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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 M. RUSSELL (Ireland)

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

Article 1: Subjects of the Law

An important preliminary point is the meaning of the words which are translated into English as "former USSR citizens who are not citizens of Latvia or any other State." These words may mean persons who are at present stateless (because they have lost the citizenship of the USSR which they formerly held and have not acquired citizenship of any of the states which have replaced the USSR); or they may mean persons who are citizens of one or other of the states which formerly comprised the USSR, the reference to "any other State" being a reference to third countries. The distinction is important for the following reason.

Obviously if the subjects of the Draft Law are true stateless persons no difficulty of general principle arises, because the Law will confer on them a legal status which they did not have and will give them the guarantee of important and valuable rights. If, however, the Draft Law will have the effect of coercing persons who are citizens of one or other of the states which formerly comprised the USSR to give up their passports because the legal status that is determined by the Law "On the Entry and Residence of Foreign Citizens and Stateless Persons in the Republic of Latvia" would be appreciably inferior and less desirable than the legal status that they would have under the Draft Law, and if the effect of

^{*} Unofficial translation into English, dated August 23, 1994

question arises, will the status and rights which the Draft Law confers on them be an adequate and just replacement for the rights which they will lose? I believe that the answer to this question is yes.

The Latvian language text of this Article may make plain the legal status of descendants, born after July 1, 1992, of the former USSR citizens described in the first paragraph; the ambiguity in the English text could be removed by adding "whenever born" after "and their descendants".

The cut-off dates in this Article are reasonable. (However, for legal certainty, either the first reference to July 1, 1994 should be "on or before July 1" or the second reference should be "on or after", in order to avoid that date being a dies non.)

The exclusions from the Law also seem to be reasonable. While it is possible that difficulties might arise in the case of, for example, a USSR soldier who married a Latvian citizen - unless "family members of Republic of Latvia citizens" in paragraph 1) covers this case - presumably this question will be addressed in the Law on Citizenship.

Article 2: Documents certifying legal status

Presumably the former USSR passport of every former USSR citizen living in the Republic of Latvia contains a personal code of a resident of the Republic of Latvia in order that no such citizen will be excluded from the application of this Article and Article 18.

The prohibition on requiring additional documents or certificates of legal status is a welcome provision.

Article 3: Principles of the rights and obligations

If the effect of this Article is - as it appears to be - to place the subject of this Law in the same legal position as a citizen of the Republic of Latvia in regard to rights and obligations, it demonstrates a generous and fair-minded attitude on the part of the drafters.

The obligation provision in the second paragraph of the Article is entirely proper.

Article 4: Inadmissibility of all forms of discrimination

Presumably the Latvian language text of the Draft Law makes it clear that what is prohibited is invidious discrimination (the English word "discrimination" has no pejorative meaning recognised in law), because justice may make it necessary to make differentiations or exceptions based on national or ethnic heritage (an expression whose precise meaning is likely to be the subject of judicial interpretation in specific cases) - for example, the State or private institutions may wish to give financial assistance to minority cultural or language groups in order to preserve their heritage; restrictions on trading hours may have to make special provision for the holy days of different religions; and so on. It is obviously desirable that the Article should enable such distinctions to be made where neither their motive nor their effect is harmful or unfair.

The Article does not appear to prohibit discrimination by the State, either in its laws or in its administrative practices. Is such provision made in some other legislation?

Article 5: Protection of personal life

Although the English translation is ambiguous, presumably in

the Latvian language text the prohibition on breaking the inviolability of the home or the secrecy of the post and the telephone is subject to the qualification "arbitrarily and illegally" so as not to hamper investigations carried out in accordance with law by the police.

Article 6: Rights in judicial, and state government and administrative institutions

It is desirable that the rights conferred by this Article should extend to local government as well as state government institutions.

Article 8: Right to freedom of thought, opinion, conscience and religious conviction

The intention of this Article is excellent. However, the inclusion of the qualifying formula "by observing the laws of the Republic of Latvia" (which I understand to mean "provided that they observe the laws of the Republic of Latvia") might create the impression of giving a possible means of unfairly restricting the free exercise of the rights, e.g., by the State authorities deciding, otherwise than through the courts, that a minority group were not observing the laws and therefore were not entitled to exercise the rights. Is the formula necessary in view of the provisions of Article 3, second paragraph?

Do the words "to organize" in the second paragraph apply only to meetings marches etc., or do they confer a separate right to associate and to form organisations (other than those specified in Article 13)? Consideration might be given to conferring an express right to form associations and political parties.

Article 9: Right to retain one's national identity

Unless the jurisprudence of the Republic of Latvia has established or is likely to establish that the right to retain one's native language necessarily includes the right to use it freely, without administrative or other impediment, or unless the question is dealt with in other legislation, consideration should be given to conferring the right in express terms.

Article 10: Right to handle one's property

Obviously much will depend upon the fairness of the procedures that will be established by the laws of the Republic of Latvia to which the rights conferred by this Article are subject. This is especially important in view of the apparent absence from Article 4 of a prohibition of discrimination by the State and its agencies.

Article 13: Right to employment and to receive pay

The right of subjects "to protect themselves from unemployment" is not self-explanatory - unless the qualification "in accordance with the laws of the Republic of Latvia" applies to it. Care should be taken both to avoid conferring a right unless its conditions and limitations are clear and to avoid seeming to give the subjects a right which might appear to the citizens of the Republic of Latvia to be one which they themselves do not enjoy. (This last mentioned caveat applies to other provisions of the Draft Law also.)

Article 14: Right to social security

The above observations on Article 13 apply equally to this Article. For example, it would obviously be impracticable to give an unqualified right to a professional training to every subject of the Draft Law.

Article 15: Right to appeal a violation of one's rights or freedoms to the courts

Are the rights and freedoms the subject-matter of this Article only those which are mentioned in the Draft Law or does the entitlement to appeal to the courts extend to every claim that a right, whether mentioned in the Draft Law or not, is a basic human right and has been violated?

Article 18: Exchange of a former USSR citizen's passport for a personal identification certificate

The time limit that will be prescribed for the exchange of documents should be a reasonable one, i.e., one which gives the person concerned an adequate period of time to consider the implications of this important step and to arrive at his or her decision. It would also be desirable that the legal and administrative implications of the exchange of the passport for the certificate should be widely publicised, clearly and in languages which the former USSR citizens will understand, well in advance of the commencement of the time limit.

There should be a regular procedure for determining what reasons for non-compliance with the time limit are acceptable so as to avoid arbitrary decisions.

The certificate should have the same legal effect for the purpose of foreign travel and recognition by foreign countries as a passport.

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General observations

It would seem desirable that the rights of the subjects of the Draft Law should include a right to participate in the legal processes of the Republic of Latvia as members of the jury or lay assessors, to the same extent as citizens of the Republic of Latvia.

It is understood that the legal position of the persons who are the subjects of the Draft Law in regard to being a candidate, or voting, in parliamentary elections or in local government elections is dealt with in other legislation of the Republic of Latvia, and that it is therefore not necessary to consider those important issues here.

My overall opinion is that the Draft Law constitutes a generally satisfactory approach to dealing with the difficult question, which arises from the circumstances of Latvia's history and geographical position, of the large number of former USSR citizens residing in her territory.

Matthew Russell

Dublin

19 September, 1994.