

## Report on the draft Law on citizenship in Latvia

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The present draft's central provision is Article 2 regulating who is regarded to be a Latvian citizen. Whereas no problems arise in regard to para 2 and 3 of Article 2, para 1 is of significant importance.

Latvian citizens will be those and only those persons who on June 17, 1940 have been Latvian citizens - according to the then valid Latvian Law - and their descendants.

By such a provision all those persons were excluded from Latvian citizenship who came into Latvia after 1940 and have in the meantime established their permanent domicile there. This means that the Russian population presently having their permanent domicile in Latvia will not acquire Latvian citizenship automatically, if they wish so, but either remain foreigners (possibly of Russian citizenship) or have to apply for naturalisation.

In my view such a regulation in the citizenship-law is a hardship for the Russian population which hardly can be justified. Moreover, according to my view, by such a regulation Latvia creates unforeseeable difficulties for herself.

What will be the effect of the regulation provided for in the draft? On the one hand side it can be expected a certain pressure on the Russian population to leave the country and return to Russia with all the uncertainties for the individuals as to their integration into social and professional life in Russia. It is very likely that such a "forced" movement of people towards Russia will create political tensions between Russia and Latvia. On the other side, it may be that a remarkable part of the Russian population will remain in Latvia as foreigners. They will regard the solution found in the draft law as unjust, inadmissible and unacceptable. In any way they will have to live as foreigners in a country many of them certainly will regard as their home country. They will live there under conditions unknown at the moment. It can be assumed that, organising themselves to defend their interests, this will create a source of unrest in Latvia. In my opinion, Latvia, therefore, will in such a way establish, contrary to her own interests, the basis of future difficulties and probably political instability.

Another point should specifically be taken into account : Since 1940 more than 50 years have gone by and, therefore, the Russian population in Latvia consists also - and this is probably true for the larger part of the Russian population - of people who were borne on Latvian territory, have lived there up to now, have there their family, children and grandchildren. They have, certainly in many cases, no family ties to Russia. Those peoples feel at home in Latvia and have never been elsewhere. I am afraid, these peoples will and cannot understand why they are foreigners in a country where they have lived their whole life. A measure as provided in Article 2 of the present draft very easily can create an atmosphere of hatred and "second class people". The danger of nationalistic outbursts, the demand for retaliation is at hand.

In this context a specific problem should be mentioned which is not dealt with in the draft : the case of mixed marriages between Latvians and Russians. In the past there have been such marriages. What happens to their descendants as far as citizenship is concerned?

Having said this, I would like to point out that I have a certain understanding for the Latvian position. They have suffered in the past and have been oppressed. Certainly, the Latvian people has no interest in creating, by a liberal legislation, a remarkable Russian minority in Latvia. I do not overlook the political danger that the Russian population may by organising a political opposition endanger the political progress achieved. Nevertheless, facts have to be taken as they are. These facts are that, as the result of a historical event, there are peoples of Russian origin already living for a relatively long time in Latvia.

Under these circumstances a sensible and reasonable solution calls for an assessment of all legitimate interests involved. And, therefore, the following should be taken into serious consideration :

1. In negotiations between the two ethnic groups, if not yet launched, the serious attempt should be undertaken to find a common, acceptable solution in the question of citizenship. Successful negotiations would be of the greatest importance for the political stability of the country and for the peaceful living together.
2. The basis of a solution could be that all persons, irrespective of their ethnic origin, will become Latvian citizens having in the past permanent domicile for a certain period of time, to be established by law. This should be equally valid for descendants of those persons. It could be provided that persons of Russian origin, who in such a way would become Latvian citizens may, nevertheless, within a certain time limit, opt against Latvian citizenship.
3. I could imagine a step-by-step solution. For example : It could be said that persons living already for a long period of time in Latvia may just opt for Latvian citizenship. Others, living not so long in Latvia but already a time period (to be established by law) may be naturalised under easier conditions. In all these cases descendants will follow their parents.
4. Members of the Russian army and other similar bodies presently serving in Latvia may not be included in such a solution.

I regard it of utmost importance that serious endeavours are undertaken to solve the question of citizenship in negotiations with the Russian part of the population. To give the impression not to be ready to talk on this subject would be most dangerous.

Finally, it must be pointed out that the exclusion of the Russian population from Latvian citizenship has the consequence of the exclusion from elections to parliament and other public bodies. Therefore, difficulties in view of Article 3 of the 1 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedom may arise.

The following remarks concern other Articles of the present draft.

Article 8: The provisions according to which Latvia will not extradite its citizens to a foreign country is of such importance that in my view it is recommendable to incorporate the provision mentioned into the constitution.

Article 9: It should be reconsidered whether it is advisable completely to exclude dual citizenship. Experience shows that there are people having such a strong tie to their country of origin that, even in case they acquire another citizenship (for instance by marriage), they are fond of maintaining their former citizenship. Moreover, para 2 gives the impression that the drafters were of the opinion not to be able to exclude dual citizenship in all cases. Therefore, the question may be put, why not allow dual citizenship in specific cases if unavoidable.

As to para 2 it should be pointed out that this provision may lead to difficulties of diplomatic nature. What will happen if the diplomatic representative of a foreign country invokes his duty to protect a person who is a citizen of his country as well as of Latvia?

For systematic reasons para 3 should be inserted into Article 21.

Article 10: Again, for systematic reasons it seems preferable to insert Article 10 as a separate paragraph into Article 2.

Article 12 and 13: It remains unclear whether these provisions refer only to children born in wedlock or to children out of wedlock as well. If the latter is the case, the situation envisaged in Article 13/2 may involve difficulties.

Article 13 para 3 may give rise to difficulties because the citizenship-law of the country of permanent residence is not taken into account. It might be advisable to add a phrase like : "if not otherwise provided in the citizenship-law of the country of permanent residence".

Article 22: It seems to me unusual to demand a "permission of expatriation" by the government. The decision to relinquish citizenship is a very personal one and principally has to be accepted by the competent authorities. A declaration to that effect seem to me sufficient.

Article 23: In my opinion it is not easy to accept a provision which deprives a person of their citizenship because that person has acted against the independence of the country or is guilty of high treason. I doubt that it is European standard to use deprivation of citizenship as a kind of penalty.

A similar problem is to be found in point 3 of this Article whereby a person who has broken citizen's oath may be deprived of citizenship. Since according to Article 38 observance of laws (in general) is part of citizen's oath, everyone violating a law could be deprived of his citizenship. In my view this goes too far, and I do not think that this was the intention of the drafters.

Chapter V: Except for Article 25, the provisions of this chapter use the term "child" without defining it. In the interest of avoiding misunderstandings it seems advisable to clearly define the term "child".

Article 27: According to para 2 the child is completely dependent of the parents in the question dealt with in this provision. I am afraid that in such a way the interests of the child are not sufficiently protected. Probably it is advisable to involve guardianship-courts in such cases.

Furthermore it is unclear whether Article 30 para 1 is applicable to Article 27 para 1. Article 30 para 1 deals with "change of citizenship" and it could be argued that the provision is not applicable to Article 27 para 2 because the latter provision deals with "loss of citizenship". It should be secured that in a case of Article 27 para 2 minors aged 14 to 18 must give their consent.