

## BRIEFING

Requested by the PETI committee



# Political and Electoral Rights of Non-citizen Residents in Latvia and Estonia: Current Situation and Perspectives

### KEY FINDINGS

Persons with undetermined citizenship of Estonia and non-citizens of Latvia ('respective non-citizen populations') do not have the right to take part in the elections to the European Parliament.

The position of Estonia and Latvia is that their respective non-citizen populations have certain legal links with respective States but that these populations are not their nationals. There are certain differences between persons with undetermined citizenship of Estonia and non-citizens of Latvia, both regarding the formal title of the status and the content of the rights (for example, Estonian non-citizen population can vote in municipal elections).

The background to the status of respective non-citizen populations is set by public international law rules on the statehood of Baltic States. The mainstream position is that Baltic States were unlawfully controlled by the Soviet Union until the early 1990s, therefore Soviet-era settlers and their descendants did not have an automatic right to their nationality.

There are three ways of conceptualising the legal status of the respective non-citizen populations. The Estonian and Latvian position that they have a special status has been accepted by some States and, by necessary implication, by the Grand Chamber of the European Court of Human Rights. Some UN human rights institutions characterise these peoples as stateless. The third reading, suggested by certain legal writers, is that respective non-citizen populations are nationals with limited political rights.

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PE 604.953 – April 2018



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There is support for both the first and the second reading, which need not be resolved conclusively for the purposes of this opinion. Both readings, while differing on other issues, would agree that Estonia and Latvia have not denied right to vote in European elections via denying nationality to their respective non-citizen populations (unless one follows the minority position that Soviet Union's control of Baltic States was lawful under international law).

Commission is correct to conclude that the decision by the Latvian and Estonian authorities not to extend the right to vote in European elections to their respective non-citizen populations does not discriminate on grounds of nationality within the meaning of EU law. The decision whether or not to extend the right to vote in European elections is one of policy of Member States.

## Introduction

I write by reference to an invitation to participate in a workshop by the Committee on Petitions of the European Parliament (PETI) on 'Statelessness and voting rights in Estonia and Latvia'. I have been provided with two documents for that purpose: first, a petition to the European Parliament of 21 June 2016, by which petitioners:

*ask the European Parliament to investigate the matter and to correct the underrepresentation of non-citizens in the European Parliament and the allocation of seats at their expense. We also request the European Parliament to put an end to unequal treatment of Estonian and Latvian de facto stateless persons as regards to rights to political participation.*

I have also been provided with a notice to members by the Committee on Petitions of 30 August 2017, which summarises the petition and the European Commission's reply. The key legal question, in my view, is whether Commission was correct to conclude, as recounted at page 2 of the notice, that:

*the decision by the Latvian and Estonian authorities not to extend the right to vote in European elections to their respective non-citizen populations does not raise a question of discrimination on grounds of nationality within the meaning of EU law.*

I propose to address the issue in five steps. I will first introduce the concept of persons with undetermined citizenship of Estonia and non-citizens of Latvia ('respective non-citizen populations'). Secondly, I will sketch the public international law background of certain particularities of their legal status. Thirdly, I will consider whether the conduct of Estonia and Latvia in relation to resident non-citizens raises questions of discrimination on grounds of nationality within the meaning of international human rights law. Fourthly, I will address the key question, i.e. whether this conduct raises questions of discrimination on grounds of nationality within the meaning of European Union law. I will suggest that Commission was correct to conclude as it did. There very well may be, as some have suggested, policy reasons for extending the right to vote in European elections to respective non-citizen populations. But these are fundamentally issues of policy, and are best addressed through the medium of political discussion within particular Member States.

It may be helpful to also note the issues that I will *not* be addressing. The focus of this report is on persons with undetermined citizenship of Estonia and non-citizens of Latvia, and therefore I will not address, except incidentally, their resident non-citizens more generally. Similarly, since my focus is on the European Union law aspects of their political and electoral rights, I will not address, except

incidentally, their political and electoral rights within the municipal and parliamentary elections of respective Member States, or other civil and political rights, or social, economic, and cultural rights.

## Non-citizen residents in Estonia and Latvia: States' perspective

It is helpful to start with the formal position taken by Estonia and Latvia themselves (it does not mean, of course, that legal assertions by States have to be taken at face value, but they do provide a good way of introducing the topic). In the National Report to the Universal Periodic Review of the United Nations Human Rights Council, Estonia explained the rights of persons with undetermined citizenship in the following terms:

*98. For historical reasons, Estonia has a considerable number of persons with undetermined citizenship. A major state policy objective is to promote acquisition of Estonian citizenship through naturalisation, minimise the number of persons with undetermined citizenship and thus encourage long term residents to become Estonian citizens. The state has constantly taken steps to facilitate this process: for example the compensation of Estonian language training costs, the consolidation of exams, and the partial or complete exemption of persons with disabilities from exams.*

*99. Persons with undetermined citizenship who live in Estonia have long-term relations with Estonia and enjoy social, economic and cultural rights equally with citizens of Estonia. Permanent residents are also guaranteed several political rights, thus they can vote in local elections, but not run for and elect the Parliament as that requires Estonian citizenship. There are no other restrictions to the right to participate in public affairs, including the right to form non-profit associations. Permanent residents with undetermined citizenship have rights as third country nationals with long-term residence in the EU, which guarantees them extensive rights of movement and access to employment throughout the EU. In addition, they have a right for visa-free entry to the Russian Federation.*

*100. As a result of the constant Government policy of integration, the number of persons with undetermined citizenship has decreased from 9% in 2007 to 6.3% in 2015. The Government continues efforts to increase the motivation among potential citizenship applicants by offering free language courses, organising information work and continuing the individual approach to citizenship applicants. For example, since February 2008, the parents of a child with undetermined citizenship are informed personally by the Police and Border Guard Board of the possibility to apply for Estonian citizenship for the child.<sup>1</sup>*

The Report of the Working Group on the Universal Periodic Review summarised Latvia's position on non-citizens in the following terms:

*20. Latvia reported that after the restoration of its independence in 1990, the temporary status of "non-citizen" had been established and was granted to persons who had immigrated during the period of Soviet occupation as a result of deliberate migration policy of the authorities of the Soviet Union and had lost citizenship of the Union of Soviet Socialist Republics with its dissolution. These persons or their descendants had never been citizens of Latvia. Latvia had always stressed that the status of non-citizens was of a temporary nature. Latvian non-citizens were not*

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<sup>1</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (28 December 2015), UN Doc A/HRC/WG.6/24/EST/1 [http://lib.ohchr.org/HRBodies/UPR/Documents/Session24/EE/A\\_HRC\\_WG\\_6\\_24\\_EST\\_1\\_Estonia\\_E.doc](http://lib.ohchr.org/HRBodies/UPR/Documents/Session24/EE/A_HRC_WG_6_24_EST_1_Estonia_E.doc) [98]-[100].

*stateless and this had been clearly stated in law. All preconditions for a successful naturalization process had been created and the process had repeatedly been simplified in accordance with international standards so as to be one of the most liberal in Europe. Almost 150,000 persons had chosen to become citizens of Latvia. At the same time non-citizens enjoyed the same social guarantees and most of the rights guaranteed to Latvian citizens and enjoyed full legal protection in Latvia and full consular protection while living or travelling abroad.*

*21. Latvia underlined that the citizenship acquisition and naturalization process had been further simplified, including in 2013 through the granting the Latvian citizenship automatically to children of stateless persons and non-citizens. In total, 99 per cent of children born in Latvia in 2015 were citizens of Latvia. At the same time, Latvia accommodated stateless persons and provided protection as a party to the relevant convention. Latvia requested that the distinction between the aforementioned groups be clearly observed during the interactive dialogue.*

*52. In relation to the special category of Latvian residents called “non-citizens”, Latvia again underlined that those people belonged to the State of Latvia, they enjoyed full protection of the country, the same freedoms of movement across the European Union, all social rights and most of the political rights, except the rights to vote at the local and national elections.<sup>2</sup>*

In short, the status of persons of undetermined citizenship of Estonia is similar in some ways to the status of the non-citizens of Latvia and in other ways different from it. Both statuses similarly reflect policy choices taken by Estonia and Latvia in early 1990s within the broader context of restoration of independence (discussed in the next section). They are also similar in that they fit only with some unease within the traditional public international law categories of connections between States and individuals. They are not nationals of Estonia or Latvia but both States recognise their rights that would not usually be enjoyed by non-nationals. One difference is suggested by the name of the status: for Estonia, they have some (undetermined) citizenship and their rights are usually addressed by describing them; for Latvia, there is an explicit status for former citizens of the Soviet Union that do not have any other citizenship. The other difference relates to the scope and content of rights that they enjoy. To take the example of voting rights in municipal elections, persons of undetermined citizenship can vote in in Estonia but non-citizens cannot vote in Latvia. The following discussion, while mostly referring to Estonian and Latvian situation taken together, needs to be read with this caveat regarding differences in mind.

## Public international law perspective

Before considering the human rights issues, it is helpful to set out the public international law background (alluded to in the submissions quoted in the previous section). The mainstream public international law position of the statehood of Baltic States, with a focus on the inter-State relations, is summarised in a 2012 legal opinion by (now) Judge James Crawford and Professor Alan Boyle:

*101. After the political collapse of the USSR, the three Baltic states – Estonia, Latvia and Lithuania – claimed to continue the identity of the pre-1940 Baltic states, which the USSR had effectively annexed. To some extent other states accepted these claims. For example, the EC declared that it ‘warmly welcomes the restoration of the sovereignty and independence of the Baltic States which they lost in 1940. They have consistently regarded the democratically elected parliaments and governments of these states as*

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<sup>2</sup> Report of the Working Group on the Universal Periodic Review: Latvia (14 April 2016), UN Doc A/HRC/32/15 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/077/58/PDF/G1607758.pdf?OpenElement> [20]-[21], [52].

*the legitimate representatives of the Baltic peoples'. The UK later stated that it 'never recognised de jure the annexation of the Baltic states in 1940, although de facto they were a part of the Soviet Union from 1940 until 1991'.*

*102. What these statements suggest is that their formal legal identity of the Baltic states, rather than being extinguished in 1940 and then revived in 1991, was preserved throughout that period. It was significant that Russia's control, though effective, was tainted by illegality. This places the Baltic states in the same category as the more fleeting cases of illegal but effective annexation mentioned above and suggests that in such circumstances even the passage of fifty years may not displace the presumption of continuity. ...*

*103. But even if this is indeed what happened, the consequences of the reappearance of the Baltic states were few. All or almost all the manifestations of the pre-1940 Baltic states disappeared after their effective submergence into the USSR. ... The result was that whether the post-1991 Baltic states continued the identity of the pre-1940 Baltic states had almost no practical effect.<sup>3</sup>*

The last paragraph quoted may be in many ways accurate regarding inter-State relations but the question of continuity was of considerable importance in matters of nationality.<sup>4</sup> To simplify the issue considerably, if Baltic States are new States, created in 1990, then applicable public international law on succession of States probably required the grant of nationality to all persons habitually resident in their territory<sup>5</sup> (which would include Soviet-era settlers and their descendants). Conversely, if Baltic States are, in legal terms, the same States as they had been in 1940 and had rather been unlawfully controlled by the Soviet Union until early 1990s, a different field of public international law is applicable. Law of collective non-recognition of unlawful territorial control, including regarding population movements and transfer, would not require the grant of nationality to those persons who, despite habitually resident within the territories, have moved there in the period of the unlawful territorial control.<sup>6</sup> Baltic States have taken the latter (mainstream) view, and Soviet-era settlers and their descendants were treated as persons of undetermined citizenship by Estonia and the status of the non-citizens of Latvia.<sup>7</sup>

To preface the following discussion, this policy choice could be criticised from two legal perspectives: first, States who take the former (minority) view that control of Baltic States was lawful and therefore they were new States (primarily Russia), could argue that Estonia and Latvia had deprived Soviet-era settlers and their descendants of their proper nationality. But, more importantly and leaving the public international law perspective aside, one could query with compliance by Estonia and Latvia with human rights obligations, both regarding the peculiar statuses as such and particular rights that pertain to them.

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<sup>3</sup> J Crawford and A Boyles, 'Opinion: Referendum on the Independence of Scotland – International Law Aspects' (10 December 2012). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79408/Annex\\_A.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/79408/Annex_A.pdf)[101]-[103] (footnotes omitted).

<sup>4</sup> See generally I Ziemele, *State Continuity and Nationality: The Baltic States and Russia* (Brill 2005).

<sup>5</sup> ILC 1999 Draft Articles on Nationality of Natural Persons in Relation to Succession of States [http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft\\_articles/3\\_4\\_1999.pdf&lang=EF](http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft_articles/3_4_1999.pdf&lang=EF) art 5.

<sup>6</sup> See a general discussion, including the situation of Baltic States, Y Ronen, *Transition from Illegal Regimes under International Law* (CUP 2011) Chapter 6.

<sup>7</sup> Lithuanian position was different: Soviet-era settlers and their descendants could acquire Lithuanian citizenship by opting for it, Ronen (n 6) 221-4.

## International human rights law perspective

What is the legal character of the statuses of undetermined citizenship by Estonia and non-citizenship of Latvia? Three responses are possible.

First, these categories are different from traditional categories of relationships between individual and States. To focus on the Latvian example, the Latvian Constitutional Court put it in the following (rather inelegantly translated) terms in a 2005 judgment:

*After passing of the Non-Citizen Law appeared a new, up to that time unknown category of persons – Latvian non-citizens. Latvian non-citizens cannot be compared with any other status of a physical entity, which has been determined in international legal acts, as the rate of rights, established for non-citizens, does not comply with any other status. Latvian non-citizens can be regarded neither as the citizens, nor the aliens and stateless persons but as persons with “a specific legal status”.*

*Latvia has clearly indicated that non-citizens shall not be regarded as stateless persons*

..

*The status of non-citizen is not and cannot be regarded as a variety of Latvian citizenship. However, the rights and international liabilities, determined for non-citizens testify that the legal ties of non-citizens with Latvia are to some extent recognised and mutual obligations and rights have been created on the basis of above.<sup>8</sup>*

The proposition is perhaps somewhat unorthodox but certainly possible. Public international law is a sufficiently flexible legal regime to accommodate new concepts when new situations arise, if they are broadly endorsed by the relevant legal community. The question, then, is practical rather than dogmatic: has the broader legal community accepted Latvia's argument that a special category exists? The Grand Chamber of the European Court of Human Rights ('ECtHR') seemed to suggest so, if by necessary implication, in the *Andrejeva v Latvia* judgment.<sup>9</sup> The Universal Periodic Review of the Human Rights Council, where all States have an opportunity to comment upon human rights issues, similarly appears to suggest that few States (and no European Union States) criticise the statuses as such.<sup>10</sup> A recent example of explicit support of the Latvian position in the EU context is the 2017 Canada-EU Comprehensive Economic and Trade Agreement that defines an investor as natural person in the following terms:

*in the case of the EU Party, a natural person having the nationality of one of the Member States of the European Union according to their respective laws, and, for Latvia, also a natural person permanently residing in the Republic of Latvia who is not*

<sup>8</sup> Judgment of the Constitutional Court of Latvia in Case no 2004-15-01016 (7 March 2005) [http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-15-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-15-0106_Spriedums_ENG.pdf) [15], [17].

<sup>9</sup> The Court described the applicant as simultaneously having 'stable legal ties' with Latvia and 'not a national of any State', but did not use the technical term of statelessness, App no 55707/00 *Andrejeva v Latvia* [GC] ECHR Reports 2009 [88] ('the Court observes a notable difference between the applicant and Mr Gaygusuz and Mr Koua Poirrez in that she is not currently a national of any State. She has the status of a "permanently resident non-citizen" of Latvia, the only State with which she has any stable legal ties and thus the only State which, objectively, can assume responsibility for her in terms of social security:'). See also App no 48321/99 *Slivenko v Latvia* [GC] ECHR Reports 2003 [114], [125] (the applicant's statelessness, nationality of Russia and non-citizenship of Latvia applied for are discussed as alternative statuses), and admissibility decision in the same case, where the Grand Chamber directly rejected the argument of the applicant, supported by Russia, that they were effectively Latvian nationals due to their connections with Soviet Latvia, ECHR Report 2002-II [74]-[76].

<sup>10</sup> Report of the Working Group on the Universal Periodic Review: Estonia (12 April 2016), UN Doc A/HRC/32/7 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/075/43/PDF/G1607543.pdf?OpenElement> [24], [123.13] (Ecuador); Report of the Working Group on the Universal Periodic Review: Latvia (14 April 2016), UN Doc A/HRC/32/15 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/077/58/PDF/G1607758.pdf?OpenElement> [26] (Kenya), [120.38] (Ecuador), [120.77] (Russia).

*a citizen of the Republic of Latvia or any other state but who is entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.*<sup>11</sup>

Another example of implicit endorsement of both categories could be the Council Regulation no 539/2001, which addresses categories exempt from visa requirements in Article 1(2) as including, in addition to refugees and stateless persons, 'other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State'.

Secondly, since these categories do not constitute nationality in the technical sense, as a matter of exclusion they must constitute statelessness. This position is taken by some United Nations human rights bodies, which address persons with undetermined citizenship<sup>12</sup> and non-citizens under the rubric of statelessness.<sup>13</sup>

Thirdly, it has been suggested in some legal writings that at least the Latvian non-citizenship is best viewed as classical nationality with limited political rights.<sup>14</sup>

Which view is the better one? To begin at the end, the third approach seems the hardest to justify: it has to explain away explicit and consistent denials of the link of nationality by States themselves, and broad cross-cutting acceptance of that position by relevant States and institutions, whether supportive of the argument (in accepting the special status) or critical (in viewing it as feigned statelessness). It is harder to decide between the first and the second approach. As noted above, some States and institutions appear to have accepted the status and many have not objected against it (or at least too strenuously); other institutions have rejected it or at least engaged with in a critical manner; and yet other stakeholders have evaded taking a clear position on it because it was not necessary for addressing the issue at hand.<sup>15</sup> The important point may be that, increasingly, the focus is shifting away from issues of status and towards particular rights, either with a focus on non-citizens in particular, like easier access to naturalisation (explicitly accepted by States themselves), or under the rubric of general rules on protection of children or rights of minorities. Perhaps fortunately, I do not have to provide a general and conclusive answer for the purpose of this opinion.

Much depends on how and where the question is posed. For the purpose of the right to vote in European elections, the right question seems to be this: have Estonia and Latvia denied this right via denial the right to nationality? Once posed in these terms, the answer has to be a negative one. For the first position outlined above, respective non-citizen populations have a particular status that provides path to nationality but not entitlement to it as such. For the second position, statelessness is an issue to be eventually addressed, preferably by naturalisation in respective countries, but this

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<sup>11</sup> <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> art 8.1.

<sup>12</sup> Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex Council resolution 16/21: Estonia (23 November 2015), UN Doc A/HRC/WG.6/24/EST/2 [55] (Committee on the Elimination of Racial Discrimination and Committee against Torture), [56], [73] (UNHCR). But see conclusions that do not use the technical term of statelessness, referred to at [56] (Committee on Economic, and Social and Cultural Rights).

<sup>13</sup> Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex Council resolution 16/21: Latvia (18 November 2015), UN Doc A/HRC/WG.6/24/LVA/2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/263/71/PDF/G1526371.pdf?OpenElement> [49] (UNHCR), 50 (Committee against Torture). But see a discussion of "'non-citizen" and stateless persons' as apparently different categories by the Human Rights Committee, referred to at [15]. And also see Judge Kristine Krūma's position, by reference to the practice of early 2000s, that 'this view [that non-citizens cannot be qualified as stateless persons] has been accepted by international human rights monitoring bodies', K Krūma, *EU Citizenship, Nationality and Migrant Status: An Ongoing Challenge* (Martinus Nijhoff 2014) 363.

<sup>14</sup> D Kochevov and A Dimitrovs, 'EU Citizenship for Latvian "Non-Citizens": A Concrete Proposal' (2016) 38 *Houston Journal of International Law* 55, 68-74.

<sup>15</sup> E.g. examples at the end of nn12-13. Also, in the process relating to the Council of Europe Framework Convention for the Protection of National Minorities, Committee of Ministers' resolution spoke of "non-citizens" without elaborating their status, Resolution [CM/ResCMN\(2014\)9](#) on the implementation of the Framework Convention for the Protection of National Minorities by Latvia, and the Advisory Committee's Opinion (18 June 2013) noted the UNHCR position in fn 1 but stopped short from explicitly endorsing it.

does not imply that Estonia and Latvia have denied their entitlement to nationality<sup>16</sup> (unless one follows the minority position in public international law sketched in the previous section, i.e. that the Soviet Union's control of Baltic States was lawful<sup>17</sup>). It does not appear that any institution has called for the grant of parliamentary voting rights to respective non-citizens, which would be the closest analogy to European elections within their purview.

## European Union law perspective

European Commission is quoted in the PETI's notice to members as having concluded that:

*Article 14(2) TEU provides that 'the European Parliament shall be composed of representatives of the Union's citizens', Article 10(2) TEU provides that 'Citizens are directly represented at Union level in the European Parliament' and Article 22(2) of the Treaty on the Functioning of the European Union (TFEU) provides 'every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State'. The Court of Justice determined that while EU law provides electoral rights for EU citizens, it does not prevent a Member State from extending electoral rights beyond its own nationals (Case C-145/04 Spain v UK)<sup>1</sup> – in other words, Member States were competent to define the composition of the electorate. The Court later clarified that when Member States define which persons are entitled to exercise the right to vote in European elections, they must exercise their competence in compliance with EU law (Case C650/13 Delvigne).*

*Nonetheless, the decision by the Latvian and Estonian authorities not to extend the right to vote in European elections to their respective non-citizen populations does not raise a question of discrimination on grounds of nationality within the meaning of EU law.*

This position seems to me to be correct, both as a matter of EU law and applicable international law, and may be summarised in three points. First, plainly, respective non-citizen populations do not have an automatic right to vote in European elections as a matter of current law.<sup>18</sup> Secondly, Estonia and Latvia are not under a legal obligation to extend the right to vote in European elections to their respective non-citizen populations. I do not think that the *Andrejeva* case of the ECtHR calls for a different conclusion: the right to possessions at issue in that case is not inescapably connected to nationality in the way that voting rights are. A State that does not move beyond, as it were, replicating the scope of its nationals for the purpose of European elections does not raise a *prima facie* human rights case that needs to be answered (even if I am wrong, the same considerations could plausibly justify distinctions in treatment by reference to status). Thirdly, States are not legally precluded from making that extension either.<sup>19</sup>

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<sup>16</sup> See App no 48321/99 *Slivenko v Latvia* [GC] ECHR Report 2002-II [77], where the Court notes that arbitrary deprivation of nationality may under certain circumstances breach the ECHR without, apparently, considering that this proposition has relevance for Latvia.

<sup>17</sup> E.g. Comment by Director of the Foreign Ministry's Department for Humanitarian Cooperation and Human Rights and Commissioner for Human Rights, Democracy and the Rule of Law Anatoly Viktorov on the European Minorities and Discrimination Survey by the EU Agency for Fundamental Rights (27 December 2017) <https://russiaeu.ru/en/news/comment-director-foreign-ministrys-department-anatoly-viktorov-european-union-minorities-and> ('the authors turn a blind eye to the shameful phenomenon of large-scale statelessness, which has deprived hundreds of thousands of people in Latvia and Estonia of access to political, social and economic rights for more than 20 years')

<sup>18</sup> A 2015 study for the European Parliament makes a suggestion that respective non-citizen population could be effectively treated as EU citizens. But this proposition rests on the uncertain premise that non-citizens are citizens with limited rights, and is inconsistent with the entirety of institutional practice of the European Union and its Member States for the last decade, G-R de Groot, K Swider, and O Wonk, *Practices and Approaches in EU Member States to Prevent and End Statelessness* (Study for the LIBE Committee) [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL\\_STU%282015%29536476\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL_STU%282015%29536476_EN.pdf) 41-2.

<sup>19</sup> Judgment of 12 September 2006 *Spain v UK* C-145/04, ECLI:EU:2006:543 [78].

I would only add, to make explicit what may be implicit in the Commission's submission, that it is a policy choice to be made by respective States whether or not to extend the right to vote in European elections. It is not an easy choice. *Spain v UK* is a good example of the level of policy debate and sensitivity involved, which included an adverse Strasbourg judgment motivating extension and the backdrop of complicated inter-State negotiations.<sup>20</sup> There may be well policy reasons for extension. Professor Ineta Ziemele, the current President of the Constitutional Court of Latvia, noted already in 2003 that Latvia should explore various ways of interlinking non-citizenship with European citizenship.<sup>21</sup> But that is a policy debate to be had by the Member States – and, indeed, status and rights of respective non-citizen populations are very much part of the policy discussion in Estonia and Latvia.<sup>22</sup> For example, the President of Latvia proposed last year a change in the rule on acquisition of Latvian nationality by children of non-citizens from an opt-in rule (by parents) to an opt-out rule,<sup>23</sup> which lead to a considerable discussion among policy makers (even if the rule is so far unchanged). To conclude, this is an issue that properly belongs to the realm of policy discussion at the level of Member States.

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<sup>20</sup> Ibid. [60]-[62].

<sup>21</sup> <http://providus.lv/article/eiropas-savienibas-pilsoniba-un-latvijas-nepilsoni>. See also Kochenov and Dimitrovs (n 14), for a more elaborate engagement with policy and technical issues.

<sup>22</sup> Judge Krūma summarised the sensitivity of policy issues discussed in the following terms: 'Upon accession to the EU, the question of granting EU citizenship to non-citizens was raised by left-wing political parties. However, it was never seriously debated in ruling centre-right government coalition. Two important reasons may explain the coalition's position: firstly, the discussion would inevitably lead to rejection of EU membership in a referendum on joining the EU. Secondly, EU citizenship for non-citizens would significantly reduce interest in naturalisation', (n 13) 364.

<sup>23</sup> <https://www.president.lv/en/news/news/the-president-of-latvia-calls-for-courage-to-stop-the-granting-of-non-citizen-status-25183>. I note that I provided an expert opinion to the President on international and human rights issues of the proposal.

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Print ISBN 978-92-846-2845-2 | doi: 10.2861/1991 | QA-02-18-546-EN-N  
PDF ISBN 978-92-846-2844-5 | doi: 10.2861/518881 | QA-02-18-546-EN-C  
EPUB ISBN 978-92-846-2844-5 | doi: 10.2861/518881 | QA-02-18-546