
CSCE SECRETARIAT
Department for Conference Services

CSCE Communication No. 8

Vienna, 31 January 1994

To the CSCE Delegations
(This Communication is also sent to capitals)

Recommendations by the CSCE High Commissioner on National Minorities about the
Latvian Draft Citizenship Law

The attached letter of the CSCE High Commissioner on National Minorities to the
Minister for Foreign Affairs of the Republic of Latvia, dated 10 December 1993,
containing recommendations about the Latvian Draft Citizenship Law, as well as the
letter of reply, dated 25 January 1994, from the Minister of Foreign Affairs of Latvia,
is circulated at the request of the High Commissioner.

Address:	Telephone:	Telefax:	Telex:
Prague Office of the CSCE Secretariat	+ 42-2-2431 10 69 (4 lines)	+42-2-2431 06 29 2431 10 75	121 614 CSCEC
Thunovská 12, Malá Strana 110 00 PRAGUE 1			Internet E-mail: CSCEPRAG@EARN.CVUT.CZ

C S C E
High Commissioner
on National Minorities

His Excellency
Mr. Georgs Andrejevs
Minister of Foreign Affairs
of the Republic of Latvia
RIGA
Republic of Latvia

Reference:
No 1463/93/L

The Hague,
10 December 1993

Dear Mr. Minister,

With great interest I took note of the draft law on citizenship as adopted in first reading by the Saeima on 25 November 1992. On several occasions, your Government has manifested its desire to consult international organizations, including CSCE, on a number of important steps it intends to take, including the comprehensive legislation on citizenship. In this connection, I refer especially to Chapter IV, paragraph 1 of CSCE Communication 260 of 23 September 1993, reporting on the visit of the personal representative of the then Chairman-in-Office to Latvia. Moreover, as you know, in the recommendations I offered to your Government on 7 April 1993, I already made some suggestions about the contents of the future citizenship law. Now that the first reading of the draft law has taken place, I take the liberty to offer you some comments and recommendations.

Let me state at the outset that I fully understand and respect the determination of your Government to maintain and strengthen the Latvian identity after 50 years of Soviet occupation which greatly endangered the maintenance of that identity. But at the same time there is the urgent need to cope with the problem of a very substantial non-Latvian minority in your country in such a way that their legitimate rights are being respected. Perhaps you will allow me to formulate some general considerations on this subject. In the first place, the question arises whether a considerable number of them can be expected to leave Latvia in the years to come. The information reaching me seems to indicate that some tens of thousands may return to the state they originally came from or will migrate to other countries, but that the overwhelming majority will prefer to stay in Latvia, partly because there are no jobs or homes available for them in the states they came from, but also because many of them have lived in Latvia already for a long time or have even been born there. As a consequence, they have established their roots in your country and do not want to leave it. This conclusion is supported by official data which show that as of 22 March 1993 out of a total of 667,343 persons registered as inhabitants of Latvia who are not Latvian citizens, 593,008 persons wanted to acquire Latvian citizenship.

As I pointed out in my recommendation of 7 April 1993, your Government has of course the right to remove from Latvia territory non-citizens whose continuous presence could be damaging to its vital interest, such as persons who have been found in proper judicial procedures to have committed grave crimes. But on the other hand, massive expulsion of non-Latvian residents would be contrary to generally accepted international humanitarian principles even more so because the overwhelming majority of the non-Latvians living in your country have not been actively engaged in oppressive practices during the years of the Soviet occupation of Latvia. I am glad that your Government is not considering this option.

A realistic assessment of the views and options of the non-Latvian population leads to the conclusion, therefore, that it is unlikely that the non-Latvian population in your country will decrease substantially in the years to come. Thinking of the many conversations I had with the members of your Government in the course of the past year, my assumption is that, confronted with this situation, the basic question to be answered is how to reconcile to two basic aims: to preserve and strengthen the Latvian identity, whilst at the same time assuring harmonious inter-ethnic relations.

In theory several options present themselves here. The first would be to follow a very restrictive policy, concerning the granting of citizenship to non-Latvians, in the expectation that the granting of full social and economic rights would be sufficient to ensure harmonious inter-ethnic relations. I would recommend not to follow this line. To deny citizenship to hundreds of thousands non-Latvians residing in Latvia is tantamount to refusing to grant them political rights, and this, in turn would, sooner or later, have negative repercussions on inter-ethnic relations which might even endanger the stability of your country. I have also gained the impression that, within the community of CSCE states, the solution of the citizenship issues is seen as being closely connected with democratic principles. If the overwhelming majority of non-Latvians in your country is denied the right to become citizens, and consequently the right to be involved in key decisions concerning their own interests, the character of the democratic system in Latvia might even be put into question. In this connection I refer to the 1990 CSCE Copenhagen Document which states that the basis of the authority and legitimacy of all governments is the will of the people.

Another option that presents itself is to allow all non-Latvians living in your country, with the exception of those who obviously threatened the vital interest of Latvia, to automatically become citizens. It is my assumption that such a formula would meet strong resistance in the Saeima because it would not be considered to provide sufficient guarantees that such a large group of new citizens would be willing to integrate into Latvian society.

However, there is a third option. According to this formula, non-Latvians, with the exception of those who constitute a clear threat to the vital interest of Latvia, will obtain the right to become Latvian citizens if they express such a wish, provided that they accept certain conditions. They would have to show their interest in becoming integrated into Latvian society by:

- 1) acquiring a basic knowledge of the Latvian language which will be tested in the course of the naturalization process according to standardized procedures;
- 2) acquiring a knowledge of the basic principles of the Latvian Constitution which will also be tested during the naturalization process according to standardized procedures; and
- 3) swearing an oath of loyalty to the Republic of Latvia.

In my view this third option is by far preferable to the others. On the one hand it provides for the non-Latvian residents a clear prospect of acquiring citizenship, provided that they make a real effort to integrate into Latvian society. On the other hand, the conditions attached to the acquisition of citizenship provide adequate guarantees that the new citizens will respect the Latvian identity. It has to be assumed that a number of the non-Latvian residents will not prove to be willing to meet the conditions for acquiring citizenship I just mentioned. Another group might prefer to wait a while before they make a decision concerning an application for citizenship. These two groups, which might be quite numerous, would then have to be content with the status of residents.

Turning now to the text of the law itself, as adopted in first reading by the Saeima on 25 November 1993, I have noted with satisfaction that there are a number of articles which, though I have some comments on a few of their aspects, are broadly in conformity with the third option I just described. I am referring to Article 10, paragraph 2, Article 10, paragraph 3, and Article 10, paragraph 6.

On the other hand, I feel bound to express my reservations about Article 9 which makes annual quotas, to be determined by the Government and approved by the Saeima, a central element in the naturalization system. The quotas will be decided upon "taking into consideration the demographic and economic situation in the country, in order to ensure the development of Latvia as a single-nation state." Quite apart from the phrase "singlenation state" which might lead to concerns about the rights of non-Latvians, these formulations give Government and Parliament considerable latitude concerning the size of the annual quotas. On the basis of the criteria mentioned, they could even lead to decisions not allowing naturalization at all or very minimal quotas for a considerable number of years. It is essential for a society based on the rule of law that the people know about their rights and the rights be established and granted in clear terms by the law. A quota system, however, could lead to considerable uncertainty amongst a large part of the population about their future status. This uncertainty, moreover could possibly last for many years, even for persons who have been living in Latvia for a long time or have been born in Latvia, and for persons with a sincere willingness to integrate into Latvian society.

At the same time, I have noted that, according to Article 11 of the draft law, in addition to the annual naturalization quotas, citizenship may be granted individually to the following persons, among others:

- persons who have legally immigrated to Latvia and were residing there permanently in June 1940, and their descendants who permanently reside in Latvia; and

- persons who have been married to a Latvian citizen for at least five years and if, upon the filing date of the request for citizenship, their permanent place of residence has been Latvia for at least three years.

In addition, Article 12 of the draft law stipulates that persons who were born in the territory of the Republic of Latvia have priority rights under naturalization quotas.

Taking these elements of the law into account, and also considering the practical difficulties in processing applications for citizenship in a short period of time, my recommendation is to replace the quota system as now formulated in the draft law by a system which gives precedence to privileged groups in the naturalization process. To clarify this idea, I submit the following scheme for your consideration:

1) After the adoption of the law, the naturalization of those categories mentioned in Articles 11, 12 and 13 will be processed as much as possible during the remainder of 1994 and 1995.

2) As of 1 January 1996, naturalization procedures will start for all those who have been residing in Latvia for more than 20 years;

3) As of 1 January 1997, naturalization procedures will start for all those who have been residing in Latvia for more than 15 years; and

4) As of 1 January 1998, naturalization procedures will start for all those who have been residing in Latvia for more than 10 years.

The advantage of this formula would be, on the one hand, that a gradual system of naturalization would be maintained, but that at the same time non-Latvian residents would have certainty about their chances of acquiring citizenship.

I now turn to some other aspects of the law. Let me, before doing so, remark that I have not tried to cover all aspects of the law, being aware that the Council of Europe has been asked to make its comments.

Article 10: As regards the proposed criteria for naturalization, I would like to make the following comments:

In my April recommendations, I have argued (point 3) for a residence requirement of five years. At the same time, I have noted that a residence requirement of ten years would, in practice, not make a considerable difference for the vast majority of non-citizens, as they already fulfil also this longer residence requirement.

I find the criteria for knowledge of the Latvian language ("at a conventional level") and of the Constitution ("fundamental principles") reasonable and well in line with my April recommendations (point 6 and 7). I would, however, once again emphasize

the need, when the subsequent Government regulations are to be issued, to adopt procedures ensuring a fair, lenient and uniform interpretation and examination throughout the country. I believe that international organizations, such as the Council of Europe, could provide assistance for developing such a system for standardized language tests. In this context, I also wish to underline the need for nation-wide efforts to provide for effective education of the Latvian language for all persons interested (c.f. point 15 of my previous recommendation). In addition to the exemption of language requirements for elderly persons in paragraph 2 of the proposed article, I also recommend (point 8 in my April recommendations) an exemption for disabled persons.

As I have suggested in point 9 of my previous recommendations, I would also suggest that it be made explicit in the fourth paragraph of the proposed article 10 that the requirement of a legal source of income does not apply to unemployed persons.

Article 11: While, in principle, not questioning the inclusion of special rules for privileged groups, it is important, as I have stressed in point 11 of my April recommendations, that any such rules fully comply with Articles 1 (3) and 5 (d) of the International Convention on the Elimination of All Forms of Racial Discrimination, prohibiting discrimination based on nationality.

When it comes to citizenship for outstanding accomplishments (paragraph 6 of the proposed article), it might be considered whether the various naturalization criteria in paragraph 10 should necessarily apply (in the draft, exception is only made to the residence criterion), as this limits the possibility for the Government to grant citizenship under this special procedure.

Article 12: as regards persons born in Latvia, it seems essential to facilitate their naturalization. In particular, children born in Latvia who would otherwise be stateless should be granted Latvian citizenship in accordance with international standards (c.f. point 2 of my April recommendations).

Article 14: Concerning restrictions for naturalization, I would like to make three comments:

The first paragraph deals with certain anti-constitutional methods. While it is proposed, which is essential, that such activities must be determined by court judgement, it is not clear what kind of acts and what kind of court proceedings are considered. If the activities are penalized by Latvian law, it seems that the purpose of this paragraph is covered by paragraph 2, which refers to restrictions for persons sentenced for serious crimes. If, however, other activities than illegal ones are aimed at, further clarification would be needed also about the proceedings before the court, including the right to defend oneself.

In the second paragraph, I would suggest that the fact that an applicant has been called to criminal responsibility but not yet brought to trial and convicted, would not be a reason for refusing citizenship, but for deferring the decision until the court has made its ruling.

With special references to paragraphs 3 and 4, I would like to recall point 10 of my April recommendations about the role of the courts in establishing the facts that would exclude a person from citizenship, if denied by the persons concerned.

Article 22: The notion of "state and nation of Latvia" in the proposed solemn oath may cause confusion. In order to avoid risks of misinterpretation, I would suggest to use the notion "state and people of Latvia".

Finally , I would like to stress the need to inform the non-citizen population in Latvia properly about the content of the law and corresponding governmental decisions an about the practical procedure to follow in order to obtain the citizenship of Latvia. In this respect, I would like to emphasize the importance of involving representatives of the groups concerned in the legislative processes on issues which are of fundamental importance to them.

Yours sincerely,

[signature]

Max van der Stoel

LATVIJAS REPUBLIKAS ARLIETU MINISTRIJA
MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF
LATVIA

Mr. Max van der Stoel
High Commissioner on National Minorities
CSCE

25 January 1994

Dear Mr. Van der Stoel,

Allow me to express my appreciation for the time that you devoted to visit Latvia earlier this month to discuss your thorough recommendations about the first reading version of the draft citizenship law.

As you are well aware of the issues that pertain to the preparation of the second reading draft of the citizenship law please, be reassured that your recommendations have been and will be taken into consideration. We will also send copies of your recommendations to each of the eight Saeima Factions, prior to the second reading of this law.

The process of drafting the citizenship law must be thorough so as to create the most optimum legislation possible. For this reason, Latvia has consulted with the

CSCE, Council of Europe and other institutions. We are still awaiting the evaluation report from the Council of Europe expert group to be received during its current Parliamentary Assembly session.

With this in mind, I request your understanding in our reserved approach in expressing our views to your submitted recommendations. We feel that we must consider all aspects of the issues relating to the citizenship law so as to make a complete and well analyzed proposal for the second reading.

Once again, I would like to reiterate the importance which Latvia places on your recommendations and those represented by the Council of Europe expert group. We will take the opportunity to consult with you in the nearest future once concrete steps are taken in preparing the second reading.

Your sincerely,

[signature]

Georgs Andrejevs

Minister of Foreign Affairs