

Protection of stateless persons in Latvia

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Distinguished Members of the Committee, Ladies and Gentlemen, colleagues,

First of all, I would like to thank the Committee for organizing this event and allowing representatives of different entities to exchange views on statelessness, which, in my opinion, is a very complex subject. I hope that today's event will provide a good ground for further discussion. The topic chosen for my presentation is protection of stateless persons, Latvian experience. In my presentation, I will provide a brief historical and political background pertaining to the protection of stateless persons in Latvia, as well as will outline the key principles, which the protection of stateless persons and other groups of persons is based upon.

First of all, I would like to mention that Latvia ratified the 1954 Convention on the Status of Stateless Persons in 1999, while the 1961 Convention on the Reduction of Statelessness – in 1990.

Article 1 para. 1 of the 1954 Convention defines the term “Stateless Person”, which is “a person who is not considered as a national by any State under operation of its law”.

Article 1 para. 2 of the same Convention imposes further limitations on its scope of operation by excluding “persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which attached to the possession of the nationality of that country”.

Latvia's community of residents consists of citizens, non-citizens, foreigners, stateless persons and refugees. Furthermore, as non-nationals, foreigners, stateless persons and refugees may have a temporary or a permanent residence permit in Latvia.

Given the specific topic of our today's discussion, as well as a specific reference in the Program of our seminar to the “large stateless population mainly resulting from the consequences of the dissolution of the Soviet Union”, including that Latvia “hosts such stateless population”, I will proceed with explaining in more detail the status of the two specific groups of population residing in Latvia – stateless persons and the non-citizens. Although both groups have a common specific feature pertaining to our today's discussion, which is lack of citizenship of any state, non-citizens are not considered to be stateless within the meaning of the 1954 Convention.

I will start with describing the legal regime governing the status and the rights of stateless persons.

Stateless persons

The January 2004 *Law On Stateless Persons* provides that “a person may be recognized as a stateless person in the Republic of Latvia if some other state has not recognized the person as a citizen thereof in accordance with the laws of such state. A person who has lost the status of a

non-citizen of Latvia shall be recognized as a stateless person if s/he does not have citizenship of any other state”.

Stateless persons in Latvia are issued with a travel document as provided by 1954 Convention.

Given the fact that stateless persons are holding residence permits (temporary or permanent), they are subjects to the same limitations as foreign citizens with respect to the maximum duration of absence from the country, multiple residence permits, as well as good behaviour. As any other foreigner, stateless persons may be expelled from the country pursuant to the provisions and safeguards established by the national immigration, administrative and criminal law.¹ Stateless persons do not enjoy full consular protection. At the same time, stateless persons have free access to labour market, education and healthcare. In addition, stateless persons who reside in a EU Member State and hold the passports of that Member State are exempt from visa requirements when travelling in the EU.²

Finally, it must be mentioned that stateless persons who are in possession of a permanent residence permit are enjoying the same social protection as citizens and non-citizens, since pursuant to Article 3 of the *Law on Social Services and Social Assistance*, citizens, non-citizens, as well as foreigners and stateless persons having a permanent residence permit, enjoy the right to receive social services and social assistance in Latvia. Finally, after residing in Latvia for at least 5 years without interruption following the receipt of a permanent residence permit, stateless persons may apply for naturalization.

¹ For example, Latvian Immigration Law complies with the following provisions of the **Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents**, *Official Journal L 016*, 23/01/2004 P. 0044 – 0053:

“Article 9

Withdrawal or loss of status

1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases:

- (a) detection of fraudulent acquisition of long-term resident status;
- (b) adoption of an expulsion measure under the conditions provided for in Article 12;
- (c) in the event of absence from the territory of the Community for a period of 12 consecutive months. (Article 36 of the Immigration Law in fact establishes a shorter term, which is six consecutive months).

(...)

Article 12

Protection against expulsion

1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

- (a) the duration of residence in their territory;
 - (b) the age of the person concerned;
 - (c) the consequences for the person concerned and family members;
 - (d) links with the country of residence or the absence of links with the country of origin.
4. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned.

5. Legal aid shall be given to long-term residents lacking adequate resources, on the same terms as apply to nationals of the State where they reside.”

² Council Regulation (EC) No **539/2001** of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, *OJL 81*, 21.3.2001, p. 1–7.

As of 1 January 2007 stateless persons in Latvia constituted less than 0.01% of the total population of Latvia.

I will now proceed with explaining in more detail the nature and legal regulation governing the status of another group of Latvian population – non-citizens. Here, I find it important to provide also a brief historical, political and legal background that led to the creation of this group.

Non-citizens

In 1940, Latvia was forcibly annexed by the Soviet Union as a result of internationally wrongful act.³ It should be recalled that under general international law the obligation to cease an internationally wrongful act (i.e. an occupation of one state by another) implies the restitution of the *status quo* and the compensation for the damage caused.⁴ It also means that other subjects of international law may not recognize or validate the otherwise wrongful act. This is an obligation *erga omnes*. The consequences of the forcible annexation of Latvia in principle need to be dealt with under the law on state responsibility.

The available practice leads to the conclusion that the Russian Federation continues the international legal personality of the former USSR, both within the internal jurisdiction of the Russian Federation, as well as with respect to rights and obligations of the USSR under international law.⁵ It is therefore the position of the Latvian Government that the Russian Federation bears the primary responsibility for the former USSR citizens unless and until they or their countries of residence choose otherwise.⁶

On 4 May 1990, when the Republic of Latvia declared the restoration of its independence, two main categories of the USSR citizens resided on its territory. Firstly, there were Latvian citizens and their descendants who were imposed the USSR's citizenship by a Decree of 1940. Secondly, there were the citizens of the USSR proper, who had settled in the territory during the forcible annexation of Latvia by the Soviet Union. The USSR collapsed only one year and few months after Latvia declared the restoration of its independence - in 1991, and this collapse was followed by a period of ambiguity as concerns the legal and practical solutions with respect to the territories and peoples concerned.

Given the legal continuity of Latvia as a subject of international law, the body of citizens of Latvia was restored in accordance with the 1919 law *On Nationality (Likums par*

³ See, e.g. *Ždanoka v. Latvia*, Application No.58278/00, European Court of Human Rights judgment GC of 16 March 2006, para.13.

⁴ See International Law Commission Articles on State Responsibility.

⁵ See, for example, *Repertory of Practice of United Nations Organs Supplement No. 8 Volume VI*, paras. 9-11, available at http://untreaty.un.org/cod/repertory/art98/english/rep_supp8_vol6-art98_e_advance.pdf; Provisional Report, Aspects of the Law of State Succession, International Law Association, Berlin Conference (2004), available at <http://www.ila-hq.org/pdf/Aspects%20of%20State%20Succession/Report%202004.pdf>; Appeal to the secretary general of the United Nations by the Baltic Assembly, adopted on 31 October 1993, available at <http://www.baltasam.org/?DocID=586&pid=487>; Dainius Žalimas, Legal and Political Issues on the Continuity of the Republic of Lithuania, Lithuanian Foreign Policy Review 99/4, available at <http://www.lfpr.lt/9902.phtml>.

⁶ In 1999, when the Russian Federation adopted the Law on Compatriots Abroad it recognized its responsibility for these persons based on the principle of state continuity. This approach was not fully preserved in the 2002 Law on Citizenship.

pavalstniecību)⁷. Thus, Latvia did not grant anew the citizenship, but restored the status and the rights thereof to those persons who were recognized as citizens under the 1919 Law, as well their descendants.

The position of the Latvian state with respect to citizenship issues has always remained unchanged. Latvia has always followed the principle that citizenship is “a bond of allegiance between the state and the individual concerned”⁸. It is the sovereign right of a state to define the circle of its citizens. At the same time, Latvia has always recognized that everyone within the state’s jurisdiction has to enjoy legal protection. In this respect, the national authorities have always appreciated a dialogue, both at the national and international level, in identifying groups needing protection, as well as identifying the necessary level and details of such protection. As a result thereof, as well as given Latvia’s specific historical circumstances, we have developed a somewhat unique national legal regime governing the status of the Soviet times settlers.

Those persons who settled in Latvia during the period of its forcible annexation by the Soviet Union were not automatically recognized as Latvian citizens. At the time concerned, it was also unclear, which country’s citizenship these individuals would choose at a later stage, as many of the states that emerged following the breakdown of the Soviet Union had not yet adopted citizenship laws or developed relevant procedures. Therefore, the Latvian authorities, for humanitarian reasons, decided to establish a **special temporary status – the status of a non-citizen** – to these former USSR citizens, who had received a permanent residence registration in the Republic of Latvia and had been registered in the Population Register. Thus, in 1995 the *Law On the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State (the Non-citizens Law)* was adopted.⁹ Indeed, following subsequent developments in the former USSR region, all individuals who lost the USSR citizenship have received the right to acquire the citizenship or were *de facto* declared citizens of at least one of the newly established or restored independent states.¹⁰

⁷ According to the 1991 Decision of the Supreme Council *On the Restoration of Rights of Citizens of the Republic of Latvia and Basic Regulations of Naturalisation*, the *Law On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons* of 9 June 1992 as well as the *Law on Citizenship* of 22 July 1994.

⁸ See the *Nottebohm Case (Liechtenstein v. Guatemala)*, the International Court of Justice judgment of 6 April 1955, 1955 I.C.J.4, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=26&case=18&code=lg&p3=92>, last viewed on 1 June 2007.

⁹ Article 1 of the *Non-citizens Law* defines non-citizens in the following way: those citizens of the former USSR or their children, residing in Latvia or are temporarily away from the country for a specified period of time, who are not or have not been citizens of Latvia or any other country, who had registered residence in Latvia as of July 1, 1992, as well as persons whose last registered place of residence before July 1, 1992 was Latvia, or persons who resided on the territory of Latvia for at least 10 years without interruption. Moreover, Article 3, part 2 of the same law specifically states that “persons that are subjects of [*the Non-citizens Law*] **cannot be regarded as stateless**”.

¹⁰ For example, the 1995 Armenian citizenship law recognizes as citizens persons of Armenian ethnic origin. The 2003 Lithuanian law on citizenship recognizes as citizens persons who had Lithuanian citizenship between 1919 and 1940 and their descendants, as well as ethnic Lithuanians. The 2003 Moldovan law on citizenship recognizes as citizens persons of Moldovan descent. The 1991 Citizenship Law of the Russian Federation automatically declared as its citizens those persons, who were born on the territory of the Russian Federation as of 30 December 1922 and who have lost the USSR citizenship, as well as their spouses and descendants. (Article 13). At the same time, the same Law recognized as Russian citizens former USSR citizens residing on the territory of the former USSR republics (Article 18). On 16 May 1996 the Constitutional Court of the Russian Federation in its judgment explained the difference between the two provisions of the Citizenship Law. Persons falling under the definition contained in Article 13 of the Law are being automatically recognized as citizens of the Russian Federation, unless they renounce their citizenship. However, persons falling under the definition contained in Article 18 of the Law would have to express their will in order to obtain Russian citizenship. The mentioned approach was partly maintained by the 2002 Law on Citizenship.

Pursuant to the effective legislation in Latvia, the scope of rights of Latvian non-citizens is very close to those of Latvian citizens – they cannot be expelled¹¹ save in special cases provided by law, and they enjoy consular protection¹². The Latvian non-citizens are the only group of persons, in addition to citizens, who enjoy permanent residence status in Latvia *ex lege*. Once a person has lawfully obtained the status of a Latvian non-citizen, s/he can freely reside on a permanent basis in a foreign country retaining also all the rights and privileges enjoyed by Latvian non-citizen, *inter alia*, to move freely and return back to Latvia at any time. Non-citizens have the same social guarantees as Latvian citizens. In fact, the only substantial difference between Latvian citizens and non-citizens is the right to vote and the right to work in the civil service or occupy posts that are related to national security. The most important development with respect to the non-citizens' rights within the EU has been achieved in December 2006 by amending Council Regulation (EC) No **539/2001** exempting Latvian non-citizens from visa requirement when travelling in the EU.¹³ Finally, non-citizens may at any time apply for naturalization.

Latvia's experience with introducing the specific legal status of "non-citizen" has both, positive and negative aspects. The positive aspect is the protection enjoyed by the individuals concerned in terms of civil, economic, social and cultural rights, which is wider than the one afforded to foreigners and stateless persons. The negative aspect is the lack of understanding of the specific historical and political circumstances that led to creation of such status, as well as specific political agenda promoted by some groups and supported by some states, that unnecessarily politicizes the subject. Another shortcoming of the existing situation is that the level of protection enjoyed by the non-citizens lead to the situation that it is more convenient to be a non-citizen of Latvia than a citizen of another state that emerged as a result of the Soviet Union's breakdown. One starts forgetting that the status had been created as a temporary solution pending adoption of citizenship laws and related procedures by other states in the former USSR region.

It has been the firm position of the Latvian Government that Latvian non-citizens may not be regarded as stateless persons within the meaning of the 1954 Convention on the Status of Stateless Persons due to the specific and interim nature of their legal status, as well as a very broad scope of rights enjoyed thereby. This position has been accepted by the majority of states and international procedures as compatible with international law.¹⁴

¹¹ Article 2 of the law *On the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State*.

¹² According to Article 98 of the *Satversme* (Constitution) of the Republic of Latvia, "Everyone has the right to freely leave the territory of Latvia. Everyone having a Latvian passport shall be protected by the State when abroad and has the right to freely return to Latvia".

¹³ Council Regulation (EC) No 1932/2006 amending Council Regulation (EC) No **539/2001** listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, *OJ L 405, 30.12.2006, p. 23–34*. The mentioned Regulation does not apply with respect to the United Kingdom and Ireland.

¹⁴ Concluding observations of the Human Rights Committee: Latvia. 06/11/2003. CCPR/CO/79/LVA. (Concluding Observations/Comments), para. 18; Concluding observations of the Committee on the Elimination of Racial Discrimination: Latvia, 10/12/2003 (CERD/C/63/CO/7), para.12; Synthesis Report: Conclusions and Recommendations on the Situation of Fundamental Rights in the European Union and its Member States in 2003, 4 February 2004, p. 90.

Conclusions

I would like to sum up by saying that international law remains fragmented when it comes to issues of state succession, continuation and citizenship. Although the issue of statelessness is addressed in the 1954 and the 1961 UN Conventions, the number of their ratifications remains low.¹⁵ Nonetheless, the state practice on this subject develops following the real life processes, sometimes making states think “outside the box”.

Here, I would like to underline that integration and development of a harmonious society is and will remain amongst the top priorities of the Latvian Government. Numerous programs have been implemented to promote naturalization in Latvia, paying specific attention to children, which gave positive results. In addition, Latvia makes significant efforts to ensure integration of society also in terms of language training and access to labour market.

To conclude, I would like to express hope that more careful and detailed approach to the issue of statelessness will be developed, including by compiling good practices. The Latvian authorities remain committed to continue sharing our experience.

I thank you for your attention.

¹⁵ As of 11 January 2007, the 1954 Convention on the Status of Stateless Persons has been ratified by 62 states. As of 1 November 2006, the 1961 Convention on the Reduction of Statelessness has been ratified only by 33 states.