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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

REPUBLIC OF LATVIA

**Draft Law on the Status of Former USSR Citizens
who are not Citizens of Latvia or any other State**

Comments by Mr A. SUVIRANTA (Finland)

Latvian Draft Law on the Status of Former USSR Citizens Who
are not Citizens of Latvia or any other State

COMMENTS

Introduction

My comments are based on an unofficial English translation, dated 23 August 1994. I have also received a Report of the Casework of the CSCE Mission to Latvia, dated 30 April 1994.

My general comment on the draft Latvian law is favourable, as far as persons within the proposed scope of the law are concerned. Several comments on the details of the draft will follow. The main problem with the draft law is, however, its scope. Because the scope is defined rather narrowly in some respects, a number of persons which would be in need of the protection of the law are left outside. This problem is also treated in the detailed comments below.

Chapter 1. General Provisions

Art. 1. According to the draft, the "subjects of this Law are those former USSR citizens (and their descendants) living in the Republic of Latvia who lived and were permanently registered without a time limitation in the territory of Latvia before July 1, 1992 and who are not citizens of the Republic of Latvia or of any other State" (*italics mine*). Representatives of the Russian population in Latvia complain-and at least not wholly without reason-that registration is in a number of cases under one reason or another denied even though the persons in question have in fact lived in Latvia for a long time. The scope of the draft law should be accordingly extended.

The definition of the scope of this draft law may have repercussions even outside the application of this very law. According to the new-and still inoperative-Law on Citizenship of the Republic of Latvia, naturalization requires as a general rule that the applicant has been registered in the Register of Inhabitants and that he has been permanently residing in Latvia for at least five years. These two requirements are written apart, and it is thus not expressly required that the applicant should have been entered in the Register of Inhabitants as a permanent resident. It may, however, be anticipated that only those former USSR citizens will be qualified for citizenship whose status as subjects of the draft law has been confirmed.

Paragraph 2 of Art. 1 refers to persons who have entered the Republic of Latvia after 1 July 1992. Evidently, the Law on the entry and residence of foreign citizens and stateless persons in the Republic of Latvia should also be applied to persons who were already living in Latvia on 1 July 1992 but who do not fulfil the requirements of Paragraph 1-not even after its possible extension-or who come under the purview of Paragraph 3.

Art. 2. I hope that the provision in Paragraph 2 of this Article is taken at its face value, that is that persons being able to show either one of the documents mentioned in Paragraph 1 need not present any additional evidence to confirm that they belong to the scope of the draft law. However, it should also be possible for persons who do not possess any of the documents mentioned in Paragraph 1 to show their status under Article 1 by other evidence.

Chapter 2. Rights and Obligations

Art. 3. According to this Article, the rights and obligations of persons within the scope of the draft law shall be deter-

mined by the Constitutional Law on the rights and obligations of a citizen and a person. I do not know whether such a constitutional law has been enacted yet; but according to the draft of autumn 1991, all persons within Latvia, without regard to citizenship, should be entitled to all human rights, and only the strictly political rights should be reserved to Latvian citizens. I have no adverse comment on this principle. (Regard taken to the large non-citizen population in some towns, it might be advisable to secure such population some influence in the municipal affairs of their home towns.) It goes without saying that the additional provisions in this Chapter cannot restrict the human rights provided by the said Constitutional Law (where not authorized by the Constitutional Law).

Art. 6. It might be advisable that in localities with a substantial population not able to use the Latvian language it would be permissible to use other languages even directly (without interpretation) in oral and written contacts between authorities and individuals-and, furthermore, not only in regard to State authorities but also as regards local (self-governing) authorities.

Art. 8. The provision in the second sentence of the first Paragraph authorizing restrictions by law to the rights mentioned in the first sentence is unnecessary in the sense that the enactment of such a law cannot be dependent on an authorization in another ordinary law. The authorization is, on the other hand, too large as compared with the corresponding provision in Paragraph 2 of Art. 9 in the European Convention of Human Rights. It can moreover be asked why such a clause on restrictions is only attached to the rights mentioned in the first Paragraph of Art. 8 of the draft law and not to other rights guaranteed by the draft law.

Art. 12. This article requires for the expulsion of an individual that lawful procedure is observed and that another State is willing to admit him. In addition, the expulsion

should only be possible on grounds mentioned in law.

Art. 15. This provision in Chapter 2 of the draft law confers to the subjects of the law the right to appeal violations of their rights or freedoms to the courts. It should evidently also be possible to take appeals from decisions applying other provisions of the draft law than those belonging to Chapter 2, e.g. decisions under Articles 17 and 18.

Chapter 3. *Required documents*

Art. 18. As mentioned in my comments to Art. 2, it may be possible that a person meeting the substantive requirements of the draft law cannot procure a USSR passport. In such a case, it should be possible to issue him a personal identification certificate otherwise than in exchange for a passport.

A person having exchanged his passport for a personal identification certificate should be entitled until he is eventually naturalized to exchange it back, in case he needs it e.g. in order to take up residence in another country.