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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 J. ZLINSZKY  
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Opinion on the draft Law on the Status of Former USSR  
Citizens Who are not Citizens of Latvia or any other State  
/hereinafter draft law/

In Latvia, due to historical development and the country's geographical position, according statistics of 1989 almost half /48%/ of the population is not-Latvian. /The Baltic States, A Reference Book /Tallinn-Riga-Vilnius, 1991/, p. 92./ This makes of such importance to regulate by law the position of those people who do not have Latvian citizenship. From this point of view the adoption of a law of the above content can only be greeted and hopefully it will clear some problems created partly by the Law of Citizenship of Latvia.

The translation of a national law into a foreign language and its understanding without the knowledge of the national legislation background always creates big difficulties. Some of the following remarks may be also the result of insufficient comprehension.

1. Relationship of the draft law and the Constitutional Law  
on Human and Citizens' Rights and Obligations

The Constitutional Law on Human and Citizens' Rights and Obligations /reference can be made only on its draft, approved by the first reading on October 22, 1991 in unofficial translation/ /hereinafter constitutional law/ divided into two main parts contains on one hand the rights and obligations of Latvian citizens and on the other hand the rights and obligations of every human being in Latvia. This latter part of the constitutional law and the draft law are standing in an unclear relationship. Both the constitutional law and the draft law contain rights and freedoms. Art. 3 of the draft law provides the application of the constitutional law, the draft law and of international and interstate agreements of Latvia to subjects of the draft law. The question arises which rights and freedoms are guaranteed for the subjects of the draft law.

The formulation of Art. 3 may indicate several alternative solutions:

a/ Joint application of the three kind of legal sources  
In this case it is not clear which content the guaranteed rights and freedoms have if they are regulated parallel in both laws but with a different content.

b/ Guaranteed rights only if confirmed  
In this case only those rights and freedoms are guaranteed for the subjects of the draft law that are provided both by

the constitutional law and the draft law: their content is determined by the special restrictions /by general clauses - see below/ of the draft law. This does not exclude the rights and freedoms that are provided only by the draft law /e.g. minority rights/.

None of the above mentioned alternatives seems to be satisfying. Even the existence of alternatives in the interpretation cannot be welcome.

The relationship between the draft law and international or interstate agreements is regulated by the draft law itself /Art. 19/.

Art. 4 of the draft law interdicts discrimination only among the subject of the draft law but not the discrimination between Latvian citizens and the subjects of the draft law. The usage of general clauses /see below/ with a possible tendency to restrict the rights and freedoms makes difficult to size up the difference between the position of the two categories but also to determine the scope and content of the guaranteed rights and freedoms.

Art. 4 mentions punishment as legal consequence of discrimination or invitation to it. Does this formulation mean that the interdiction of discrimination by the state is not included?

## 2. General clauses

The draft law in Chapter 2 listing the rights and freedoms of the subjects of the draft law very often use general clauses.

E.g.

in Art. 6

"in accordance with Articles 8 and 9 of the Language Law"

in Art. 7

"by observing the procedure set in the laws of the Republic of Latvia"

in Art. 8 para 2

"by observing the laws of the Republic of Latvia"

in Art. 10

"in the procedure set in the laws of the Republic of Latvia", "by observing the legislation of the Republic of Latvia"

in Art. 11

if! "in accordance with the procedure set by law"

in Art. 12 para 1

"with a decision adopted in accordance with the procedure set by law"

in Art. 13

in accordance with the laws of the Republic of Latvia"

in Art. 14

"In accordance with the legislation of the Republic of Latvia"

in Art 15

"In accordance with the legislation of the Republic of Latvia"

In an extreme case the above mentioned general clauses may be filled in by legal regulation that empty the guaranteed rights and freedoms. There is no guarantee either that these clauses be filled by the executive, state organs of a lower level. It would be more desirable to regulate the possible restrictions right in the draft law like e.g. in Art. 8 para 1 and to allow a further regulation of the question /procedure etc./ only by an act of the Parliament.

### 3. Right to appeal - right to status provided by the draft law

Art. 15 provides legal remedy against any violation of the rights and freedoms of the subjects of the draft law. The basic question is however whether the decision on the application of the draft law to somebody itself may be appealed or not. The law on citizenship of the Republic of Latvia that applies only to those who are citizens of Latvia refer in procedural questions to the Cabinet of Ministers /Citizenship Law Art. 15/. Art. 17 para 3 of the draft law also contain such a reference to the Cabinet of Ministers. Is there according to the regulation of the Cabinet of Ministers any possibility to appeal decisions on the application of the draft law or on the issue of personal documents which indicate the status of their holder? It would be more satisfying to regulate this right in the draft law itself.

### 4. Some remarks on some of the rights

#### Right of association

The right of association is missing in the draft law. Once again the question of the relationship of the constitutional law and the draft law arises. While the right of assembly is regulated by both laws the right of association only by the constitutional law. Does this latter fact mean that the legislator has just forgotten to guarantee parallel the right of association /in that case the lack of parallel regulation compared with the regulation of other right seems very unlogical/ or that the above mentioned right is not guaranteed for the subjects of the draft law?

#### Right of minorities

With regard to the very high proportion of not Latvian citizens having the position of the subjects of the draft law in Latvia the notion "retain" as a guaranteed right may

be subject of further discussions. To retain the native language, culture and traditions may implicate the total passivity of the state towards these values of the minorities but also an active support of these values. The meaning of the word may turn out only in the practice presumably according to the financial abilities of Latvia but it should be kept in mind that the pure abstaining from hindering of cultivation of minority's culture does not enable the retention of it.

#### Right to property

The constitutional law in its Art. 9 enables only for Latvian citizens to obtain private property /in this case the translation may have led to misunderstanding but to exclude all not-Latvians from the obtaining of all kind of private property seems to be quite harsh/. It is unclear whether the draft law loosens this strict rule by enabling in Art. 10 the acquisition of property or not and if the former is the case at what extent.