

HCNM.GAL/1/97  
11 September 1997

**Organization for Security and Co-operation in Europe** ENGLISH only  
**Secretariat**

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**Department for Conference Services**

At the request of the OSCE High Commissioner on National Minorities, the attached letter dated 23 May 1997 to the Minister for Foreign Affairs of the Republic of Latvia, Mr. Valdis Birkavs, and the letter of reply, dated 11 September 1997, are being distributed to all OSCE delegations.

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**High Commissioner  
on National Minorities**

His Excellency  
Mr. Valdis Birkavs  
Minister for Foreign Affairs of the Republic of Latvia  
RIGA  
Republic of Latvia

Reference no.:  
376/97/L

The Hague  
23 May 1997

Dear Mr. Minister,

May I thank you once again for the kind reception I received when I visited Riga last April. I highly value the good cooperation which has developed between your Government and my office.

Having reflected on the discussions I had during my stay in Latvia, I would like to make some observations on the ongoing debate, stimulated by President

Ulmanis, regarding the question of the integration of the large group of non-citizens in your country.

On 8 January 1997, the total population of your country numbered 2,452,352. 686,027 of them, more than 28 %, are non-citizens of Latvia. An unknown number of them may have become citizens of the Russian Federation, but it can be safely assumed that the overwhelming majority of the non-citizens of Latvia are stateless. The law on Citizenship of 22 July 1994 provides them with the opportunity to apply for naturalisation, but it does not allow all those who are interested to apply immediately. The so-called "window" system incorporated in the Law gives priority to those born in Latvia over those born outside Latvia, and priority to the younger age group in each category over the older ones. Thus, the right to apply for naturalisation has been spread over seven years, beginning in 1996. The most numerous categories come last. According to the publication on naturalisation in Latvia published in 1997 by the Naturalisation Board, no less than 469,053 non-citizens have to wait until after 2000 before they have the right to apply.

In 1996 persons who were born in Latvia and were between 16 and 20 years old were allowed to apply. Very few of them did. While over 33,000 could have applied, only 525 persons started the naturalisation process in 1996. For the first four months of 1997, their number was only 101. Since 1 January of this year, the age group between 21 and 25 (more than 31,000) was allowed to apply, but only 151 actually did so in the first four months of 1997. It is therefore no exaggeration to conclude that naturalisation through the so-called General Naturalisation Procedure is stagnating. A somewhat greater number of persons have made use of the provisions in the Law on Citizenship for extraordinary naturalisation. Of the category of persons who were citizens of Latvia before 17 June 1990 and their descendants, 346 persons applied in the first four months of 1997 from the category of those who were spouses of citizens for more than ten years, the number is 359. Still, it is clear that if the present trend continues the number of naturalisations in Latvia will only be a few thousands annually. In the period since the naturalisation process started in February 1995 and mid May 1997, the total number of naturalisations was only just over 4,800.

The question inevitably arises, how this low number of applications can be explained, taking into account the fact that surveys in the last few years have consistently shown percentages varying from 62 to 80 % of the non-citizens of Latvia being interested in becoming citizens. There are no doubt some incidental factors, like the fact that young men realise that they are free from military service if they remain stateless. But this does not explain that the number of women applying for citizenship in the age group 16-20 is also excessively low. Another factor might be that acquiring Latvian citizenship means that a visa is necessary for travelling to Russia. But on the other hand many must have been aware that the old Soviet travel documents would not remain valid for much longer. Ignorance about naturalisation procedures probably also plays a negative role. In a poll conducted by the Naturalisation Board, 24,1 % of those interested in acquiring citizenship complained about this. I have therefore asked the Foundation on Inter-Ethnic Relations, which

supports my work, to finance a pamphlet in Latvian and Russian which provides information about how the naturalisation process works. But all the factors mentioned taken together cannot explain the enormous gap between the interest in naturalisation during polls and the minimal number of actual applicants.

The answer can be found in the survey conducted by the Naturalisation Board. Clearly aware that, in order to acquire citizenship, they would have to pass a test in the Latvian language and a test of their knowledge of the history and the Constitution of Latvia, 47,4 % of those wishing to acquire citizenship answered that they had insufficient knowledge of the Latvian language, 40,8 % stated that they were insufficiently acquainted with the history and the Constitution of Latvia, 19,8 % complained that the naturalisation fee was too high.

Permit me, Mr. Minister, to comment on each of these points separately.

Regarding the language test, I have to recall that many states require an adequate knowledge of the state language as a condition for acquiring citizenship. I have therefore understanding for the objections against lowering the standards of the test. On the other hand, only 10% of the young people in a survey of the Naturalisation Board could speak Latvian fluently. For very many of those interested in applying for citizenship the language test must therefore constitute a formidable barrier. This underlines the crucial importance of the National Programme for Latvian language training. The need to ensure high quality teaching of the Latvian language in schools with instruction in the Russian language is evident. The same applies to language training programmes for adults. I express the hope that international assistance in achieving the aims of the National Programme for Latvian language training will be continued and, when necessary, expanded.

Regarding the tests on the history and the Constitution of Latvia, I recognise the solidity of the argument that a candidate for citizenship must show his willingness to integrate by acquainting himself or herself with some basis facts relating to these subjects. However, even taking into account the fact that the history test has recently been somewhat simplified and that a book has recently been published with the help of the Norwegian Government which can be of considerable help in preparing for these tests, I do feel that they have to be made much easier. The argument has been used that of those who submitted themselves to these tests over 90% passed it successfully. But the high percentage I just quoted of those afraid that the test might be too difficult for them, and the fact that according to the Naturalisation Board 32% of those who did pass stated that they had certain difficulties in succeeding, are aspects which ought not to be overlooked. Reading the list of questions which can be asked, I wonder whether it is really necessary for candidates for citizenship to know what Swedish educational policy was like in Vidzeme in the seventeenth century, or which religion was supported in Latgale during the period of Polish region, or which state officials hold the most merits for achieving diplomatic recognition of Latvia in the beginning of the twentieth century. Equally, I wonder about questions in the test on the Constitution like:

from what age may a person be a candidate for the post of State President of Latvia?; on what occasions shall the Cabinet of Ministers resign?; are legitimate and illegitimate children equal in courts? I wonder whether many citizens of other European states, and perhaps of Latvia as well, would not have difficulties in answering such questions.

I wrote to you earlier, Mr. Minister, about the naturalisation fee which at the time of its introduction was about equal to one month's minimum wage. In your reply you stated that this question might be considered again in the Council of Ministers in 1997. I express the hope that the fee, which constitutes quite a burden for people from lower income groups, will be lowered.

Intensification of language training, easier history and constitutional tests and a lower naturalisation fee, together with improved information about the naturalisation process, can contribute to stimulating the naturalisation process, and, as a consequence, the process of integration of non-citizens. However, permit me to add a strong plea for abolishing the "window" system. The maintenance - also in the modified form I recommend - of the test system provides a sufficient guarantee that Latvia will not suddenly be swamped by a bit wave of new citizens insufficiently prepared for integration. There is in my view no valid reason to let hundreds of thousands of non-citizens wait for several years before they can get a chance to start the process of naturalisation.

Children of parents residing in Latvia neither of whom are citizens of Latvia nor any other state

In my letter of 6 April 1993 to the then Foreign Minister Andrejevs I made the following recommendation to the Government:

"Children born in Latvia who would otherwise be stateless should be granted Latvian citizenship, taking into account article 24, paragraph 3, of the International Covenant on Civil and Political Rights and article 7, paragraph 2, of the Convention on the Rights of the Child, and the 1961 Convention on the Reduction of Statelessness".

Permit me, Mr. Minister, to discuss in greater detail these international instruments, to which Latvia became a party without making any reservations.

The Convention on the Reduction of Statelessness requires State Parties to take specific steps to reduce statelessness within their jurisdictions. Article 24, paragraph 3, of the International Covenant on Civil and Political Rights provides that "every child has a right to a nationality". Article of the Convention on the Rights of the Child, which entered into force for Latvia on 14 May 1992, is more explicit than the article of the Covenant quoted above and reads as follows:

- "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. State Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant internationalo

instruments in this field, in particular when the child would otherwise be stateless."

On the implementations of the Convention on the Rights of the Child for Latvia I should like to make a number of comments, which I am making after having consulted the following international experts: Professor Geraldine van Bueren of the Child; Professor Thomas Burgenthal, Presiding Director of the International State of Law Centre at the George Washington University, member of the UN Human Rights Committee; Professor Asbjorn Eide, Director of the norwegian Institute of Human Rights at the University of Oslo and Chairman of the UN Working Group on the Rights of Minorities; Ambassador Thomas Hammerberg of Sweden in his capacity as Vice-Chairman of the UN Committee on the Rights of the Child; Professor Martin Scheinin of the Faculty of Law at the University of Helsinki and member of the UN Human Rights Committee; and Professor Christian Tomuschat of the Faculty of Law at Humboldt University in Berlin. Although the formulations chosen are mine, all experts consulted have endorsed the essence of my legal argumentation and conclusions without reservation.

The argument might be made that Article 7 of the Convention on the Rights of the Child would not have any practical consequences for Latvia because most stateless children have as parents former USSR citizens who have the option of acquiring the citizenship of the Russian Federation. I am of the opinion that this is not a valid argument for several reasons. Firstly, the right articulated in Article 7 of the Convention on the Rights of the Child, of which the child is the intended beneficiary, cannot be made dependant upon the possible exercise of an option available to the parent. Secondly, the availability to a parent of an option cannot be considered to confer a duty to make use of it; otherwise there would no longer be any "right" to a nationality (as articulated in Article 15 of the Universal Declaration of Human Rights, Article 24, paragraph 3, of the International Covenant on Civil and Political Rights and Article 7 of the Convention on the Rights of the Child). Finally, Article 3 of the Convention on the Rights of the Child requires that "In all actions concerning children [...] the best interest of the child shall be a primary consideration". It cannot be considered to be in the best interest of the child if he could be obliged to become a citizen of a state where he does not live and probably, like most of the persons of Russian ethnicity born in Latvia, does not intend to live in the future.

Opening the door for granting Latvian citizenship on the basis of the Convention on the Rights of the Child does not imply that Latvia could be obliged to apply the *ius soli* to anyone born in the territory of Latvia. The obligation in question exists only and exclusively for those children born in Latvia who would otherwise be stateless. In this respect I refer to the relevant legislation of Finland. There, like in Latvia, the legislation is based on the hereditary principle (*ius sanguinis*). But an exception is made for stateless children. According to the Act on Citizenship, a child becomes a Finnish citizen if she or he is born in Finland and does not, from birth, receive any other citizenship.

In my view the Convention on the Rights of the Child does not oblige Latvia to grant Latvian citizenship automatically to children born in Latvia who would otherwise be stateless. Taking into account the formulation of Article 7 of the Convention, a state still acts in conformity with the provision if it obliges parents to lodge a formal application for citizenship on behalf of the child (a request to which the state has to accede) and if it insists that the presence of the child and its parents in the state is not a temporary one by requiring a previous period of residence of some years. In this regard I refer to the European Convention on Nationality which was adopted unanimously by the Committee of Ministers of the Council of Europe on 15 May 1997, with prevention of statelessness as one of its essential principles. Article 6, paragraph 2, of this Convention mentions two options: either automatic conferral of citizenship upon otherwise stateless children, or conferral of citizenship on application after a period of residence "not exceeding five years immediately preceding the lodging of the application". It is my understanding that State practice within Europe is mainly in conformity with the requirements of Article 6 of the European Convention on Nationality, which, in turn, is in conformity with the requirements of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

The comment has been made that the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child limit the freedom of citizenship legislation to settle these issues only if its standards are arbitrary or rob the right of its content. My view is that, while Article 7 of the Convention on the Rights of the Child leaves a certain latitude, the limits of this latitude have been drawn in Article 6 of the European Convention on Nationality, which reflects current State practice in Europe. It would in my view not be in conformity with Article 3 of the Convention on the Rights of the Child, which requires that "in all actions concerning children [...] the best interest of the child shall be a primary consideration", if the waiting period before an application for citizenship of the child can be made would be extended beyond 5 years. It goes without saying that maintaining the obligation to pass language and constitutional tests for the category of children described in Article 7 of the Convention on the Rights of the Child would rob the right conferred in this article of its meaning, taking into account the fact that such tests would in all likelihood only be passed when these children approach adulthood.

Taking all the aspects of the problem into consideration, I recommend to the Government to base itself on the formula on which consensus was recently reached in the Council of Europe and which provides that otherwise stateless children will be granted citizenship on application after a period of residence not exceeding five years immediately preceding the lodging of the application. In making this recommendation, I have taken into account that the Law on Citizenship of Latvia presently in force does not provide for the granting of citizenship to otherwise stateless children on the basis of Article 7 of the Convention on the Rights of the Child. However, the Law on Citizenship stipulates in Article 28:

"Should an international agreement ratified by the Saeima provide for

provisions other than those contained in this Law, the provisions of the international agreement shall be applied".

Consequently, there is no need for Latvia to change its legislation in order to adopt it to the provisions of the Convention on the Rights of the Child. These provisions can be applied directly, there is only the need of administrative implementation.

There are in my view not only strong legal, but equally strong political arguments for following the line I have recommended regarding stateless children in Latvia. The naturalisation process will be widened as a consequence of Latvia's obligations under the Convention on the Rights of the Child, but this has to be seen against the background of a number of naturalisations under the general naturalisation process which is very much smaller than generally anticipated. The children to be naturalized in accordance with the Convention are nearly all born in Latvia, and most of them have few if any memories of the Soviet past. They are apt to consider Latvia not as a foreign country, but as their country. The language programme of the Government which will increase in importance in the coming years, will ensure that they will get an adequate training of the Latvian language in their schools. There is every reason to assume that by the time they reach adulthood they will be well integrated in Latvian society.

#### Summary of recommendations

In conclusion, Mr. Minister, I should like to summarize my recommendations as follows:

- 1) it is desirable that the tests of the history and the Constitution of Latvia as required in the naturalisation process will be maintained, but in simplified form;
- 2) it is of importance for applicants for citizenship from the lower income groups that the naturalisation fee be reduced;
- 3) the so-called "window" system laid down in the Law on Citizenship ought to be abolished;
- 4) Latvia ought to start the granting of Latvian citizenship to children in Latvia who are presently stateless or who would become stateless at birth, in accordance with Article 7, paragraph 2, of the Convention on the Rights of the Child to which Latvia is a party. I want to stress that I am not arguing for an automatic granting of citizenship to this category of children. Parents will have to show interest by making an application. In addition, it is in my view reasonable and in accordance with the European Convention on Nationality and the Convention on the Rights of the Child if Latvia would require lawful and habitual residence for a period of five years immediately preceding the lodging of such an application.

These are the proposals I want to submit to you Mr. Minister. I am looking forward with great interest to your reply.

Yours sincerely,

[signature]

Max van der Stoel  
OSCE High Commissioner on National Minorities

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MINISTER OF FOREIGN AFFAIRS

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REPUBLIC OF LATVIA

31 / 666-5680  
11 September 1997

H.E. Mr. Max van der Stoel  
OSCE High Commissioner  
on National Minorities  
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Excellency,

I have the honour to refer to your letter of 23 May 1997. I am certain that during your visit to Latvia on 7-8 April you obtained the latest information on the developments in the field of human rights. I would like to take this opportunity to inform you about several important developments in Latvia which have taken place since your last letter.

The Saeima (Parliament) adopted the Law on Refugees and Asylum Seekers on 19 June 1997. On the same day, the Law on the Ratification of the 1951 UN Convention on the Status of Refugees was adopted.

On 4 June 1997 the Saeima adopted the law on the ratification of the European Convention on Human Rights and its Additional Protocols 1, 2, 4, 7 and 11. Latvia has accepted the Convention's control mechanism, i.e. the right to individual complaint and the compulsory jurisdiction of the European Court of Human Rights.

A change of Government has also taken place meanwhile. The new



Government continues a commitment to promoting the integration of society in Latvia.

Turning to the recommendations contained in your letter, the Ministry of Foreign Affairs consulted the relevant ministries and Standing Committees of the Saeima when preparing its reply, therefore it has taken some time.

With regard to the possibility of reducing the naturalisation fee, I am pleased to inform you that significant changes are to take place which follow the general line of your recommendations. On 22 July 1997 the Cabinet of Ministers accepted conceptually the proposal that the naturalisation fee be reduced as follows:

- 1) the naturalisation fee shall be 15 Lats for high school students and university students from indigent families;
- 2) the naturalisation fee shall be abolished for orphans and children whose parents' rights have been taken away;
- 3) the Head of the Naturalisation Board shall have the right to exempt from the naturalisation fee persons who are recognised as indigent.

Such a reduction should eliminate or at least diminish significantly applicants' problems with covering the naturalisation fee. It should be stressed that this is currently a conceptual decision which provides a framework for the contents of the final decision. According to the existing procedures, a corresponding draft decision shall be submitted to the Cabinet of Ministers and voted on at a later stage. The draft decision is currently being reviewed by the ministries.

I would like to comment your suggestion that naturalisation tests should be further simplified. The existing history test has been designed in accordance with the Law on Citizenship which prescribes that an applicant has to know the history of Latvia. Therefore, the essential issues of the history of Latvia have been included in the test. It should also be stressed that all questions that are included in the test are covered by a book by J.Taurçns, "The Main Questions of the History of Latvia and the Constitutional Principles of the State". The history part of the exams has been simplified - the number of required correct answers has been reduced significantly. Initially, the applicants had to prepare 300 possible questions, which were unknown beforehand; now there are only 150 questions which have been published. The number of required correct answers has been reduced from 12 out of 18 to 11 out of 18. The Latvian language test has been redesigned so that it is less connected with remembering large portions of text. I would also like to stress that the tests have been designed in collaboration with experts from the Council of Europe. Given all these simplifications, it is unlikely that the tests will be reformatted significantly. The high percentage of applicants that pass the test - 93,7% in Latvian language and 90.5% in the history and Constitution - does provide an indication that the tests are not too difficult. At the same time, the Naturalisation Board has indicated its readiness to continue optimisation of the tests.

I fully agree with you on the crucial importance that the National Programme for Latvian language training plays on the integration of society in general and in preparing the residents of Latvia for Latvian language tests in particular. According to available information, the implementation of this Programme is being carried out as planned and in accordance with the agreed schedule. By September 1997 the core body of teachers for Latvian language education had received the necessary training; several new textbooks for students and handbooks for teachers have been published. New TV materials for learning Latvian have also been developed.

A conceptual decision of the Cabinet of Ministers was taken on 22 July 1997 to reduce the time limit which determines the interval after which an applicant may re-take the naturalisation test. The Ministry of Justice will prepare the corresponding draft decision and submit it to the Cabinet.

The Ministry of Foreign Affairs has informed the Saeima about your views on the so-called "window" system. There is an ongoing discussion of this and other questions related to naturalisation.

I would also like to stress that the abolishing of the "window" system is not a long-term solution. Currently 5804 out of some 125,000 eligible persons have naturalised. If such a proportion were to remain without the "window" system, it is likely that no more than 33,000 persons would have naturalised by now. Such a low figure indicates that the long-term solution lies elsewhere - most importantly, a change in the attitudes of non-citizens towards the country in which they live. This is one of the directions where I think the Government of Latvia could work together with you, developing among non-citizens an understanding of civil society and the need for integration.

The Naturalisation Board together with the Latvian National Human Rights Office is currently conducting a comprehensive sociological survey both among citizens and non-citizens of Latvia in order to obtain more accurate information on the reasons for the slow pace of naturalisation and to develop suggestions on how to accelerate the processes of integration and establishment of a civil society. The full results of the study will be known before the end of this year and will serve as a basis for further action with regard to naturalisation.

With regard to the situation of children of non-citizens who have been born in the Republic of Latvia since the renewal of independence, I would like to inform you of the following. The existing Law on Citizenship does not directly contradict Article 7 of the Convention on the Rights of the Child or the provisions of the International Covenant on Civil and Political Rights and the Convention on the Reduction of Statelessness, since the children born in Latvia have the right to the citizenship of Latvia, which they can exercise together with their parents or independently at the age of 16. I can only agree with you on the importance of Article 28 of the Law on Citizenship on the supremacy of international instruments over the Law. However, it is the view of the Government of Latvia that the provisions of the mentioned instruments have been observed. It should also be noted that in practice the rights of

children of non-citizens born in Latvia are not affected, since they would not be affected by the restriction to certain professions or the right to vote due to their young age. In accordance with the relevant national legislation they enjoy their rights, including protection by law, possibilities for education, medical care, the right to travel and protection by the Republic of Latvia while abroad.

I would like to note that the practice of the participating states of the OSCE with regard to the application of the above-mentioned international human rights documents differs from country to country. I would also like to note that Latvia is not a signatory to the European Convention on Nationality, to which you have referred.

I recognise that there may be different interpretations of the above-mentioned human rights documents; however, it should be stressed that the decision to change or not to change the Law on Citizenship with regard to this and other matters is beyond the competence of the Government and can only be taken by the legislative body - the Saeima.

I would like to thank you for your continuous active involvement and genuine interest in the issues related to naturalisation in Latvia. I am convinced that your efforts have contributed to increased awareness of the process of naturalisation by the general public in Latvia.

I hope that my answers have clarified the position of the Latvian Government on the issues of interest to you. I look forward to further constructive co-operation and remain,

Yours sincerely,

[signature]  
Valdis Birkavs  
Minister for Foreign Affairs