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'Non-citizens' of Latvia

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The legal history of the status of 'non-citizens of Latvia' is closely intertwined with the recent past of the State itself. On 15 October 1991, the Latvian Supreme Council (the interim Parliament) passed the Decision 'On the Renewal of the Rights of the Citizens of the Republic of Latvia and on the Fundamental Principles of Naturalisation', which was based on the concept of the continuity of citizenship of the Latvian Republic which existed before the Soviet occupation: only those persons who had been citizens of independent Latvia in 1940 and their descendants had their citizenship restored. The Citizenship Law of 1994 confirmed this approach.

The legal status of people who were not recognized as citizens of Latvia remained unclear until 1995, when the 'Law on the Status of Former Union of Soviet Socialist Republics (USSR) Citizens Who Do Not Have Citizenship of Latvia or of Any Other State' was adopted. The Law introduced a special legal status of 'non-citizens', granted to those who enjoyed registered domicile in Latvia on 1 July 1992 and who did not have citizenship of Latvia or of any other country (except for some retired USSR army officers and the members of their families).



According to the clarification by the Latvian Constitutional Court, 'non-citizens' can neither be regarded as citizens, nor as aliens nor stateless persons.¹ Latvian and international courts clarified that this status amounts to a permanent legal bond between the Latvian Republic and its 'non-citizens', thus excluding statelessness.² 'Non-citizens' of Latvia are thus nationals in the terminology of the QNI. Currently, more than 247,000 people belonging to ethnic minorities hold this status.

¹ See Constitutional Court of Latvia, Case No. 2004-15-0106, para. 15 (2005), available at: satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-15-0106_Spriedums_ENG.pdf

² Ibid., para.17. See also Andrejeva v Latvia (2009) App. No. 55707/00 ECtHR, para. 88

They represent a large part of the Latvian population, 11.6%. This situation will continue, as the children born to parents who are either both 'non-citizens', or of whom one is a 'non-citizen' and the other is stateless, subsequently also become 'non-citizens'. Indeed, in accordance with Section 8(2) of the 'Law on the Status of Former USSR citizens who do not have citizenship of Latvia or of any other state', a child also becomes a non-citizen if both of his/her parents are 'non-citizens', or one is a 'non-citizen' and the other one is stateless, despite criticism by the UN Committee on the Rights of the Child and the Council of Europe Commissioner for Human Rights.³ In accordance with Section 3.1 of the Latvian Citizenship Law, however, either parent may register such a child as a citizen, if some administrative formalities are fulfilled. This might be problematic from the perspective of the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness, because the safeguard against statelessness is limited to children both whose parents are non-citizens/stateless and the parent registering the child is legally resident in the country.⁴

'Non-citizens' have rights akin to citizens. These include, for example, the right to reside in Latvia without a visa or residence permit, as well as the right to work without a work permit. Some rights and opportunities are reserved, however, only for 'full' citizens. This includes political rights (such as the right to participate in elections and the right to establish political parties), the right to hold certain government positions, and social and economic rights (land property rights in some territories, public and private sector careers in some professions as well as pensions for working periods accrued outside Latvia during the Soviet period, if the period is not covered by an international agreement). In August 2016, there were as many as 84 differences in rights between citizens and 'non-citizens', mainly relating to careers in the public sector.⁵ Almost all persist to this day. In particular, the citizens of Latvia can travel visa-free to 164 states and territories, but 'non-citizens' only to 46. More importantly still, 'non-citizens', although connected by a bond of *de facto* nationality to the Latvian State, are not European citizens, which leads to huge discrepancies in settlement and rights between the two statuses. Indeed, 'non-citizens' of Latvia cannot settle anywhere except for Georgia while Latvian citizens are welcome in 39 countries.

The status of 'non-citizens' shares second last place in the world (45th) with 38 other nationalities in the Settlement Freedom ranking, only allowing full access to Georgia; as opposed to Latvian nationality, which is 6th and allows full access to 39 countries and territories. The status of 'non-citizen' occupies 120th place on the 2016 Travel Freedom Ranking, far behind Latvian nationality, which is ranked 20th on the same scale and only allows visa-free travel to the Russian Federation to those born before February 1992 and to minors. Yet compared to last year's rankings and value, the status of 'non-citizens' has significantly improved, climbing 11 places from 131st place in 2015. These differences in Settlement and Travel Freedoms between Latvian nationality and 'non-citizen' status are naturally reflected in the contrasting external value ranking – with Latvian nationality taking 19th place and the 'non-citizen' status being transposed to 123rd. In the QNI General Ranking, the status of 'non-citizens' climbed six places to 103rd place, which is still very far from the ranking of Latvian nationality, however,

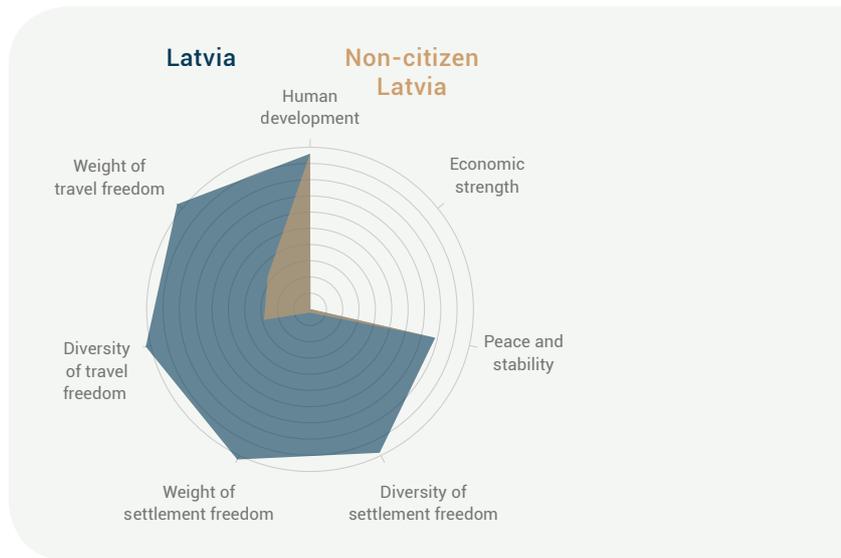
3 Moreover, Latvian law allows foreign national parents to register their child as a 'non-citizen', if one parent is a 'non-citizen' and the other parent is a foreign national. In these situations the law permits parents to choose this 'non-citizen' status for their child, instead of a foreign nationality

4 See Gérard-René de Groot, Strengthening the Position of the Children: Council of Europe's Recommendation 2009/13, in *Concepts of Nationality in a Globalised World* (Council of Europe 2011). Gérard-René de Groot, Katja Swider and Olivier Wonk, *Practices and Approaches in EU Member States to Prevent and End Statelessness* (European Parliament, 2015)

5 See Vladimir Buzajevs, 'Masveida Bezoilsonība' Latvijas Cilvēktiesību komiteja (Rīga, 2016) komiteja, available at: ihrc.lv/biblioteka/MASVEIDA_BEZPILSONIBA_k.pdf accessed 28 March 2017

which takes 24th place. In terms of the QNI's quality of nationalities, Latvian citizenship, with a value of 75.4%, is of Extremely High Quality, while the 'non-citizens' Latvia status is only of Medium Quality with a value of 29.2% and among the worst nationalities in Europe.

Such a discrepancy between those possessing the two statuses of legal attachment to the same state – i.e. that of Latvian citizenship as well as that of 'non-citizen' of Latvia – could not but give rise to questions concerning possible discrimination. In September 2008 the (Latvian) Ombudsman completed an investigation into the differences in rights between citizens and 'non-citizens'. The Ombudsman found that some restrictions on 'non-citizens' were not proportionate, such as the ban on 'non-citizens' from working as advocates or patent attorneys, from receiving the highest level of clearance for security work, or from being heads or members of boards in the investigative agencies. He also found a disproportionate restriction to the legal limitations on obtaining land property in the cities by 'non-citizens'. The Ombudsman recommended verifying whether restrictions concerning those rights guaranteed for EU citizens but denied to 'non-citizens' are justified. Such verification has never taken place in practice, however, since the new Ombudsman elected in March 2011 declared that the principle of equality required differential treatment towards persons in legally different situations, finding that the difference in rights between citizens and 'non-citizens' was not discriminatory, since the legal status of 'non-citizens' is not comparable with that of citizens.



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