19, §§ 46-70, 1 February 2022).

67. In the case of *S.-H. v. Poland* ((dec.), nos. 56846/15 and 56849/15, 16 November 2021), which concerned a refusal by the Polish authorities to confirm the acquisition of Polish citizenship by descent of the two applicants born through surrogacy, the Court considered the gravity of the negative consequences of such a refusal when determining the applicability of Article 8 (ibid., §§ 62-65 and 67). In that case, the Court found that it had not been established that the applicants had suffered any practical difficulties as a result of that refusal and that any repercussions on the applicants' personal identity had not crossed the threshold of seriousness for an issue to be raised under Article 8 of the Convention. The Court therefore declared the applicants' complaint in that case inadmissible as incompatible *ratione materiae* with the provisions of the Convention (ibid., §§ 68-77).

68. The Court finds, as it did in the case of *Denisov v. Ukraine* ([GC] (no. 76639/11, § 92, 25 September 2018, which concerned an employment-related dispute between an individual and the State), that when assessing whether or not a private-life issue under Article 8 of the Convention has been raised, there is a close link between the questions of applicability and the merits. Once a measure is found to have seriously affected the applicant's private life, that conclusion means that the complaint is compatible *ratione materiae* with the Convention and, at the same time, that the measure constitutes an "interference" with the "right to respect for private life" under Article 8. The case-law referred to above on citizenship-related matters (see paragraphs 65-67 above) attests to such a close link.

69. In the present case, the Government, referring to the lack of serious negative consequences for the applicant, argued that her complaint under Article 8 was incompatible *ratione materiae* with the Convention and therefore inadmissible. The Court sees no particular reason in the context of the case before it to join the question of the applicability of Article 8 to the merits of the case. It will therefore proceed to analyse whether Article 8 of the Convention is applicable and, accordingly, whether it has jurisdiction *ratione materiae* to examine the relevant complaint on the merits.

2. Application of the principles to the present case

70. Turning to the facts of the present case, the Court observes that the domestic procedure applied to the applicant was not that of annulment or revocation of citizenship, but the refusal of the domestic authorities to issue her with an Estonian citizen's identity document. In particular, the domestic authorities found that the applicant had never acquired Estonian citizenship by birth, contrary to what she herself claimed. In that connection, the Court rejects her contention that her situation should be seen from the angle of deprivation of citizenship (see paragraph 58 above).

71. Nevertheless, the Court has already had occasion to hold that the general principles concerning the loss of nationality could, in certain circumstances, be considered applicable even in a situation where the State

has refused to recognise a person as a citizen of that State (see *Hashemi and Others*, § 46; *Ahmadov*, § 45; and *Alpeyeva and Dzhalagoniya*, § 110, all cited above). The Court finds no reason to hold otherwise in the present case.

72. As to the practical negative consequences on her private life of the respondent State's refusal to recognise her as an Estonian citizen, the applicant referred to the possible risk of her residence permit being revoked and of her being expelled from Estonia. The Court is of the view that this risk is purely speculative and hypothetical. The applicant, who has been residing in Estonia since 1998 and holds a long-term residence permit, did not point to any practical circumstances which would lead her to believe that she would face such a risk. The Court, moreover, observes that the domestic courts explained to the applicant how the Constitution and the Obligation to Leave and Prohibition on Entry Act offered protection for her continued residence in Estonia (see paragraph 15 above).

73. The applicant made a general reference to Directive 2003/109/EC of 25 November 2003 (see paragraph 56 above), without linking it in any manner to the practical obstacles or difficulties she had encountered. Against that background, it is not for the Court to invent any hypothetical situations in which she might face complications owing to her not being recognised as an Estonian citizen by birth.

74. It has not been called into question that the applicant, as a non-citizen, cannot vote in the Estonian parliamentary elections. The Court acknowledges that participation in elections may be seen as one of the central features of exercising one's rights as a citizen and as an element of one's social identity. However, the Court cannot help but note that the applicant, despite considering herself to be Estonian citizen and having lived in Estonia since 1998, apparently never took the necessary (administrative) steps to exercise her right to vote before learning in 2020 that she was not recognised as an Estonian citizen. She also never raised the issue of her own right to vote in the domestic proceedings. As regards the right to vote, the present case should be distinguished from the case of *Ahmadov* (cited above, §§ 10 and 45), where the applicant had regularly received polling cards for various elections from the relevant electoral constituency and had voted in presidential elections and in a referendum. In the present case, the applicant had never shown any interest in participating in the parliamentary elections, nor had the respondent State ever led her to believe that she would have the right to vote.

75. The Court disregards the applicant's argument that the refusal to recognise her as an Estonian citizen had had negative consequences for her son (see paragraph 57 above), since he is not a party to the present proceedings. The applicant provided no indication as to how such alleged difficulties had affected her family life within the meaning of Article 8 of the Convention.

76. The Court is mindful that the applicant could have perceived the decision of the Estonian authorities not to recognise her as an Estonian citizen as a negation of an element of her identity (compare *S.-H. v. Poland,* cited

above, § 73; compare, *mutatis mutandis*, *Zeggai v. France*, no. 12456/19, § 65, 13 October 2022). Even so, it is noteworthy that the Tallinn Administrative Court specifically stressed in its judgment that the State had not denied the applicant's social identity as an Estonian (see paragraph 15 above). Indeed, it is not in dispute between the parties that the applicant is of Estonian origin (see paragraph 4 above). Moreover, unlike in a number of citizenship-related cases which the Court has been called upon to examine, the respondent State in the present case never gave the applicant any indication that she was recognised as an Estonian citizen (compare and contrast *Ahmadov*, § 45, and *Alpeyeva and Dzhalagoniya*, § 119, both cited above; compare, *mutatis mutandis*, *Zeggai*, cited above, § 65).

77. The Court does not overlook the fact that the applicant's ancestors had been issued with a citizenship certificate and a passport in accordance with Article IV of the Tartu Peace Treaty (see paragraph 5 above). However, the domestic courts explained, referring, *inter alia*, to the Supreme Court's earlier judgment and the report by researchers of the University of Tartu (see paragraphs 10-16 above) why those documents, without their addressees ever having resettled in Estonia, were not sufficient to consider the applicant's ancestors to have obtained Estonian citizenship. While the applicant clearly disagrees with the reasoning of the domestic courts, the Court notes that those courts addressed all her central arguments and provided reasoning which the Court has no grounds to call into question (compare and contrast *Emin Huseynov*, cited above, § 51, where the domestic courts had completely disregarded, without any explanation, the existence of a stamp in the applicant's Soviet passport confirming his Azerbaijani citizenship).

78. Lastly, the Court notes the Government's argument that the refusal to recognise the applicant as an Estonian citizen had not left her stateless, given that she was a Georgian citizen. While the applicant denied that she had renewed her Georgian identity documents after moving to Estonia in 1998, she did not deny in the proceedings before the Court that she was a Georgian citizen. Indeed, it appears that she had marked her citizenship as Georgian in the application form when applying for the Estonian residence permit (see paragraph 6 above).

79. Against that background, and noting that the applicant continues to hold a valid Estonian long-term residence permit, the Court finds that the decision not to recognise her as an Estonian citizen and issue her with Estonian citizen's identity document cannot be said to have created uncertainty as regards the legal status of her stay in Estonia (compare and contrast *Emin Huseynov*, § 52; *Ahmadov*, § 46; and *Alpeyeva and Dzhalagoniya*, § 112-13, all cited above).

80. In light of the above, the Court concludes that the applicant has not shown that the Estonian authorities' refusal to recognise her as an Estonian citizen and to issue her with an Estonian citizen's identity document affected her private or family life to an extent that crossed the threshold of seriousness for an issue to be raised under Article 8 of the Convention.

81. In view of the above considerations, the Court finds that Article 8 of the Convention is not applicable. The Government's objection in this regard should therefore be upheld. Accordingly, the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

II. COMPLAINT UNDER ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8

82. The applicant complained that the refusal to recognise her as an Estonian citizen and to issue her with an Estonian citizen's identity document had been discriminatory. She relied on Article 14 of the Convention in conjunction with Article 8. Article 14 reads as follows:

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' arguments

1. The Government

83. The Government, referring to their arguments regarding the applicant's complaint under Article 8 taken alone (see paragraphs 45-50 above), contended that the complaint was incompatible *ratione materiae* with the provisions of the Convention. In the alternative, they argued that it was manifestly ill-founded.

84. They further submitted that the applicant had failed to clearly state on which grounds she had been discriminated against.

85. As to the persons with whom the applicant had compared herself, that is to say those who had applied for identity documents between 2003 and 2015 and had obtained them as a result of an administrative error, the Government admitted that those persons continued to be recognised as Estonian citizens because the State had taken the view that they should not suffer as a result of its mistake. By the time the applicant had lodged her application with the PBGB in 2020, the administrative error had already been corrected. Moreover, by that time the Supreme Court had already given its guidance on how to correctly interpret Article IV of the Tartu Peace Treaty. The applicant could not therefore have had any legitimate expectation of benefiting from the State's earlier error. She had not been erroneously recognised as an Estonian citizen and had not, as a result of that error, been issued with an Estonian citizen's identity document. She was therefore not in

an analogous or relevantly similar situation to those with whom she had compared herself.

86. Lastly, the Government asserted that the alleged difference in treatment had in any event been objectively and reasonably justified. The right not to be discriminated against did not give the applicant the right to request that an earlier erroneous practice be extended to her situation. On the contrary, the refusal to issue her with an Estonian citizen's identity document had been justified by the need to continue the lawful practice already upheld by the Supreme Court. It was for the domestic courts to decide how the Citizenship Act was to be interpreted in conjunction with Article IV of the Tartu Peace Treaty. The outcome of that interpretation had not been arbitrary.

2. The applicant

87. The applicant argued that she would have been issued with an Estonian citizen's identity document had she applied for it before 2015. She submitted that she had been discriminated against on the grounds of her birth or association with a national minority or on the grounds of being an "optant's descendant".

88. She submitted that the change in administrative practice might have been justified, at least in part, on national security grounds (that is to say to avoid immigration from the Russian Federation of persons with unfriendly intentions towards Estonia). Nevertheless, this reason could not justify a blanket ban. Referring to the University of Tartu's research report, the applicant contended that the change in administrative practice had been arbitrary and not based on a comprehensive judicial analysis of historic evidence and practice. In any event, she did not pose a threat to national security.

B. The Court's assessment

89. The Court reiterates that Article 14 merely complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to that extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter. Moreover, the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the ambit of any Convention Article, for which the State has voluntarily decided to provide (see *Beeler v. Switzerland* [GC], no. 78630/12, §§ 47-48, 20 October 2020; see also *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, §§ 145-47, 14 September 2023,

where the Court explained, in the context of Article 2 of Protocol No. 1, that the fact that the applicants' complaint under that Article was incompatible *ratione materiae* with the Convention could not be taken to imply that the facts of the case did not fall within the ambit of that Article).

90. Against that background, the Court has held that the scope of Article 14 read in conjunction with Article 8 might be more extensive than that of Article 8 taken alone (see *Beeler*, cited above, § 62). In order to determine whether Article 14, read in conjunction with Article 8, is applicable to a case, it must first be determined whether the situation complained of falls within the ambit of Article 8 (compare and contrast *S.-H. v. Poland*, cited above, §§ 79-80).

91. In the context of citizenship-related cases, the Court found in the case of *Genovese* (cited above, §§ 33-34), which concerned the denial of citizenship to a child born out of wedlock (and in which no separate complaint under Article 8 alone was raised), that Article 14 in conjunction with Article 8 was applicable. Similarly, in the case of *Zeggai* (cited above, § 28), which concerned the rejection of the applicant's request for a certificate of French nationality in the context of Algerian independence and where a distinction between the applicant and his siblings was based on a temporal element, the Court found Article 14 in conjunction with Article 8 to be applicable.

92. In the light of the aforementioned case-law, the Court finds that the issue raised by the applicant falls within the ambit of Article 8 and that Article 14, taken in conjunction with Article 8, is thus applicable to the facts of the case at hand.

93. In the present case, the applicant essentially complained that she had been treated differently from those optants' descendants whose ancestors (like those of the applicant) had not resettled in Estonia but who had applied for Estonian citizen's identity documents before 2015 and had been recognised as Estonian citizens.

94. The Court considers that, despite the grounds of discrimination relied on by the applicant (see paragraph 87 above), the difference in treatment in the present case actually arose from the change in administrative practice in 2015. More specifically, this difference in treatment was brought about by the change in the way the domestic authorities interpreted the conditions set out in Article IV of the Tartu Peace Treaty (see paragraph 30 above). In fact, the applicant herself seems to imply this when suggesting that she would have been issued with the Estonian citizen's identity document had she applied for it before 2015, that is to say at the time when the domestic authorities had followed the interpretation according to which optants who had not resettled in Estonia were nonetheless recognised as Estonian citizens (as were their descendants).

95. This new interpretation, which was adopted in 2015 (and which in substance appears to have meant a return to the pre-2003 approach), was soon after confirmed by the Supreme Court (see paragraphs 31-36 above). In the proceedings brought by the applicant, the domestic courts once more

confirmed the interpretation given to Article IV of the Tartu Peace Treaty, referring not only to the Supreme Court's earlier judgment in case no. 3-16-1810 but also to the report by researchers of the University of Tartu (see paragraphs 39-42 above). It can also be inferred from the Supreme Court's judgment in case no. 3-16-1810 that the court considered the earlier administrative practice, according to which resettling in Estonia was not seen as a condition for finalising the citizenship procedure (see paragraph 36 above), to be erroneous. Indeed, the Government also argued that the administrative practice between 2003 and 2015 had been based on an incorrect interpretation of the Tartu Peace Treaty (see paragraphs 85-86 above).

96. Against that background, the Court considers that the fact of having applied for Estonian citizen's identity documents before or after 2015, that is to say before or after the administrative practice became more restrictive (with the aim of correcting the previous erroneous practice) cannot be considered to be an aspect of any grounds of discrimination covered by Article 14 of the Convention (compare and contrast *Zeggai*, cited above, § 55, and Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date, request no. P16-2021-002, French *Conseil d'État*, §§ 60-62, 13 July 2022). While the applicant clearly disagrees with the post-2015 administrative practice, the fact that her request was refused does not give rise to any issue under Article 14 in conjunction with Article 8 of the Convention.

97. It follows that the applicant's complaint under Article 14 in conjunction with Article 8 of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 October 2024.

Milan Blaško
Registrar

Pere Pastor Vilanova
President