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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Comments on the draft law on Citizenship
of the Republic of Latvia**

by Matthew RUSSELL (Ireland)

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the Republic of Latvia

by

Mr. Matthew Russell (Ireland).

{Note: These comments are based upon the widely held view that the legal situation in Latvia is that of an end to foreign occupation rather than the succession of states. The text which is referred to is the English text of the draft law appearing in document CDL (92)53.]

Chapter I

1. The definition of "Second World War emigrants" will give rise to certain practical difficulties (e.g. establishing whether a person left Latvia in the period 1940 - 1991 as a refugee or merely as an economic migrant). Furthermore it is not entirely clear that the definition and the apparent reference to it in the first version of Article 10 are in fact synonymous. (A definition will not be required if the R. Rikards' version of Article 10 is adapted as the expression does not seem to appear in any other Article.)

Would the definition be clearer if its fourth line read
".....as refugees, or were deported, or who left
Latvia....."?

2. The prohibition in Article 8 of the extradition of a Latvian citizen (including one who is also a citizen of another country: Article 9) can be altered by an international agreement which provides for such extradition: Article 31. The European Convention on Extradition includes the right to refuse extradition of nationals.
3. In Article 10 the main differences between the two versions are issues of policy - e.g. the Rickards version confers the rights (but not the obligations) of citizenship automatically upon the categories of persons it mentions and does not oblige them to relinquish the citizenship which they have acquired abroad, whereas the first version requires the making of an application for citizenship and the loss of the other country's citizenship.

Chapter II

4. The provision in Article 13 which determines at birth the citizenship of a child born outside Latvia by reference to the permanent residence of the parent with whom it lives may give rise to uncertainty in cases where, for example, that parent is changing or is about to change residence to Latvia.

Chapter III

5. It would be important to ensure that the requirements of Article 18 of knowledge of the Latvian language and the Latvian Satversme be applied at a uniform level throughout the country in order to avoid the risk of allegations of unfairness by local officials.

Is it proposed that the 16 years continuous residence in

Latvia required by this Article could be interrupted by a vacation or visit to relatives out of the country? The express reference to educational or business absences would suggest so. Perhaps the duration rather than the purpose of the absences might be stated?

6. The category of person contemplated by paragraph i) of Article 19 is not immediately apparent.
7. In Article 20 the version of paragraph 1) of J. Lagzdin seems preferable. It would not seem to be conformable with generally accepted standards of justice and fairness of administrative procedures that a person could be refused naturalisation on grounds so general and so subjective as those mentioned in this paragraph by documents alone and unless there are witnesses to specific facts and the person concerned has had an opportunity of defending himself against his accusers. (A similar comment applies to paragraphs 6), 8), 9) and 13) of this Article.)

Will any sentence of imprisonment, however short or however long ago (including sentences imposed prior to 1991) result in a refusal of citizenship?

Presumably a person who has been charged with a crime ("called to criminal responsibility") and not yet brought to trial will have his application deferred until the trial has taken place rather than refused under paragraph 2), and so not be obliged to wait for a year to repeat his application under Article 36?

Chapter IV.

8. Presumably a decision of the Supreme Court to deprive a person of his citizenship under paragraph 2) of Article 21 will be in accordance with criteria laid down by law

rather than discretionary. See Article 23.

9. In Article 22 should "only" be inserted after "prohibited"?
10. In Article 23 should "only" be inserted after "decision"? Alternatively, a reference to the possibility of additional grounds being prescribed by law could be added.
11. Article 23 seems to use the expressions "deprivation of citizenship" and "forced extradition" as synonyms (the expression "extradition" means loss of citizenship: Chapter I). Is it envisaged that a Latvian citizen who has no other citizenship may be deprived of his citizenship and thus rendered stateless?
12. Will criteria be laid down establishing the circumstances in which the Government will decide to permit the reintegration of, for example, someone who lost citizenship through his parents' choice? Such a person might be an adult and the protection of some at least of the pre-requisites in Article 18 might be appropriate.

Chapter V

13. Although the age of the children referred to in Article 25 is stipulated, such is not the case in
 - Article 26,
 - Article 27,
 - Article 28, and
 - Article 29.

Perhaps the term "child" might be defined in Chapter I.

There are also undefined references to "underaged" (in

Articles 28 and 29) and "minors" (in Article 29, although it is defined for the purpose of Article 30).

14. In Article 29, by whom may the change in the child's citizenship be reconsidered?

Chapter VII

15. If the form of citizen's oath prescribed by Article 38 had not been published the words of renunciation "and forever" might perhaps be omitted. However, as the proposed oath apparently has been published the deletion of the words at this stage might create political difficulties.

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Conclusion.

Given the very great practical difficulties which history and geography have imposed upon the Republic of Latvia, the draft law on citizenship can be regarded as generally a balanced and fair-minded attempt to cope with those difficulties.