Democratic Transition and Linguistic Minorities in Estonia and Latvia

Committee on Petitions
Democratic Transition and Linguistic Minorities in Estonia and Latvia

IN-DEPTH ANALYSIS

Abstract

Upon request by the PETI Committee, the Policy Department for Citizens’ Rights and Constitutional Affairs commissioned this in-depth analysis on Democratic Transition and Linguistic Minorities in Estonia and Latvia. The writer claims that in order to understand the situation of political representation rights of ethnic and linguistic minorities in Estonia and Latvia it is essential to provide a historical-political framework that contextualizes the presence of such substantial minorities in the two countries and justifies the type of relationship existing with the majority of nation holder.

She also suggests that from one side, full integration is the goal that needs to be pursued, while at the same time it’s important to ensure the cultural and national values of Latvians and Estonians.
ABOUT THE PUBLICATION

This research paper was requested by the European Parliament’s Committee on Petitions and was commissioned, overseen and published by the Policy Department for Citizens’ Rights and Constitutional Affairs.

Policy Departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

To contact the Policy Department for Citizens’ Rights and Constitutional Affairs or to subscribe to its newsletter please write to: poldep-citizens@europarl.europa.eu

RESPONSIBLE RESEARCH ADMINISTRATOR

Giorgio MUSSA
Policy Department for Citizens’ Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

AUTHOR

Angela DI GREGORIO, Professor of Comparative Public Law,
Department of International, Legal and Historical-Political Studies of the University of Milan

LINGUISTIC VERSION(S)

Original: EN

Manuscript completed in April 2018
© European Union, 2018

This document is available on the internet at:
http://www.europarl.europa.eu/supporting-analyses

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.
CONTENTS

EXECUTIVE SUMMARY

1. NATION STATES AND ETHNO-LINGUISTIC MINORITIES IN CENTRAL AND EASTERN EUROPE 6

2. ETHNIC COMPOSITION OF BALTIC COUNTRIES, HISTORICALLY AND POST-USSR 7

3. CONSTITUTIONAL PROVISIONS ON MINORITY RIGHTS AND THE PRINCIPLE OF NON-DISCRIMINATION. THE PREAMBLE TO THE LATVIAN CONSTITUTION 10

4. REPRESENTATION, CITIZENSHIP AND INTEGRATION IN ESTONIA AND LATVIA: CHANGES IN THE LAW OVER TIME 11

5. DEMOCRATIC CONDITIONS SET BY THE EU AND THE COUNCIL OF EUROPE 19

CONCLUSIONS 21
LIST OF TABLES

TABLE 1:
Ethnic composition and its change over time  8
EXECUTIVE SUMMARY

The origins of the ethnic and linguistic minorities present in Estonia and Latvia are different from those of other minorities found across central and eastern Europe. This fact should lead to a specific approach in protecting these minorities, an approach that must enable diverse and potentially conflicting values to coexist.

From one side, full integration is the goal that needs to be pursued, and this can only be obtained through total legal equivalence with citizens. At the same time, it is important to ensure the cultural and national values of Latvians and Estonians, an issue that is justifiably sensitive given the history of oppression suffered, the memories of which are still alive.

Choosing policies of inclusion, without erasing cultural and linguistic differences, could in the long term prove successful, considering that the two countries are relatively small and have both recently undergone waves of emigration.

Candidatures and participation in major international organisations, especially the European Union, with its democratic conditions for membership, have stimulated the two countries to simplify their naturalisation procedures, especially with respect to children. However, the issue of political rights remains a thorny one.

Two key issues are on the table: first, granting full citizenship (and thus automatically all rights including political rights) and second, granting some political rights to non-citizen residents as a transitory measure until the first objective is inevitably achieved over time. In this respect, the advantages of European Union citizenship, such as the right to vote in local and European Parliament elections, seems to be an appealing option for European and national institutions to discuss.

Although the real content of the political aspects of EU citizenship is still inextricably linked to citizenship of a Member State, the questions we discuss here could stimulate supranational and post-sovereign reflections about citizenship, at least with regard to immigrants who are longstanding residents (or even native-born descendants of such residents) of these countries, dating back to the 1950s.
1. NATION STATES AND ETHNO-LINGUISTIC MINORITIES IN CENTRAL AND EASTERN EUROPE

To understand the situation in terms of political representation rights for ethno-linguistic minorities in Estonia and Latvia, we must first place it in the historical and political context that has brought about these substantial minority populations in the two countries and explains the existing relations between them and the majority group in each nation.

We will not dwell on technical details here, but will instead bring up the main legal frameworks in play, in an effort to establish the context and account for the need for a challenging yet not impossible balance between national interests and the integration of a very specific, particular minority that represents a burdensome past that is hard to cope with.

These phenomena must in turn be placed in the context of what we can call the painful construction and reconstruction of the nation state in central and eastern Europe. In fact, the ethnic and national heterogeneity of some countries in the region, and the related problems of protecting ethno-linguistic minorities, can be traced back to the multi-ethnic composition of the empires (both tsarist and Soviet) to which these nations belonged before becoming autonomous states, empires whose heavy aftermaths have continued to be felt in recent times. The specific nature of central and eastern Europe thus lies in the fact that the appeal of the nation state model has been challenged by a multi-national reality inherited from an imperial past.

The formation of nation states in this part of Europe is thus relatively recent and has often encountered uncertainties, as demonstrated by persistent conflict, irredentism and a lack of acceptance of borders. After an apparent ‘freezing’ of national questions during the Communist era, the issues of nation state building have returned to centre-stage.

From a constitutional point of view, one of the most original aspects of post-socialist eastern Europe (which in general has imitated Western models) lies precisely in the legal status of the nation, of its peoples, and of the State. These societies are involved in a process of reconstructing a national identity devastated by proletarian internationalism. This helps explain their loyalty to the nation state model. However, the new States assert national unity in an environment of potential conflicts (due to minority groups within and strained relations with bordering countries). So, despite measures to protect ethnic minorities, an ‘individualist’ approach predominates at times, where the reality of minorities is accepted only in terms of the private exercise of civil liberties.

The situation in Baltic countries is even more specific, even if they do fit into the general framework described above. They are the only former Soviet Republics that enjoyed independence between the two world wars and carry traditions of parliamentarism and democracy. These traditions and statehood provided a strong element of national cohesion in the struggle to regain independence from the Soviet Union and are still today an important feature in policies to protect language and national identity. So there is a nationalist tendency in Baltic countries which, due to wounds suffered in the past, prevails throughout central and eastern Europe, as the memories of past injustices are too recent and have never been reconciled.

---

2. ETHNIC COMPOSITION OF BALTIC COUNTRIES, HISTORICALLY AND POST-USSR

Historically, Baltic peoples have found themselves at the crossroads of several dominant empires and have been subjugated by their neighbours. This is especially true for Estonians and Latvians, while the history of the Lithuanian people is somewhat different, with centuries of autonomous government under a Grand Duchy and later a Commonwealth formed with Poland. Following the Treaty of Nystad in 1721 and then the Third Partition of Poland in 1795, the lands of the three Baltic countries fell under the Russian Empire’s control. After the Russian Empire collapsed, the three countries managed with difficulty to gain and maintain independence until 1940, when they were forcibly annexed by the Soviet Union following the Molotov-Ribbentrop Pact.²

Both the Russian Empire and the Soviet Union were multi-national states resulting from distant historical origins and successive campaigns of expansion and assimilation. Their complex ethnic and national composition was further exacerbated by immigration policies pursued throughout history. In particular, Soviet leaders displaced ethnic Russians,³ spreading them across the various Republics of the Union and making them the local ruling class, in order to monopolise power in conjunction with figures from the army. Furthermore, numerous ethnic populations, including Baltic peoples, were victims of deportation, especially during Stalin’s reign.⁴ As a consequence, when the Soviet Union broke up, around 25 million Russians and Russophones found themselves outside of the core Russian Republic, in areas where they were perceived as members of the former dominant group. At the same time, as a result of Soviet immigration policy, in many former Soviet Republics the ratio of the national ethno-linguistic population to Russophones became so imbalanced that in some instances, such as Latvia, it was feared that Russophones would be likely to gain the numerical advantage.

The approach towards Russian and Russophone former Soviet citizens in other former Soviet republics was different. The vast majority of them were immediately granted citizenship in whichever Republic they resided, or in any case were allowed to opt for citizenship within a short period of time⁵ (Lithuania, for example, took this approach⁶). The situation was very different in Estonia and Latvia.

It should be recalled that the three Baltic countries were the first to undertake measures to break away from the Soviet Union; Estonia proclaimed its independence back in November 1988. Having considered their 1940 incorporation into the USSR as forced annexation, even from a legal point of view, these countries stressed the idea of a restoration of the sovereignty they had enjoyed from 1918

---

³ Often other Slavic populations as well, such as Ukrainians and Belorussians, generically labelled ‘Russophones’.
⁵ Citizenship criteria varied based on both geographical origin and permanent residence prior to independence; in many Republics, registration of residence was considered sufficient to automatically obtain citizenship in the new State. In others, the duration of permanent residence was considered the crucial criterion. See P. Van Elsuwege, ‘Russian-speaking minorities in Estonia and Latvia: Problems of integration at the threshold of the European Union’, ECMI Working Paper 20, Flensburg, 2004.
⁶ Although Lithuania had taken the ‘zero option’ even prior to its independence in November 1989, allowing 90% of ex-Soviet permanent residents to become citizens (the requirements were: two years’ residence, a source of income, and a pledge of allegiance to the Constitution and to Lithuanian law), Lithuania’s law on citizenship passed in December 1991 is nevertheless in line with those enacted by Estonia and Latvia (requiring a language test, 10 years’ residence, a source of income, knowledge of the Constitution, and no other citizenship, with some categories of individuals excluded). It should also be mentioned that the Russophone minority has always been much smaller in terms of numbers in Lithuania than it has been in Estonia and Latvia.
to 1940; this continuity as independent states was fostered by international recognition of their status.⁷ Legal continuity with the pre-war statehood (as was clear in Latvia given its revival of its 1922 Constitution) had consequences on these countries’ treatment of citizenship. With the pre-war laws initially restored, the pool of citizens was essentially ‘renewed’, not redetermined. The three Baltic states thus proclaimed themselves the ‘continuers’ of the independent states formed in 1918, rather than the successors of the Soviet Union, as Russia would have wanted. This continuity is shown in the ‘1940 option’ (as described later herein) for acknowledging residence in the country, hence considering 50 years of Soviet occupation as legally null and void. A softer attitude was taken by Lithuania, which chose the ‘zero option’.

Before moving on to analyse the legal aspects of the issue, it is important to keep in mind the ethno-linguistic composition of the two Baltic Republics, and how this composition has changed over time.

### Table 1: Ethnic composition and its change over time

<table>
<thead>
<tr>
<th></th>
<th>Pre-war period</th>
<th>1989</th>
<th>2017 to 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Estonians in Estonia</strong></td>
<td>88.2% (total population 1 136 000)</td>
<td>61.5% (of total 1 576 000)</td>
<td>68.7%⁸ (2017 total population 1 315 635)</td>
</tr>
<tr>
<td><strong>Russophones in Estonia</strong></td>
<td>8.2%</td>
<td>30.3%</td>
<td>6 Russians 25.1% Ukrainians 1.7% Belarusians 0.8%</td>
</tr>
<tr>
<td><strong>Others in Estonia</strong></td>
<td>3.6%</td>
<td>8.2%</td>
<td>3.5%</td>
</tr>
<tr>
<td><strong>Latvians in Latvia</strong></td>
<td>75.5% (of total 1 905 000)</td>
<td>52.0% (of total 2 680 000)</td>
<td>60.2%⁹ (of total 2 109 000 in 2018)</td>
</tr>
<tr>
<td><strong>Russophones in Latvia</strong></td>
<td>10.6%</td>
<td>34.0%</td>
<td>Russians 26.2% Belarusians 3.2% Ukrainians 2.4%</td>
</tr>
<tr>
<td><strong>Others in Latvia</strong></td>
<td>13.9%</td>
<td>14.2%</td>
<td>7.1%</td>
</tr>
</tbody>
</table>

**Sources:** For older figures, see K. Arjakas, The Baltic States: A Reference Book, Estonian Encyclopaedia Publishers; Latvian Encyclopaedia Publishers; Lithuanian Encyclopaedia Publishers, 1991. For recent figures, see the statistics centres and Interior Ministries of the two countries, as cited in footnotes 12 and 13.

Russian-speaking people have always been present in the Baltic region, whereas a previously significant German minority left the country following land expropriations in the 1920s.¹⁰

---

⁷ Many countries including the USA had never recognised the USSR’s annexation of the three Baltic countries and thus recognition of their restored independence was faster; as for the EEC and its Member States, see the Common Declaration on the Baltic States of 28 August 1991.

⁸ [https://www.stat.ee/population](https://www.stat.ee/population). According to the Estonian Interior Ministry’s at [www.siseministeerium.ee/en/activities/citizenship-and-migration](http://www.siseministeerium.ee/en/activities/citizenship-and-migration), as at January 2017 there were 79 438 persons ‘of undetermined citizenship’ in Estonia, compared to 82 561 in 2016. In 2016, 1 746 people were naturalised as citizens, of which 1 450 had been persons ‘of undetermined citizenship’.

⁹ [http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN_Latvija_piec_TTB_VPD.pdf](http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN_Latvija_piec_TTB_VPD.pdf). As stated on the Office of Citizenship and Migration Affairs website, Persons Status Control Division, a department of the Ministry of Internal Affairs, since the naturalisation process began on 1 February 1995, as at 28 February 2018, the office had received 145 822 applications and 145 493 people had been granted citizenship.

¹⁰ In Latvia, ethnic Latvians accounted for 68% of the population in 1897, while 15% was composed of Slavic peoples (mainly Russians, but with some Belarusians, Poles and Ukrainians), followed by Germans (7.4%) and Jews (6.4%). In the 1920 census, Latvians had grown to 73%, but other national groups still made up about a quarter of the population even after 1918. A. Leiven, The Baltic Revolution: Estonia, Latvia, Lithuania. Country Studies, Washington, 1996.
Given the ratio of the national population to minorities in Estonia and Latvia in the wake of their independence from the Soviet Union, it comes as no surprise that they undertook exclusion measures (perceived as discriminatory at international level) with respect to immigrants from the Soviet era (1940-1990). The purpose of these measures was not only to punish the former ruling class, but more importantly – at least initially – to preserve the national identity, partly by ensuring a numerical advantage. This is especially true for Latvia, which even today is the country with the strictest policies and legislation concerning the naturalisation and integration of Russophone minorities. Further strong identity protection measures include legislation on language, education and the media.\(^{11}\)

As a result of these policies,\(^{12}\) most Russophone minority individuals living in these two former Soviet Republics lost both their citizenship (as Soviets) and their privileged economic and social status. Based on the above, it is clear that the specific problems in these countries are not related to the denial of the rights and protection of minorities per se (such measures were absolutely necessary in the transition from the socialist model to the constitutional-democratic model and for the convergence with European institutions and the related democratic requirements); indeed, in Estonia and Latvia minorities’ rights are protected in accordance with international standards.\(^{13}\) Rather, certain exclusionary measures (first and foremost regarding political rights) have arisen indirectly, through the denial of rights connected to citizenship status.

As an immediate result of these policies, both countries have a very high percentage of ex-Soviet citizens within the resident population. The socio-political and legislative situation has however changed over time. In addition, the pressures of the democratic conditions for EU membership have softened the rigid attitude that had been adopted immediately after the dissolution of the Soviet Union. There are also significant differences here between Estonia and Latvia.

The term used to refer to former Soviet citizens who were not Latvian or Estonian citizens by birth and who over the years were neither naturalised nor acquired citizenship of another country, is ‘non-citizens’ (nepilsoni) in Latvia, while in Estonia it is ‘persons of undetermined citizenship’ (määratlematu kodakondsusega isikud). Whereas Latvia adopted a specific law for such individuals in 1995 (designed to be a transitional law yet still in force today), in Estonia the legislation of reference is simply the Aliens Act of 8 July 1993 and subsequent amendments.

The question of voting rights, and political representation in general, is an extremely delicate one that from time to time moves into the European spotlight. Even though they started from similar circumstances, Estonia and Latvia have opted for somewhat different policies in granting voting rights.\(^{14}\)

\(^{11}\) For a reconstruction of the problems caused by the law on digital media, see the reports by the Latvian Human Rights Committee at\[http://www.lhrc.lv\].

\(^{12}\) These were evident from the outset. In Estonia, Russophones could not vote on adopting the new Constitution despite a substantial portion of them having actively supported the independence of their respective Republics. In the Latvian referendum on independence, on 3 March 1991, the support of non-Latvians was actually a determining factor in the outcome.

\(^{13}\) See periodic reports presented in the country-specific monitoring of the implementation of the Framework Convention for the Protection of National Minorities at\[https://www.coe.int/en/web/minorities/country-specific-monitoring\].

\(^{14}\) Latvia’s electoral legislation, including for European elections, can be found at\[https://www.cvklv/pub/public/28124.html\], while Estonia’s can be found at\[http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweest.htm\]; see also\[www.legislationline.org\] and the OSCE/ODHIR election observation reports.
3. CONSTITUTIONAL PROVISIONS ON MINORITY RIGHTS AND THE PRINCIPLE OF NON-DISCRIMINATION. THE PREAMBLE TO THE LATVIAN CONSTITUTION

None of the Constitutions of the Baltic countries contain a specific section on protecting minority groups, instead providing only generic non-discrimination principles with a series of requirements, which include the basis of nationality (Estonian Constitution Article 12 and Latvian Constitution Article 91, the latter being more generic). There are also some specific provisions for protecting minorities.

Article 114 of the Latvian Constitution states that people belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity (the section on rights was introduced in 1998, as the 1922 Latvian Constitution, restored in 1991, did not contain one). The Constitution does not indicate a requirement to hold citizenship in order to have minority rights. The Estonian Constitution places even more attention on minority rights, which are more advanced than those of the other new EU Member States because they provide for collective rights in addition to individual rights. However, actual legislative implementation of these constitutional rights has sometimes been rather limited. Article 37 paragraph 5 states that the language of teaching in the educational institutions of minorities shall be chosen by the institution itself. Article 49 states that each individual has the right to preserve his or her ethnic identity. According to Article 50, national minorities have the right to establish self-governing institutions based on the provisions of the cultural autonomy law on national minorities, while Article 51 paragraph 2 stipulates that in localities where at least half of the permanent residents belong to a national minority group, each of these residents has the right to receive replies from national and local public bodies in that minority language. This provision is reinforced under Article 52 paragraph 2, according to which in localities where the first language of the majority of residents is not Estonian, the local authorities may, in accordance with the law, use the language spoken by the majority of the permanent residents as their internal working language. Finally, according to Article 104, the passage of laws on the cultural autonomy of national minorities requires an absolute majority vote.

Another matter of particular interest is the long preamble to the Latvian Constitution introduced in June 2014. Adopted after more than a year of public debate, this preamble reasserts the fundamental principles on which the State is founded, attributing particular importance to the concepts of the Latvian nation and Latvian language. Two years after a failed constitutional referendum to recognise Russian as a second official language, the preamble then reaffirmed Latvian as the sole state language (as already established under Article 4 of the Constitution, now reaffirmed in paragraph 5 of the preamble) at the same time, the preamble ensures respect for national minorities.
4. REPRESENTATION, CITIZENSHIP AND INTEGRATION IN ESTONIA AND LATVIA: CHANGES IN THE LAW OVER TIME

Even if national and international legal systems are slowly evolving, the link between political rights and state citizenship still seems unbreakable at present. European citizenship is established as supplemental to citizenship of a Member State (as per Article 9 of the TEU), although EU residence has managed to gain an importance of its own for local and European Parliament elections, on the back of the Treaty of Maastricht. The system does recognise a certain autonomy in EU citizenship, with all its implications, but the connection to a Member State for political rights seems insurmountable at present, as confirmed by case law at the two European courts in Strasbourg and Luxembourg.

One issue that remains very complex, even if the situation has become less numerically alarming over time, is the coexistence of different residence statuses in the two countries in question, statuses that correspond to a varying scope of rights (and different underlying legislation), and not just political rights. The legislation that is most pertinent here relates to citizenship, foreigners and stateless persons, as well as electoral laws (such as local elections in Estonia). Only in Latvia is there a specific law – adopted in 1995 and amended several times – that addresses former Soviet Union citizens who are not citizens of either Latvia or another country.

For these two countries, there is therefore a distinction between citizens of the country, aliens, stateless persons and permanent resident non-citizens. According to international law, permanent resident non-citizens are also considered stateless, even if in Latvia the 1995 law created a new status for these individuals that is accepted or at least tolerated internationally: the aforementioned status of non-citizens (*neipēsoni*). In Estonia, the category is called ‘persons of undetermined citizenship’, but these are like the permanent resident non-citizens of Latvia and thus benefit from a series of rights based on the laws on aliens. According to the authorities of both countries, the status of permanent resident non-citizen is very close to citizenship status, is not discriminatory, and was established as a temporary, interim phase to enable ex-Soviet residents without citizenship to be naturalised. This creation of an interim status with some attributes of citizenship (such as a passport and diplomatic protection abroad, though with some limitations) would have made sense only if it were indeed transitional, leading to the acquisition of citizenship (any citizenship). However, with accession to the EU and the extension of freedom of movement to non-citizens, the incentive to request naturalisation has waned.

Though we wish to confine our observations here to representation and citizenship rights, it is clear that there are many related complex issues that have developed very slowly over time, such as the social integration of the various communities, a lack of acceptance by nationalist movements of the multicultural nature of their communities, nationalist rhetoric on both sides, differences between the

15 Although branded as derivative, EU citizenship, besides supplying the holders with supranational rights beyond their states of origin, also alters the essence of the Member State nationalities it is derived from, including the rules of loss and acquisition of such nationalities. The acquisition and the loss of nationality are not among the issues which the Union is empowered to regulate’, to quote D. Kochenov in ‘Citizenship’s Role in the European Federation’, in R. Schütze (eds), Globalisation and Governance: International Problems, European Solutions, Cambridge University Press, 2018. See also D. Kochenov, ‘Pre-Accession, Naturalization, and ”Due Regard to Community Law”: The European Union’s ”Steering” of Citizenship Policies in Candidate Countries during the Fifth Enlargement’, in Romanian Journal of Political Science, Vol. 4, n. 2, 2004. For the Court of Justice’s dismissal of jurisdiction, see its 2010 decision in Case C-135/08, Janko Rottmann, EU:C:2010:104, [2010] ECR I-1449, paragraph 17.

16 It is obviously different for freedom of movement rights within the EU, which are recognised even for non-citizens.


economic conditions of minority groups and those of the national majority group, generational issues, as well as language, historical reconciliation and memory.

In any case, even an examination of legislation on citizenship alone cannot use legislation elsewhere in Europe as an abstract benchmark, because the situations of non-citizens in these two countries are definitely unique. Those who have attempted to make such a comparison, which is difficult for historical reasons, with citizenship laws in other countries, have noted that while citizenship laws in Western countries are essentially ‘prospective’ in nature, that is, written to deal with future immigration, such laws in the former Soviet Baltic countries are ‘retrospective’, aiming to define the status of people already in the country, perhaps for decades.

Latvia

Upon gaining independence from the Soviet Union, Latvia took the so-called ‘1940 option’. Initially, the citizenship laws of 1919 were reinstated. Subsequently, the Supreme Council of the Republic of Latvia adopted a resolution, on 15 October 1991, ‘On the Renewal of the Rights of Citizens of the Republic of Latvia and the Fundamental Provisions for Naturalisation’ and another on 28 October 1992 ‘On the Conditions for the Recognition of the Rights of Citizens of the Republic of Latvia Regarding Persons who were Resident within the Borders of Latvia before 1 August 1914 and their Descendants’. Only those who had Latvian nationality prior to 17 June 1940 and their descendants, if residents of Latvia before 15 October 1991 and registered by 1 July 1992, were to be automatically recognised as Latvian citizens when the new law took effect. The resolution stipulated similar conditions for those who had been Latvian residents prior to 17 June 1940 but did not have Latvian nationality. For those not belonging to either of the two categories described above, a complex naturalisation system was put in place, requiring residency in Latvia for at least 16 years, knowledge of the Latvian language and Constitution, and an oath of loyalty to the Republic. Citizenship was denied to former Soviet security force personnel and members of the Soviet Ministry of Internal Affairs, as well as to Soviet Communist Party and Komsomol members who had been sent to Latvia, with the exception of those who were originally from Latvia. Residents who did not automatically become Latvian citizens either emigrated, became aliens (if they acquired citizenship of Russia or another country) or became stateless.

With a few amendments, this procedure was also included in the new citizenship law of 22 June 1994, adopted by the parliament elected in June 1993 by citizens of Latvian nationality only. For naturalisation, however, this law contained not only the language and residence requirements, but also the controversial system of quotas and age brackets, whereby from 1995 to 2000 only persons

20 R.M. Kalvaitis, cit., 262.
21 The law was very inclusive. It allowed for the acquisition of Latvian citizenship, regardless of national or religious background, by whoever had been resident in the new State before 1 August 1914 and had not acquired citizenship of another country. Within a few years, nearly all residents managed to gain citizenship, including German and Jewish minorities, who constituted the economic elite at the time. Integration in the 1920s was fostered by pluralistic party politics, and thus by a democratic dialectic without nationalist positions. Several laws that benefited minorities were adopted, in a model that was innovative for the time. Things deteriorated with the coup d’é tat in 1934; the citizenship law was amended in 1927 and then again in 1938. Under the first Soviet occupation, over 30 000 Soviet soldiers arrived in the country by the end of 1939. Then under Nazi occupation, the Jewish and Roma communities disappeared, followed by the Germans, who either fled or were interned by the Soviets. The deepest demographic transformation occurred in the 1950s. Between 1951 and 1989, over 400 000 Soviets came to live in Latvia.
22 That is, automatic citizenship only for those who were Latvian citizens as at 17 June 1940 and their descendants, as well as for orphans of unknown parents or without living parents.
23 Naturalisation required five years’ residence after May 1990, basic knowledge of the language, Constitution and history of Latvia, a loyalty oath, a source of income, and renunciation of any other citizenship (except for members of the Latvian diaspora). There were exceptions, with no citizenship granted to those who disseminated fascist, Nazi, Communist or other totalitarian ideas, former USSR military personnel, KGB employees or agents, etc.
24 Only a certain number of applications could be submitted per year (about 2 000), with preference being given to younger people. The strictest measures were however removed from the initial project, which President Ulmanis refused to sign.
1376x788

aged 16 to 25 could apply for citizenship, while others would have to wait until after 2001-2003.²⁵

Russophone residents protested, appealing to international institutions. Pressured by the Council of
Europe (which made Latvia’s membership to it contingent upon ending the quota system), the Latvian
Parliament amended the law in June 1998, eliminating the age-window system and immediately
granting all non-citizens aged 16 or over the right to apply for citizenship provided they pass a
language and history test. In addition, the children of non-citizen residents born after 21 August 1991
(the date of independence) were immediately eligible for citizenship if requested by their parents.
Pressured by a group of members of parliament, this law was upheld through a referendum on 3
October 1998.

The quota system was thus replaced by a complex mechanism of periodic testing of applicants,
including a scrupulous test of their knowledge of Latvian language and culture, along with a loyalty
oath and proof of sufficient means of subsistence. Subsequent amendments, again adopted following
international pressure, simplified naturalisation procedures. In 1995, the naturalisation procedure had
already been simplified for those who had completed studies in Latvian, in the form of an exemption
from the language test. Then in 1998, as mentioned, the quota system was conclusively discarded, and
the procedures were simplified further by introducing the traditional principle of *jus sanguinis*,
connected with *jus soli* as had been urged since 1993 by the High Commissioner on National Minorities
(HCNM) of the Organisation for Security and Cooperation in Europe (OSCE), all permanent resident
children born in Latvia after 21 August 1991 to stateless or non-citizen residents were granted
citizenship rights in their country of birth under certain conditions (they must apply when aged 16 to
18 and provide proof of knowledge of the language, whether through a simplified test or by
documenting their studies). Passing the language test was also facilitated as the general exam contents
were made available to candidates in advance, the number of questions was reduced, and testing
procedures were simplified for candidates over 65.

The language requirement normally constituted the greatest obstacle for those hoping for
naturalisation, especially considering that as of 1991, only 21.1% of resident Russophones knew
Latvian. Additionally, the language policy pursued in Latvia was initially very strict: citizenship was not
a sufficient condition for enjoying political rights. In the first few years following its independence, the
electoral commissions formalised the exclusion from candidate lists of any citizens they considered to
be lacking sufficient knowledge of Latvian, leading to voting rights violations that even reached the
European Court of Human Rights in Strasbourg.²⁶

The law on citizenship was amended once more on 9 May 2013. These amendments seem to retract
some of the liberal tendencies in previous amendments, and appear to respond to two basic
concerns²⁷, namely Latvian society’s fear that Russophones could still threaten the country’s
independence, and the risk of population decline due to recent emigration.

²⁵ For details see R.M. Kalvaitis, cit., pp. 256-257.
²⁶ Despite this measure having been censured by the ECHR (as shown in Podkolzina v. Latvia, 9 July 2002), there
have been cases of municipal council seats being stripped away for insufficient knowledge of Latvian, even in
predominantly Russophone municipalities (as this was provided for under government regulations). For violation of
Russophones’ right to a pension, see the ECHR judgment in the case of Andrejeva v. Latvia on 18 February 2009
and the Savickis and Others v. Latvia case, on which the Court has yet to reach a judgment.
²⁷ As per L. Panzeri, cit., according to whom the amendments were dictated by both a need to definitively integrate
Russophones and a need to promote the element of ethnicity as a condition for acquiring citizenship.
In fact, the amendments not only facilitate naturalisation, especially of children\(^{28}\) (although procedures were made more complicated for adults\(^{29}\)), but also facilitated the acquisition of citizenship by Latvians who formed the country’s historical diaspora, permitting dual citizenship.\(^{30}\) On the other hand, the possibility of dual citizenship for naturalised residents was expressly rejected, thus preventing naturalised Latvian Russophones from maintaining or regaining Russian citizenship. The same preclusion applies to Russophones who have been Latvian citizens from birth (as descendants of pre-1940 citizens), and to descendants of naturalised persons and to ethnic Latvians residing in countries not included on the official list, which does not contain any former Soviet republic.\(^{31}\)

One of the things for which the new version of the law has been criticised is that citizenship is not automatically granted to the children of non-citizens (unlike under Estonia’s 2015 law), as had been recommended by numerous major international institutions (the UN High Commissioner for Refugees, the OSCE HCNM, the Commissioner for Human Rights of the Council of Europe, and the European Commission Against Racism and Intolerance). Instead, citizenship for these children can be acquired only upon request by a parent.\(^{32}\)

**The 1995 law and subsequent amendments and the Constitutional Court’s disapproval**

The peculiar situation of ex-Soviet residents without citizenship led to the establishment of a new category of individual that had never before been seen in international law. The category of so-called ‘non-citizens’ is an atypical status distinct from both alien and stateless, that entails many of the rights granted to citizens, with the exception of political rights. To deal with the wave of stateless individuals suddenly created (as around 740 000 people had arrived in the country during the Soviet era), in April 1995 Latvia adopted a law ‘On the status of those former USSR citizens who do not have citizenship of Latvia or of any other state’; this law was later amended and was the subject of a Constitutional Court ruling on 7 March 2005.\(^{33}\)

---

\(^{28}\) Article 2(1)(2): the right to acquire citizenship regardless of place of birth for children with at least one Latvian citizen parent; Article 3(1): citizenship for children born in Latvia after 21 August 1991 to stateless or non-citizen permanent residents. The application may be presented by only one parent of the applicant if he/she is between 15 and 18 years old and demonstrates knowledge of the language. It also simplified the procedure by exempting those with certain academic qualifications from the language test (Article 21). For a summary of the new aspects, see: *Third Report submitted by Latvia pursuant to Article 25, para. 2 of the Framework Convention for the Protection of National Minorities*, [http://www.refworld.org/pdfid/58737a3d4.pdf](http://www.refworld.org/pdfid/58737a3d4.pdf).

\(^{29}\) Legal protection is limited if the application is rejected, and acceptance is denied to those who ‘in their behaviour or actions have caused danger to the security of the State and society, to the constitutional order, to independence and to the territorial integrity of the State’ (Article 11 (1)(1)).

\(^{30}\) Without losing citizenship of the country in which they live, Latvian residents abroad who demonstrate that an ancestor of theirs lived in Latvia between 1881 and 1940 and demonstrates knowledge of the Latvian language, may obtain citizenship as from 2013; individuals exiled or deported during the German and Soviet occupations, and their descendants, have the same right; even more recent emigrants can claim dual citizenship, maintaining Latvian citizenship even if they have become citizens of any of a list of EU, NATO or EFTA countries, along with Brazil, Australia, New Zealand or any other country with which Latvia has signed an international treaty.

\(^{31}\) The Interior Ministry’s website (provided below) distinguishes between the following means of acquiring citizenship: Child born abroad if one or both parents are Latvian citizens at the time the birth of the child, Naturalisation, Latvian exiles and their descendants, Latvians and Livs, Descendants of Latvian Citizens, Restoration of citizenship: [http://www.pmlp.gov.lv/en/home/services/citizenship/registration-if-citizenship/](http://www.pmlp.gov.lv/en/home/services/citizenship/registration-if-citizenship/)

\(^{32}\) Although the majority of those classified as non-citizens are adults, not children, children inherit non-citizen status at birth and the parents often do not act to apply for citizenship on their behalf. See FIDH Latvian Human Rights Committee, Experience of Latvia and proposals based on it: a submission for the report on racial and ethnic based discrimination through nationality and citizenship exclusion, 16 February 2017, [www.lhrc.lv](http://www.lhrc.lv). The same report calls for the simplification of the language test for the elderly (from level B1 to A2) and more transparency in dual citizenship criteria, to clarify why it is allowed for countries such as Australia, and not for Belarus and Russia, which border with Latvia. The report also requests legal protection rights to appeal against the rejection of citizenship applications, as the 2013 amendment seems to give the executive branch discretion on this matter.

\(^{33}\) Verification of compliance of some articles of the law on the status of former USSR citizens who are neither citizens of Latvia nor another State, with Article 98 of the Constitution (freedom of movement and regulations on extradition), with Articles 2 and 3 of Protocol IV of the European Convention on Human Rights, Article 12 of the International Covenant on Civil and Political Rights, and with Article 8(1) of the Convention on the Reduction of Statelessness. The petitioners (members of the Saeima, the Latvian Parliament), as stated in the judgment, had
This new category of non-citizen residents (as long as they had arrived in Latvia prior to 1 July 1992) and their descendants were granted some rights, including a special passport (right to leave and re-enter the country), diplomatic and consular protection abroad, and the right to public education, healthcare and social security (with some exceptions). The law also grants this category of individuals the right ‘to preserve his or her native language and culture within the ethno-cultural autonomy and to preserve his or her traditions’, provided that ‘such traditions are not in conflict with the laws of Latvia’.

The status of ‘non-citizen’ however does not include either political rights, the right to civil service employment or even to practice certain professions in the private sector; it also places restrictions on property purchasing rights and a series of restrictions on freedom of movement (a work permit and visa are required to move within Latvia).

As noted by the Court in the judgment cited above, this law was designed as a bridge from lacking citizenship to acquiring it, but ended up creating a new legal status with uncertain, changing borders and an indeterminate duration. The Court censured the measure stipulating the automatic forfeiture of ‘non-citizen’ status for those who had obtained permanent residence of another former Soviet state (as it violates Article 98 of the Constitution, which grants all Latvian passport-holders the right to protection by the state that issued it, and the right to return freely to Latvia).

It should also be kept in mind that non-citizen status and the rights connected to it are protected by the Latvian courts, as it is considered different from statelessness; ‘non-citizens’ benefit from broader social and economic guarantees than those envisaged under the 1954 UN Convention relating to the Status of Stateless Persons.

**Estonia**

At the time it gained independence, Estonia also chose the ‘1940 option’. Having provisionally restored the country’s 1938 citizenship law in November 1991 with a few amendments (following the doctrine of legal continuity), the Supreme Council then adopted a citizenship law on 26 February 1992 whereby citizenship was automatically granted to all those who had been Estonian citizens prior to 16 June 1940 and to their descendants, regardless of ethnic origin. For all others, the following conditions were set out for naturalisation: at least two years of residence in Estonia from 30 March 1990 onwards, passing an Estonian language test, and taking a loyalty oath to the State and to the Constitution.

In conjunction with this, the law on aliens passed on 8 July 1993, which applies to both aliens and stateless persons residing in Estonia, should be taken into account. This law provided for residence

---

underlined that ‘the objective of the Non-Citizen Law is first of all to disunite non-citizens of Latvia from foreign citizens (aliens), secondly to determine the specific status of these persons in Latvia, thirdly, to issue to non-citizens a document, which attests their personality, the non-citizen passport’. The petitioners claimed that 10 years after the law was introduced, it was necessary to revise the status of non-citizens, who should no longer be considered potential citizens of Russia or other CIS countries by virtue of their non-residence in those countries, but increasingly as citizens; by contrast, the amendment to the law of 20 May 2004 actually worsened their position, having stipulated that non-citizens could be stripped of their non-citizen status, not only if they were registered as permanent residents of a CIS country, but even if they were to obtain permanent residence in a foreign country in which they would not be guaranteed citizenship.

34 To buy property, non-citizens must obtain a special permit from the local municipality, and are able to access fewer privatised public-owned companies than citizens. Non-citizens also cannot buy certain types of property, such as land adjacent to border areas, or agricultural and forestry lands.

35 Based on this law, citizenship was recognised by birth to those recognised as Estonian citizens or by naturalisation. Naturalisation was granted to those fulfilling the following conditions: at least 18 years old, residing in Estonia for the past two years (after 30 March 1990) and one year after the naturalisation application (up to 1 April 1992, no applications could be filed), and knowledge of the Estonian language. The residence and language requirements could be waived for stateless individuals who had been living in Estonia for 10 years prior to the application date, as well as for the elderly and the disabled.
An exception was made for certain categories of individuals such as foreign military personnel and former KGB agents or employees: obviously, these excluded individuals could never have applied for citizenship.

Over time, naturalisation requirements became more permissive, especially for children. For example, under pressure by the OSCE HCNM, the citizenship law was amended on 8 December 1998 to state that all those born in Estonia after February 1992 to non-citizen parents could acquire citizenship via naturalisation. Further amendments were then made, aiming to simplify naturalisation procedures and to establish exemptions to the language test for certain categories of individuals (such as the disabled). An amendment adopted on 21 January 2015, which took effect on 1 January 2016, enables children under 15 born in Estonia before 1 January 2016 to be automatically naturalised as citizens if: 1) both parents (or the only parent) are not recognised as citizens of any State based on legislation in force (including those who were USSR citizens before 20 August 1991 and who are not legitimately recognised as citizens by any other State), and have legitimately resided in Estonia for at least five years (not necessarily consecutively); and 2) the child is a permanent resident of Estonia. Children under 15 born in Estonia were retroactively granted citizenship. This amendment also changes the language testing format, simplifies the procedure further for the disabled, allows for a small reimbursement for expenses incurred in preparing for the test, and abolishes the written exam for candidates over 65. It also contains provisions allowing dual citizenship in some cases for children, who are however required to choose one country of citizenship within three years of reaching adulthood.

**Estonian law of 1993 on local elections**

Political representation of permanent resident non-citizens is relatively better in Estonia than in Latvia. Indeed, Estonia’s law on local elections grants all permanent residents (in accordance with the 1992 Constitution) the right to vote (but not the right to run for public office) in municipal council elections.

Despite this right, which enabled Russophones to make their voice heard in municipalities where they are present in large numbers, the authorities’ openness towards them has resulted in their entreaties being supported mainly by general, moderate political parties, and thus no major ethnic group-based parties have emerged.

Granting permanent residents the right to vote in local elections represented a major victory for the Russophone minority considering that non-citizen Russophones could not vote in either the constitutional referendum on 28 June 1992 or the first post-independence elections held on 20 September 1992. In fact, the following statement was included in the Constitution (Article 156, paragraph 2): ‘In elections to local authority councils, the right to vote is held, pursuant to conditions prescribed by law, by persons who reside permanently in the territory of the local authority and have attained eighteen years of age’. As for the debate on the adoption of implementing legislation, a proposal was initially put forward to also grant the right to stand for public office, but it was dismissed. The law on local elections nonetheless guarantees voting rights for all non-citizens and aliens that have been permanent residents for at least five years in the municipality in which they wish to vote.

The 1993 local elections law was replaced in 2002 by a new law, which has since been amended several times but is currently in force. The 2002 law – which was adopted in order to allow for the right to vote and to stand for public office in local elections for all European citizens residing in Estonia, as required for accession to the EU – did not change its predecessor’s provisions regarding residents who are not

36 An exception was made for certain categories of individuals such as foreign military personnel and former KGB agents or employees: obviously, these excluded individuals could never have applied for citizenship.


38 Approved by a Constituent Assembly composed of the Supreme Council of Estonia, elected in 1990 by the entire resident population prior to citizenship exclusion policies, and the Estonian Committee, elected by Estonian citizens only according to pre-war rules. Seven of the 60 Assembly members were Russophones.
citizens of another state. However, during parliamentary debates on the bill, the six members representing the moderate Russophone party raised the question of unequal treatment of non-citizens, many of whom are long-term residents or were even born in Estonia, compared to any newly arrived EU citizens. Amendments passed in 2006 eliminated the five-year residence requirement and added (in Article 5.1) a definition of the term ‘alien’ as a ‘person who is neither a citizen of the Republic of Estonia nor of a European Union Member State’.

Voting rights in local elections for Russophones in Estonia are now an established practice and universally accepted.

**Similarities and differences between Estonia and Latvia**

To begin with, it should be noted that the concentration of Russophone minorities is different in the two countries: they are more concentrated geographically in Estonia and more widespread across the country in Latvia. There are also differences in the relative influence of political parties representing minorities and in the attitudes of elites toward minorities over time, with Estonia having taken a more inclusive approach.

For both countries, discrimination has arisen as a problem from an international law standpoint. As mentioned earlier, the doctrine of legal continuity and the principle of restoration to the original condition of prior sovereignty have led to a disregard for the era of Soviet occupation. However, it has also been acknowledged that circumstances which lasted 50 years and created bonds between the resident population and the former republic, cannot be equated to a wartime occupation, which by nature is provisional. Though the principle of international law ex injuria jus non oritur (‘law cannot arise from injustice’) may be true, it is challenged by another principle, ex factis jus oritur (‘the law arises from facts’). Based on the latter, in fact, Lithuania restored its pre-war constitution but then soon replaced it with a provisional constitution. Furthermore, with its accession to the EU in 2004 and the granting of voting rights in local and European elections for permanent resident non-citizens, attitudes of exclusion and discrimination towards resident non-citizens have become accentuated, especially in Latvia, even if specific agreements have granted some rights inherent to European citizenship to resident non-citizens, such as free movement within the Schengen area.

Critical reports by international organisations such as Helsinki Watch have referred not so much to the duration of the period of residence required, but to the point in time at which residence is considered to begin. As for the linguistic requirements for citizenship, they are in general not much different from those in place in other countries, but the difficulty of Baltic languages and the age of many resident non-citizens are factors that, at least initially, make the language test seem an insurmountable obstacle. Authorities have also never ensured free or efficient language services to support adult residents in meeting the need to learn the local language.

In Estonia, while local voting rights were granted back in 1992, the national parliament’s electoral law of 1994 exacerbated the conditions for running for public office by requiring fluency in the Estonian language. In 2002, a new electoral law was adopted, which in its current version (as amended in 2017) requires good knowledge of Estonian only for civil servants involved in organising the electoral process (Article 13). This provision is also included in the law on European Parliament elections, in the law on local elections. The 1994 law on political parties and amendments thereof even stipulates that only citizens of Estonia or another EU country may become members of political parties. In Latvia, meanwhile, the 2006 law on political parties expressly states that the founders of any political party must be Latvian citizens, but that non-citizens may be members.

---

39 R.M. Kalvaitis, cit., 242.
Latvian society seems more divided on the subject of minorities (as evidenced by the failed referendum on language), but the Russophone minority is more organised and assertive compared to that of Estonia, and has also been present in the country to some extent since before World War II.

Finally, the two major differences between Estonia and Latvia are that in Estonia, non-citizens can vote in local elections and, as of 1 January 2016, native-born children of non-citizens automatically acquire citizenship (a law applied retroactively within certain limits).
5. DEMOCRATIC CONDITIONS SET BY THE EU AND THE COUNCIL OF EUROPE

The European institutions took a particularly active approach to the status of non-citizens in Estonia and Latvia up to 2004, and the pressure exerted proved effective. Over the years, there have been several different claims by Russophone residents of these two countries that reached the European Court of Human Rights in Strasbourg, which however declined jurisdiction in this matter, given that there are reservations related to national jurisdiction in terms of citizenship.

With regard to the democratic conditions for EU membership, during the process of monitoring candidate countries, the European Commission underlined back in 1997 that while the protection of minorities in Lithuania was satisfactory, Estonia and Latvia both needed to take actions to encourage the naturalisation and integration of Russophone residents. In 2000, the Commission acknowledged the progress made by the two countries and stated that the legislation on language had been aligned with international standards.

With regard to the Council of Europe, Latvia had applied for membership on 13 September 1991 but it was asserted that the lack of a law on citizenship taking into account the condition of non-citizens was an obstacle to gaining membership. Similar observations were made by the OSCE HCNM, which from 1993 onwards pressed for the inclusion of non-citizens.

Under international law, there are also conventions in force – some of which are binding for the Baltic countries – that aim to reduce statelessness.

On several occasions, the European institutions have recognised that the issue of granting citizenship is an internal matter to be determined by the Member States; the Union’s instruments are limited. Several petitions to the European Parliament have been submitted, but the European Commission has always replied that citizenship is not a matter that falls within its competence and that conditions for the granting of nationality are the competence of the Member States. European citizenship has affected the condition of non-citizens, in some ways favourably (since the EU considers permanent resident non-citizens of Estonia and Latvia as European citizens for the purpose of freedom of movement) but in other ways unfavourably, giving rise to contradictions (all resident who are citizens of other EU countries, even those who arrived only recently, have the right to vote in local and European elections, whereas many permanent residents who have always or almost always lived in the country do not).

The ECHR has always indirectly validated Latvia’s choice to deny citizenship rights to residents who immigrated during the Soviet era and has ruled out any violation of international conventions by Latvia, citing the state’s exclusive control over the means of acquiring citizenship as well as the fact that the European Convention on Human Rights does not consider citizenship to be a human right.

However, the ECHR’s intervention did help bring about the amendment to the 2002 electoral law in terms of language skills in the official language in order to run for public office. The Court’s decision in Podkolzina v. Latvia on 9 April 2002 affirmed that it was illegitimate to exclude from running for public office a Latvian citizen who, despite having supplied the language skills certificates required by law, was removed from the electoral lists when the Language Inspectorate assessed the citizen’s language.

---

41 For example, 1000/04, 0021/05, 0810/05, 1746/08 and 0747/16 petitions.
42 According to F. Palermo and J. Woelk, Diritto costituzionale comparato dei gruppi e delle minoranze, p. 130, this has drastically reduced the number of naturalisation applications.
skills to be insufficient. However, it appears that this ruling has not been adequately respected at national level.

Specifically regarding the protection of ethno-linguistic minorities, the major text at European level is the Framework Convention for the Protection of National Minorities of the Council of Europe, approved on 10 November 1994 and in force since 1 February 1998 after having achieved the required number of ratifications. Stimulated by this text, post-socialist countries adopted a series of laws to protect minorities.
CONCLUSIONS

The issues we have tackled here are very complex, involve numerous actors, and will be difficult to resolve. From a constitutional perspective, the search for a solution entails balancing diverse interests and values warranting protection. The national authorities’ point of view is clear, especially in Latvia, which refuses to grant local election voting rights to non-citizens (the discrimination has been more striking since 2004 given the comparison with residents who are citizens of other EU countries), claiming that this route would not encourage real integration, which can only happen through applying for and acquiring citizenship.

The question is not limited to the interests of small minority groups whose numbers are thinning out, because it also involves major geopolitical aspects with repercussions that go beyond the case at hand. History and geography cannot be changed, of course, and the ethno-linguistic minorities involved here are specific minorities associated with a former ruling class.

As several authors have noted, the problem for these two countries, and especially Latvia for demographic reasons, is that legislation was employed for the purpose of state-building when these nations gained independence. Over time, however, other needs have arisen, linked to emigration, which could lead to a further decline in the Latvian population. Other change factors should also be taken into account: even though the new generations of Russophones are for the most part entirely emancipated from the Soviet past, there are still social and identity-based wounds that have yet to heal. Perhaps, however, with some further international mediation, mutual distrust can be overcome.

Even though citizenship legislation in both countries has become more permissive as compared to the approach taken in the early years following the regaining of independence, naturalisation application numbers are still very low among permanent residents. There are several reasons for this. First, it may not be worthwhile to apply for citizenship considering that non-citizenship status is nearly equivalent (granting a passport and free movement in the Schengen area and to and from Russia) but avoids the military service requirement. Secondly, many Russophones have emigrated to other European countries or to Russia, while many of those who remain are either too old to learn the language or do not wish to declare that the Baltic countries were forcibly annexed by the Soviet Union, or have other reasons for opting out of citizenship.

The extent of rights enjoyed by non-citizens means that the difference between them and citizens is small (yet significant, as they are deprived of political rights, through which national policies can be influenced), but the requests that continue to be put forward are on a different level: non-citizens want the right to vote and to run in European Parliament elections (both in Estonia and Latvia since 2004), the right to run in local elections (Estonia), and the right to vote and run in local elections (Latvia).

However, it should be clarified that the question of granting representation rights to the European Parliament for non-citizen residents of Member States remains unsolved in European law. Reflection on this point would be extremely useful and should be conducted on the back of specific studies on European citizenship, its characteristics and its limitations. Some interesting points have been raised by Kochenov and Dimitrovs, who as mentioned earlier recommend recognising non-citizen Latvians as ‘nationals for the purposes of the Community law’, although it is not clear why this would be valid for Latvia but not for Estonia, and what specific European citizenship rights could be granted to such individuals given that as far as political rights are concerned, the authors themselves admit that it would be difficult to extend them to ‘nationals for the purposes of the Community law’, while other rights (e.g. freedom of movement) are already at least in part granted to non-citizen residents.

44 See L. Panzeri, L’accesso alla cittadinanza degli appartenenti a minoranze: il caso della Lettonia, tra istanze nazionalistiche e condizionalità europea, cit.
Even if, at the outset of the democratic reconstruction process, certain exclusion measures seemed reasonable and the authorities’ discretion as to who to exclude seemed incontrovertible, over time the national parliaments should update the law to achieve balance between the various values at play, given that these countries are now firmly established as Euro-Atlantic democracies.

This issue has been dealt with by the ECHR on several occasions, especially with respect to Latvia. The most notable case is Ždanoka v. Latvia (judgment of 16 March 2006), which is the most frequently cited in the literature as well as by national courts as evidence of the opportunities and limits of lustration laws in the former communist world. The Court however claimed that the right to free elections (Article 3 of Protocol 1) had not been violated and reasserted the legitimacy of a ‘democracy able to defend itself’, but introduced a temporal aspect that does not entirely match the German concept of wehrhafte Demokratie. Pluralism and democracy are founded on a compromise that often requires individuals to accept limitations to some freedoms in order to ensure greater stability of the country (as previously stated in the decision in the Refah Partisi and others v. Turkey case of 31 July 2001). So, the challenge lies in reconciling the imperative of defending a democratic society with the safeguarding of individual rights (United Communist Party of Turkey and others v. Turkey, judgment of 30 January 1998). Every time the State wishes to exercise the principle of a ‘democracy suited to defend itself’ to justify interference with individual rights, the scope and consequences of the intended measures should be carefully evaluated, so as to aim for a balanced expected outcome.

In its interpretation of Article 3 of Protocol 1, the ECHR underlined the need to evaluate electoral legislation within the context of the country’s political development, although this does not imply that unacceptable features of one system could be justifiable in another system. However, it is important to determine whether a restriction on rights is proportionate, and this must be done by taking into account the specific historical and political context, along with the broad margin of approval that the State has in this respect.

Finally, the ECHR singled out a series of principles with which any lustration laws should comply. The temporal aspect is one such principle that can be applied to restrictions to acquiring citizenship: the factor of time is crucial in an overall assessment of the proportionality of exclusion measures.
Upon request by the PETI Committee, the Policy Department for Citizens’ Rights and Constitutional Affairs commissioned this in-depth analysis on Democratic Transition and Linguistic Minorities in Estonia and Latvia. The writer claims that in order to understand the situation of political representation rights of ethnic and linguistic minorities in Estonia and Latvia it is essential to provide a historical-political framework that contextualizes the presence of such substantial minorities in the two countries and justifies the type of relationship existing with the majority of nation holder.

She also suggests that from one side, full integration is the goal that needs to be pursued, while at the same time it’s important to ensure the cultural and national values of Latvians and Estonians.

DISCLAIMER
This document is addressed to the Members and staff of the European Parliament to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and should not be taken to represent an official position of the European Parliament.