

### Russian-speaking minorities in Estonia and Latvia: problems of integration at the threshold of the European Union

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# **RUSSIAN-SPEAKING MINORITIES<sup>1</sup> IN ESTONIA AND LATVIA: PROBLEMS OF INTEGRATION AT THE THRESHOLD OF THE EUROPEAN UNION**

PETER VAN ELSUWEGE

ECMI Working Paper # 20

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<sup>1</sup> The term ‘Russian-speaking minorities’ is used because not all of the people affected by citizenship and language dilemmas are ethnic Russians, yet the vast majority speaks Russian as their first language.

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## Introduction

The restoration of the Baltic states' independence, back in 1991, brought about a number of political and legal challenges. The presence of large non-titular communities in Estonia and Latvia<sup>1</sup> has proven to be the most pressing of these. Notwithstanding the fact that the European Commission already in 1997 concluded that 'on the whole the rights of the Russian-speaking minorities are observed and safeguarded'<sup>2</sup>, the legal status of these living relics of the Soviet period remains controversial.<sup>3</sup> A resolution of the Council of Europe Committee of Ministers, adopted on 13 June 2002, criticised the protection of national minorities in Estonia.<sup>4</sup> In the lead-up to the December 2003 parliamentary elections, the Russian Duma adopted a resolution 'on gross violations of human and minority rights in the Republic of Latvia'.<sup>5</sup> Dmitry Rogozin, chairman of the Parliamentarian Committee on International Relations, announced that Russia should consider the weapon of economic sanctions to put pressure on the Baltic state, which he described as 'a land of hooligans' where 'Nazis have come to power'.<sup>6</sup> Whereas these statements have to be situated within the context of the ongoing election campaign, the remarks of Alvaro Gil-Robles, European Council Commissioner for Human Rights, are to be taken more serious. During his visit to Riga in October 2003, the High Commissioner criticized the lack of citizenship for more than twenty per cent of Latvia's population and recommended the granting of voting rights to non-citizens in municipal

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<sup>1</sup> Only 58.2 per cent of the Latvian population is ethnically Latvian whereas 67.9 per cent of the Estonian population is ethnically Estonian. Russians constitute the largest ethnic minority in both countries (29.2 per cent in Latvia and 25.6 per cent in Estonia). See: <http://www.europa.eu.int/comm/enlargement/Latvia/index.htm> and <http://www.europa.eu.int/comm/enlargement/estonia/index.htm>

<sup>2</sup> Commission Opinion on Estonia's Application for Membership of the European Union, COM (97) 2006 final, 13. [hereafter referred to as 'Commission Opinion on Estonia'].

<sup>3</sup> See for instance the discussions surrounding the withdrawal of Martijans Bekasovs as Latvia's observer in the European Parliament as a result of his complaints about the problems of Latvia's Russian-speaking minorities. Dace Akule and Marcin Frydrych, "Parliamentarian sacked for backing Russian rights", EUObserver, 5 Nov. 2003, at <http://www.euobserver.com/index.phtml?aid=13370>.

<sup>4</sup> The resolution, *inter alia*, stated that 'protection of national minorities is not always addressed in an adequate manner in the legislative process and administrative practice'. Resolution ResCMN (2002)8 on the implementation of the Framework Convention for the Protection of National Minorities by Estonia.

<sup>5</sup> Declaration of the State Duma in connection with major violations of human rights and the rights of national minorities in the Latvian Republic, adopted on 14 October 2003. Unofficial translation at [http://pws.prserve.net/mirusce/duma\\_latv.htm](http://pws.prserve.net/mirusce/duma_latv.htm)

<sup>6</sup> X, "Russia issues new threats to Latvia", *Baltic Times*, 16 Oct. 2003.

elections.<sup>7</sup> On the other hand, Günter Verheugen, EU Commissioner responsible for enlargement, declared that Latvia fulfils all the criteria in the field of societal integration and has complied with all international requirements regarding its ethnic minorities.<sup>8</sup>

The striking differences between the statements of the Council of Europe and European Union representatives contribute to the existing ambiguity surrounding the legal status of Estonia's and Latvia's Russian-speaking and often stateless minorities. This issue is of particular importance in the light of these countries' accession to the EU on 1 May 2004. The question remains whether this new situation will bring changes to the legal status of the Russian-speaking population in general and the non-citizens in particular. This paper tries to trace the origins of the existing problems, taking into account the Baltic states' specific historical and constitutional framework. In addition, it tries to evaluate the relevant EU legislation in order to define the rights of non-citizens in an enlarged EU.

## **1. State continuity and the legacy of the Soviet period**

Any analysis of the present situation has to take into account the burden of history. This is particularly true for the Baltic states, whose statehood is essentially based on the concept of legal continuity between the independent inter-war republics and the states that arose out of the disintegrated Soviet Union.<sup>9</sup> The forcible incorporation of the Baltic states into the Soviet Union in 1940, on the basis of secret protocols to the Molotov-Ribbentrop Pact, is considered to be null and void. Even though the Soviet Union occupied these countries for a period of fifty years, Estonia, Latvia and Lithuania continued to exist as subjects of international law.

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<sup>7</sup> Kathleen Knox, "Latvia: European Rights Official Stirs Debate With Citizenship, Voting Comments", *RFE/RL*, 15 Oct. 2003, at <http://www.rferl.org/features/2003/10/10102003164255.asp>. X, "Bitter Pill", *Baltic Times*, 16 Oct. 2003.

<sup>8</sup> Sannija Jauce, "Latvia and Estonia adhere to all regulations on ethnic minorities – Verheugen", *LETA*, 6 Nov. 2003, at <http://www.leta.lv>

<sup>9</sup> Peter Van Elsuwege, "State Continuity and its Consequences: The Case of the Baltic States", 16 *Leiden Journal of International Law* (2003), 377-388; Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR* (The Hague, 2003), 45-78.

Estonia and Latvia proceeded from this assumption to restore their pre-war citizenship legislation. Accordingly, only citizens of the pre-war republics and their descendents were entitled to citizenship in 1991. Citizens of the former Soviet Union who had arrived during the Soviet era and their children had - and have - to pass a process of naturalisation to receive an Estonian or Latvian passport. This procedure implies *inter alia* that the candidates have to prove their knowledge of the constitution, the history and the national anthem; they have to swear an oath of allegiance and, foremost, they have to pass an examination testing proficiency in the national language.<sup>10</sup> This situation, which was only clarified after an initial period of absolute legal uncertainty<sup>11</sup>, implies that both Estonia and Latvia have to deal with a large number of stateless persons, called ‘non-citizens’ or ‘aliens’.<sup>12</sup> Lithuania, alternatively, preferred to apply the so-called zero-option, which meant the granting of citizenship to all permanent residents of the restored Lithuanian state regardless of nationality and without any language requirements.<sup>13</sup>

The implementation of the citizenship legislation coincided with the development of new language laws. Without voting rights, the majority of Russian-speakers in both Estonia and Latvia had little opportunity to influence the formulation of a restrictive linguistic legislation, including language requirements for employment and the mandatory use of the state language in various areas.<sup>14</sup> Lithuania, in contrast, did not adopt similar restrictions.

The different choices of Estonia and Latvia on the one hand and Lithuania on the other can be linked to their different demographical situation at the moment of restored independence. According to the last Soviet census of 1989, the share of the titular population in Estonia and Latvia had dropped to 62 and 52 per cent respectively. In Lithuania, the proportion of ethnic Lithuanians remained at

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<sup>10</sup> Article 12 of the Latvian Citizenship Law, at <http://www.ttc.lv> and Article 6 of the Estonian Citizenship Act, at <http://www.legaltext.ee>.

<sup>11</sup> The Latvia Citizenship law has been adopted on 22 June 1994, the Estonian Citizenship Act on 19 January 1995.

<sup>12</sup> In Latvia, the legal status of these persons is based on the ‘Law on the Status of Former USSR Citizens Who are not Citizens of Latvia or Any Other State’, at: <http://www.humanrights.lv>, adopted on 12 April 1995. In Estonia, the Aliens Act, at <http://www.legaltext.ee>, adopted on 8 July 1993 is applicable to this category of persons.

<sup>13</sup> The Lithuanian Citizenship Law, at <http://www.urm.lt>, was passed on 5 December 1991.

<sup>14</sup> For an overview, Boris Tsilevich,, “Development of the Language Legislation in the Baltic States”, 3(2) *Journal on Multicultural Societies*, at <http://www.unesco.org/most/v13n2edi.htm>.



approximately 80 per cent.<sup>15</sup> Only 13,7 per cent of the Russian-speaking population in Estonia reported proficiency in the Estonian language. In Latvia and Lithuania the corresponding figures were 22,7 and 33,5 per cent.<sup>16</sup> In this context, widespread concerns about the ‘imminent extinction’ of the Estonian and Latvian nation contributed to the adoption of restrictive language and citizenship laws. A similar threat was less outspoken in Lithuania, which preferred a more liberal approach towards the integration of its Russian-speaking minorities.

The Estonian and Latvian options attracted the attention of various international organisations, particularly in the light of the unpredictable and unstable situation in Russia. By the end of 1993, the initial pro-western policy of Boris Yeltsin and his Minister of Foreign Affairs, Andrei Kozyrev, had come to an end.<sup>17</sup> Simultaneously, the growing popularity of the ‘Red-Brown’ coalition of former communists and extreme right organizations forced the Russian government to adopt a more assertive approach towards foreign policy problems. In April 1993, a new military doctrine suggested that maltreatment of Russians in the so-called ‘near-abroad’, defined as ‘the geopolitical space of the former Soviet-Union’, could be construed as grounds for Russian military intervention.<sup>18</sup> In this context, the drafting of Estonia’s legislation on the status of non-citizens provoked the scarcely revealing threat that ‘given the natural desire of the Russian-speaking population to protect itself from blatant discrimination, Russia will be unable to remain a disinterested observer.’<sup>19</sup> President Yeltsin, who described the Estonian policy as ‘a practice of ethnic cleansing’ and ‘the introduction

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<sup>15</sup> Lithuania’s specific historical and socio-economic development can explain the relatively small number of Russian-speakers in comparison to the other Baltic republics. First, Lithuania has a long tradition of independent statehood which goes back to the Middle Ages. It came under Russian dominance after the disintegration of the Polish-Lithuanian Commonwealth (1795), which is more than a century after the incorporation of the Baltic provinces into the Russian empire of tsar Peter the Great. Consequently, the northern part of the Baltic region has a longer tradition of Russian settlement. Secondly, Lithuania was not so much affected by the industrial revolution at the end of the nineteenth century. The Soviets considered the Lithuanian republic as a primarily agricultural area, which largely reduced the influx of Russian migrant workers. Finally, the higher birth rate of Catholic Lithuania in comparison to Protestant Estonia and Latvia guaranteed a consistent majority of ethnic Lithuanians.

<sup>16</sup> Anatol Lieven, *The Baltic Revolution. Estonia, Latvia, Lithuania and the Path to Independence* (New Haven, 2<sup>nd</sup> ed. 1994), 183-184.

<sup>17</sup> Peter Truscott, *Russia First. Breaking with the West* (London, 1997), 152.

<sup>18</sup> Richard Löwenhardt, *The Reincarnation of Russia. Struggling with the Legacy of Communism 1990-1994* (London, 1995), 116.

<sup>19</sup> Statement by the President of the Russian Federation of 24 June 1993. Annex to a letter dated 25 June 1993 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General concerning the situation of human rights in Estonia and Latvia, A/48/223.

of an Estonian form of apartheid', clearly stated that Russia had the means 'to remind the Estonian leaders about certain geographical and demographical realities.'<sup>20</sup> Taking into account the continued presence of Russian troops and the existence of border disputes between Russia and both Estonia and Latvia, the alleged discrimination of Russian-speaking minorities produced an environment with huge potential for conflict.

## **2. Reaction of the international community**

This confrontational course of events clearly threatened the fragile stability in the entire Baltic region and demanded a clear-cut response from the side of the international community. Against the background of the outbreak of ethnic violence in Yugoslavia and the Caucasus, the Member States of the Organisation for Security and Cooperation in Europe (OSCE) decided to establish permanent missions in Tallinn and Riga, operating in close co-operation with the High Commissioner for Human Rights, Max van der Stoep.<sup>21</sup> This constant monitoring, in combination with the High Commissioner's diplomatic recommendations, decreased the plausibility of violent escalation. In addition, the Council of Europe provided legal expertise and advice on draft citizenship and language laws. Last but not least, the European Union developed its own strategy of 'preventive diplomacy' within the framework of the Common Foreign and Security Policy as provided under the Treaty of Maastricht. This plan, leading to a '*Pact on Stability in Europe*', was essentially based on the proposals of the French Prime Minister Eduard Balladur<sup>22</sup> and entered into the EU's institutional framework as a result of the June 1993 Copenhagen European Council.<sup>23</sup> The basic objective of 'fostering good neighbourly relations and encouraging

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<sup>20</sup> Ibid.

<sup>21</sup> Rob Zaagman, *Conflict Prevention in the Baltic States: The OSCE High Commissioner on National Minorities in Estonia, Latvia and Lithuania*, (Flensburg, 1999), 15.

<sup>22</sup> Takako Ueta, "The Stability Pact: from the Balladur Initiative to the EU Joint Action", in Martin Holland (ed.), *Common Foreign and Security Policy. The Record and Reforms* (London, Washington, 1997), 92-104.

<sup>23</sup> The June 1993 Copenhagen European Council 'welcomed the idea of using the instrument of 'joint action' in accordance with the procedures provided for in the common foreign and security policy.' Accordingly, the Council adopted decision 93/728/CFSP on 20 December 1993 (OJ L339, 1993) and reported to the December Brussels European Council. On 14 June 1994 the Council adopted decision 94/367/CFSP on the continuation of the joint action. Eventually, the Pact on Stability was adopted on the occasion of the Paris Conference on 20-21 March 1995. This conference completed the joint action and transferred the responsibility for the implementation of the Stability Pact to the OSCE.

countries to consolidate their borders and to resolve the problems of national minorities' clearly applied to the confrontational situation between the Baltic states and Russia.<sup>24</sup> Within this framework a 'Baltic Round Table' brought together officials from both parties, with the EU in the role of moderator. This 'confidence building measure'<sup>25</sup> coincided with the introduction of conditionality provisions in the bilateral agreements between the EC/EU and each of the Baltic republics.

In contrast to similar agreements concluded with other Central and Eastern European countries, the Trade and Cooperation Agreements (TCAs) with the Baltic states contained a specific reference to democratic principles and human rights.<sup>26</sup> A serious violation of these principles could lead to the suspension of the agreements.<sup>27</sup> Edwige Tuczny argues that the EC included this provision in the light of the precarious situation of the Russian-speaking minorities in Estonia and Latvia.<sup>28</sup> Notwithstanding the potential applicability of the conditionality clause to this specific problem, her statement seems to disregard the gradual evolution of the EC's human rights policy. Already in June 1991, even before the recognition of the restored independence of the Baltic republics, the Luxembourg European Council adopted a declaration which referred to the practice of 'including clauses on human rights in economic and cooperation agreements with third countries'.<sup>29</sup> Furthermore, the fact that identical conditionality clauses were included in the TCAs with Albania and Slovenia plays

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<sup>24</sup> Sven Arnsward suggests that the conflicts between Russia and the Baltic States had been a major incentive for the initiation of the Pact. Sven Arnsward, "The Politics of Integrating the Baltic States into the EU – Phases and Instruments", in Matthias Jopp and Sven Arnsward (eds.), *The European Union and the Baltic States. Visions, Interests and Strategies for the Baltic Sea Region* (Helsinki, 1998), 31. It has to be mentioned, however, that this Pact was not exclusively devised for the specific situation of the Baltic States whereas the outbreak of ethnic violence in Yugoslavia can be seen as the primary incentive for the development of the Stability Pact.

<sup>25</sup> Arnsward, *ibid.*, p.32.

<sup>26</sup> E.g. Article 1 of the TCA with Estonia states that 'Respect for the democratic principles and human rights established by the Helsinki Final Act and the Charter of Paris for a new Europe inspires the domestic and external policies of the Community and Estonia and constitutes an essential element of the present agreement.' Agreement between the European Economic Community and the Republic of Estonia on trade and commercial and economic cooperation. *O.J.*, 1992, L403/4. An identical provision is included in the TCA's with Latvia (*O.J.*, 1992, L403/13) and Lithuania (*O.J.*, 1992, L403/22)

<sup>27</sup> E.g. Article 21 of the TCA with Estonia states that 'The parties reserve the right to suspend this Agreement in whole or in part with immediate effect if a serious violation occurs of the essential provisions of the present Agreement.' Agreement between the European Economic Community and the Republic of Estonia on trade and commercial and economic cooperation. *O.J.*, 1992, L403/7. An identical provision is included in the TCA's with Latvia (*O.J.*, 1992, L403/16) and Lithuania (*O.J.*, 1992, L403/25)

<sup>28</sup> Edwige Tuczny, *L'Elargissement de l'Union Européenne aux pays d'Europe centrale et orientale. La conditionnalité politique* (Paris, 2000), 104-105.

<sup>29</sup> Presidency conclusions Luxembourg European Council. Annex V, Declaration on human rights, *Bull. EC*, 1991, 6, I.45.

down the assumption that this mechanism was devised for the specific case of the Baltic states.<sup>30</sup> Be that as it may, it cannot be denied that the inclusion of conditionality clauses in the bilateral agreements with Estonia, Latvia and Lithuania forms an important aspect of the EC/EU involvement in this area.

Conditionality, however, is not an unequivocal concept.<sup>31</sup> Parallel to the ‘conditionality clauses’, which constitute the EC/EU’s stick behind the door, the perspective of strengthened relations and eventual accession provided an important incentive (carrot) to promote the development of the Baltic states’ minority policies. The preamble to the TCAs, for instance, contained a provision for further development of relations. The established contractual links were considered to ‘contribute to progress towards the objective of an association agreement in due course, when conditions are met.’<sup>32</sup> The June 1993 Copenhagen European Council also underlined that it remained the objective of the Community to conclude Europe Agreements as soon as the necessary conditions had been fulfilled.<sup>33</sup> In the meantime, the EC and its Member States concluded Free Trade Agreements (FTAs) with each of the Baltic states. The FTAs, on their turn, referred to the prospect of association and recognised Estonia’s, Latvia’s and Lithuania’s ultimate objective ‘to become a member of the EU’.<sup>34</sup> The eventual conclusion of Europe Agreements with these countries in June 1995 brought them to the centre of the pre-accession process<sup>35</sup>, which implied the further application of the EU’s conditionality policy.

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<sup>30</sup> From the Europe Agreement with Bulgaria onwards (see O.J. 1994 L 233/24) onwards, the ‘explicit suspension clause’ has been replaced by a ‘general non-execution clause’, which provides for the possibility of political negotiations before the suspension of the agreement. The differences between the ‘Baltic’ and the ‘Bulgarian clause’ are laid down in a Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and Third Countries, COM (95) 216 final.

See also: Kris Pollet, “Human Rights Clauses in Agreements between the European Union and Central and Eastern European Countries”, 7(3) *RAE-LEA* (1997), 293-294.

<sup>31</sup> Erwan Lannon, Kirstyn Inglis, and Tom Haenebalcke, “The Many Faces of EU Conditionality in Pan-Euro-Mediterranean Relations”, in Marc Maresceau, and Erwan Lannon, (eds.), *The EU’s Enlargement and Mediterranean Strategies. A Comparative Analysis* (Houndmills 2001), 97-138.

<sup>32</sup> Agreement between the European Economic Community and the Republic of Estonia on trade and commercial and economic cooperation. *O.J.*, 1992, L403/2. (Latvia and Lithuania: *O.J.*, 1992, L403/11 and L403/20).

<sup>33</sup> Presidency conclusions Copenhagen European Council, (21-22 June 1993), *Bull. EC.*, 1993, 6, 1.14.

<sup>34</sup> Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Estonia, of the other part, *O.J.*, 1994, L373/2. (similar agreement with Latvia and Lithuania: *O.J.*, 1994, L374/2 and L375/2.)

<sup>35</sup> Initially, the Europe Agreements were regarded by the European Community as association agreements, providing more of an alternative to accession than a pre-accession instrument. This

To reach their ultimate objective of becoming EU Member States, the Baltic countries had to satisfy the political and economic criteria for accession as identified by the June 1993 Copenhagen European Council. This, *inter alia*, implies stable institutions ‘guaranteeing democracy, the rule of law, human rights and respect for and promotion of minorities.’<sup>36</sup> The December 1994 Essen European Council added the political condition of ‘*bon voisinage*’ to the Copenhagen requirements.<sup>37</sup> Multiple references to the necessity of good neighbourly relations and the importance of the Pact on Stability in Europe provided an interesting framework for the evolving Baltic-Russian relations. In this regard it is noteworthy that the first Commission Communication on the establishment of a specific policy towards the Baltic Sea region explicitly referred to the issue of the Russian-speaking population and the EU’s role as go-between:

*“An appropriate integration of non-citizens, in particular the Russian-speaking residents of the Baltic states, especially Latvia and Estonia, in accordance with relevant recommendations from international organisations as well as a constructive dialogue between the parties concerned would strongly contribute to the improvement of regional security and stability. In this context the Union has a role in promoting the observance of the fundamental values which now bind the countries of the region including the rights of persons belonging to minorities.”*<sup>38</sup>

### **3. EU pre-accession conditionality and its consequences**

Within the legal framework of the EU accession process, the European Commission plays a primarily role in the monitoring of the pre-accession conditionality. In accordance with Article O TEU (now Art. 49 EU), the Commission presented its Opinions on the applications for membership together with *Agenda 2000*, an elaborated strategy paper on the policies of the Union and the impact of enlargement,

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situation changed as a result of the Copenhagen European Council of 21-22 June 1993. On the political reorientation of the Europe Agreements, see Kirstyn Inglis, “The Europe Agreements Compared in the Light of their Pre-Accession Reorientation”, 37 *CML Rev.* (2000), 1173- 1210.

<sup>36</sup> Presidency conclusions Copenhagen European Council, (21-22 June 1993), *Bull. EC.*, 1993, 6, 1.14.

<sup>37</sup> Presidency conclusions Essen European Council, (9-10 December 1994), *Bull. EU.*, 1994, 12, I.54.

<sup>38</sup> Communication from the Commission to the Council, *Orientations for a Union Approach towards the Baltic Sea Region*, SEC(94) 1747 final, Brussels, 25 Oct. 1994, 3.

on 17 July 1997. Concerning the fate of the Russian-speaking population in Estonia and Latvia, the Commission concluded that ‘there is no evidence that these minorities are subject to discrimination except for problems of access to certain professions in Latvia’.<sup>39</sup> Furthermore, the Commission observed that ‘the rate of naturalisation of non-citizens has been slow in both countries’ and recommended the acceleration of this process ‘to ensure the integration of non-citizens’.<sup>40</sup> The country reports attributed these problems to the relative difficulty of the tests, the high enrolment fees of the examination, and the fact that non-possession of Estonian or Latvian citizenship may have appeared as an advantage.<sup>41</sup>

A comparison between the reports on Estonia and Latvia reveals a striking difference between the Commission’s observation that in Latvia ‘*non-citizens continue to be affected by various types of discrimination*’<sup>42</sup> whereas in Estonia ‘*foreigners are subject to some restrictions*’.<sup>43</sup> The Commission Opinion on Latvia criticised the so-called ‘window system’, which restricted the right to apply for naturalisation according to age brackets, and the fact that non-citizens are barred from certain occupations. Ten differences in status between citizens and non-citizens were assumed to be contrary to the Latvian Constitution and the UN Convention on Civil and Political Rights. Moreover, the lack of political participation, even in local elections, and the poor protection of non-citizens’ fundamental rights had to be tackled. Finally, the European Commission maintained that ‘the Latvian authorities must consider ways to make it easier for stateless children born in Latvia to become naturalised.’<sup>44</sup> A similar recommendation can be found in the Commission Opinion on Estonia. In general, however, the Commission produced a more favourable picture of the situation. Notwithstanding the existence of certain ‘restrictions’, the Estonian authorities are expected to resolve ‘some practical difficulties’. The granting of voting

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<sup>39</sup> Agenda 2000. For a stronger and wider Union (Vol. I). The Challenge of Enlargement (Vol. II), COM(97)2000 final, 45.

<sup>40</sup> Agenda 2000, *ibid.*

<sup>41</sup> Commission Opinion on Latvia’s Application for Membership of the European Union, COM(97)2005 final, 15-18. [hereafter Opinion on Latvia] Commission Opinion on Estonia’s Application for Membership of the European Union, COM(97)2006 final, 13-15. [hereafter Opinion on Estonia]

<sup>42</sup> Opinion on Latvia, 17.

<sup>43</sup> Opinion on Estonia, 15.

<sup>44</sup> Opinion on Latvia, 17-18. According to Article 1 of the UN Convention on the Reduction of Statelessness and in line with the Convention on the Rights of the Child and Article 24 of the International Covenant on Civil and Political Rights, states are under an obligation to grant citizenship to children born in their territories who would otherwise be rendered stateless.

rights in local elections has been praised because it ‘effectively contributes towards the integration of non-citizens and the protection of their rights’.<sup>45</sup> In contrast to the Opinion on Latvia, the general evaluation of the political situation in Estonia does not contain any references to the necessity of further efforts to ensure general equality of treatment for non-citizens and minorities. Finally, the Commission did not put into question the basic elements of the naturalisation process but only observed that ‘*the main weakness in the present system lies in the inadequate resources available for Russian speakers to learn Estonian in order to sit in the naturalisation test.*’<sup>46</sup> In other words, the Commission identified the stimulation of language training as the main vehicle to speed up the rate of naturalisations and to proceed the process of societal integration.

Despite the quite similar problems faced by the Russian-speaking and stateless communities in Estonia and Latvia, the Commission seemed to be less critical to the situation in Estonia. Consequently, the recommendation to start accession negotiations with this country, together with four other Central and Eastern European (CEE) applicant countries (the Czech Republic, Hungary, Poland and Slovenia), provoked extensive debate, analysis and speculation.<sup>47</sup> Notwithstanding the storm of criticism to the Commission Opinions, the December 1997 Luxembourg European Council endorsed the recommendations to start accession negotiations with only five CEECs. Simultaneously, the European Council launched the ‘enhanced pre-accession strategy’, including Accession Partnerships, annual Commission reports on the progress towards accession and increased pre-accession aid.<sup>48</sup> This strategy, which is obviously the EU’s diplomatic reaction to the controversial reception of the Commission Opinions, established a comprehensive legal framework for monitoring the situation in the applicant countries. The Accession Partnerships lay down the short and medium-term priorities on the basis of the Commission observations. The annual Commission reports, on their turn, assess the progress towards the fulfilment of these priorities and form the basis for updates of the Partnerships. Finally, financial assistance is targeted on the priorities of the Accession Partnerships. The entire

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<sup>45</sup> Opinion on Estonia, 15.

<sup>46</sup> *ibid.*, 14.

<sup>47</sup> An overview of the reactions is listed in: Arnswald, 74-82.

<sup>48</sup> For a legal analysis of the enhanced pre-accession strategy, see Marc Maresceau, “Pre-Accession”, in Marise Cremona, (ed.), *The Enlargement of the European Union* (Oxford, 2003), 30-40.

strategy is based on the principle of financial conditionality. The ‘carrot’ of financial assistance can only be granted if certain conditions are satisfied, whereas Regulation 622/98 on the establishment of Accession Partnerships contains the ‘stick’ of eventual sanctions.<sup>49</sup>

The prospect of accession and the mechanism of financial conditionality have brought the EU in a privileged position to monitor and influence the minority situation in Estonia and Latvia. The proclaimed impact of the EU’s conditionality policy upon the situation of the Russian-speaking minorities in Latvia and Estonia is very controversial. Whereas certain observers subscribe to the official stance that the prospect of accession contributed to significant improvements concerning the naturalisation procedure and the legislation on the use of minority languages in official procedures<sup>50</sup>, others have criticised the European Commission’s flexible and favourable approach towards the restrictive policies of the Estonian and Latvian governments.<sup>51</sup>

It cannot be denied that the European Commission recommendations contributed to changes in citizenship and language legislation. In 1998, for instance, Latvia abolished the ‘window system’ and granted, upon request of their parents, citizenship to stateless children born in Latvia after 21 August 1991. Furthermore, the Latvian government eliminated restrictions preventing non-citizens from working as fire-fighters, airline staff, and pharmacists. Non-citizens could receive unemployment benefits without presenting certificates of Latvian language knowledge and the naturalisation procedures for people over the age of 65 and disabled persons were

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<sup>49</sup> Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships, OJ 1998 L 085/1.

<sup>50</sup> See e.g. Mark A. Jubulis, “The External Dimension of Democratization in Latvia: the Impact of European Institutions”, 13 *International Relations* (1996), 59-73; Nida M. Gelazis, “The Effects of EU Conditionality on Citizenship Policies and Protection of National Minorities in the Baltic States”, in Vello Pettai and Jan Zielonka, *The Road to the European Union (Vol. 2). Estonia, Latvia and Lithuania* (Manchester, New York, 2003), 46-74.; Jekaterina Dorodnova, “EU Concerns in Estonia and Latvia: Implications of Enlargement for Russia’s Behaviour Towards the Russian-speaking Minorities.”, *EUI Working Papers* 2000/40, 45.

<sup>51</sup> James Hughes and Gwendolyn Sasse, “Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs”, JEMIE (2003), at [http://www.ecmi.de/jemie/download/Focus1-2003\\_Hughes\\_Sasse.pdf](http://www.ecmi.de/jemie/download/Focus1-2003_Hughes_Sasse.pdf), 1-36; Marc Maresceau, “Quelques réflexions sur l’origine et l’application de principes fondamentaux dans la stratégie d’adhésion de l’UE”, to be published in *Liber Amicorum Jean Raux* (Rennes, 2004).



simplified.<sup>52</sup> Similar amendments could be observed in Estonia. There is, therefore, little doubt that the process of EU accession has been a force for improvement. On the other hand, however, the Commission reports have been criticised for emphasising on the integration of minorities ‘to such an extent that it is plausible to argue that they indicate a preference for assimilation.’<sup>53</sup> In particular, there is a focus on linguistic integration, ‘which the Reports interpret as the need to make minorities proficient in the official state language.’<sup>54</sup> The basic idea that instruction of the national language is a prerequisite for societal integration can be found in all Accession Partnerships and Commission reports. Consequently, the EU’s technical and financial assistance in the field of minority protection is primarily targeted on language training.<sup>55</sup> This policy does not necessarily reflect the aspirations of the non-titular population, which is voicing concerns that the process of integration threatens the preservation of their own language and culture. A good example of this conflict between the perceived necessity of further integration and the rights of the Russian-speaking minorities can be found in the field of education.

#### **4. Integration versus assimilation: how to find a balance?**

In Latvia, the 1998 Education Law foresees the introduction of Latvian as the language of instruction in all public secondary schools and the implementation of bilingual education in primary schools from 1 September 2004 onwards.<sup>56</sup> This decision has provoked intensive discussions. According to the proponents of this legislation, the educational reform is a prerequisite for solving the problems of the Russian-speaking minorities. An educated knowledge of the official language allegedly promotes the competitiveness of non-Latvian speakers on the labour market and places them in a privileged position for the acquisition of Latvian citizenship. The Latvian educational system has, therefore, been described as ‘the most important driving force of the integration process.’<sup>57</sup> The Russian-speaking community, on the

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<sup>52</sup> Gelazis, 67.

<sup>53</sup> Hughes and Sasse, 16.

<sup>54</sup> *ibid.*

<sup>55</sup> Within the framework of the PHARE programme 3,7 million euro has been allocated for Latvian language training whereas the Estonian Language Training Programme received 1,4 million euro in 1997 and 3,1 million in 2001.

<sup>56</sup> The text of the Latvian Education Law is available at: <http://www.ttc.lv>

<sup>57</sup> National Programme “The Integration of Society in Latvia”, Riga, 2001, at <http://www.ng.gov.lv>, 56.

other hand, has expressed concern that the opportunities and guarantees for primary and secondary education in the minority language are increasingly limited.<sup>58</sup> A joint statement of Latvia's minority NGOs denounced the education reform as a disguised form of assimilation<sup>59</sup> and the Association for the Support of Russian Language Schools in Latvia (LASHOR) stressed the importance of education in the mother tongue for the children's intellectual development.<sup>60</sup> These claims have been actively supported by the Russian Federation. The Russian Ministry of Foreign Affairs accused Latvia of violating 'the provisions and the spirit of the European Framework Convention for the Protection of National Minorities.'<sup>61</sup> Article 14,2 of this document, which has been signed but not yet ratified by Latvia, stipulates that:

*'in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.'*<sup>62</sup>

The following paragraph, however, clearly limits the application of this provision:

*'the opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language.'*

The explanatory report to the Convention explicitly subscribes the Latvian argumentation that 'knowledge of the official language is a factor of social cohesion and integration.'<sup>63</sup> Furthermore, the Russian allegation that the education reform leads to assimilation and would, therefore, be contrary to Article 5 of the Framework Convention is not very convincing. This provision effectively protects national minorities from assimilation against their own will but does not preclude the Member

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<sup>58</sup> Open Society Institute, *Monitoring the EU Accession Process: Minority Protection (Vol I). An Assessment of Selected Policies in the Candidate States*, (Budapest, 2002), 325.

<sup>59</sup> Joint statement of Latvia's minority NGOs: "For a genuine integration, against assimilation", at <http://www.arts.uwaterloo.ca/minelres/archive/04161999-15:26:55-14291.html>.

<sup>60</sup> Open Society Institute 2002, 342. See also [www.lashor.lv](http://www.lashor.lv).

<sup>61</sup> On the situation in Latvia Regarding Abolition of the System of Secondary and Professional Education in the Russian Language, at: <http://www.mid.ru>.

<sup>62</sup> The text of the Framework Convention for the Protection of National Minorities is available at: [http://www.coe.int/T/E/human\\_rights/minorities/](http://www.coe.int/T/E/human_rights/minorities/)

<sup>63</sup> *ibid.*

States from taking measures in pursuance of their general integration policy. It can therefore be concluded that even if the Framework Convention would be binding to Latvia, legal action on this basis is very questionable. This is particularly true after amendments to the Education Law guarantee teaching in the minority language up to 40 % of the entire curriculum.<sup>64</sup>

In spite of this new situation, Latvian citizens have already lodged a complaint against Latvia before the European Court of Human Rights (ECHR).<sup>65</sup> The applicants proclaimed that the education reform infringes Article 2 of the first Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, including a right of education for every person ‘in conformity with [his/her] own religious and philosophical convictions’. In a judgment of 1968, concerning the use of languages in the Belgian educational system, the ECHR decided that the notion ‘religious and philosophical convictions’ does not include the right to choose the language of instruction in schools.<sup>66</sup> The Court also noted that the general prohibition of discrimination (Art. 14), even when read in conjunction with the above mentioned Article 2 of the first Protocol, ‘does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice.’<sup>67</sup> Notwithstanding the fact that legal experts have criticised this decision,<sup>68</sup> it is obvious that the Belgian linguistic case gives a very strong argument to the Latvian government. Yet, the ECHR did not discuss this issue because the applicants could bring an action before the Latvian Constitutional Court.<sup>69</sup> The ECHR can only act as a ‘last resort’ after the education reform is conducted and all domestic remedies have been exhausted.

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<sup>64</sup> X, “Education reform 2004: law amended, problem not solved”, (71) *Minority Issues in Latvia* (2003), at <http://lists.delfi.lv/pipermail/minelres/2003-August/002884.html>. It has to be mentioned, however, that MPs from the ruling nationalistic faction ‘For Fatherland and Freedom/LNNK’ suggested a restrictive interpretation of the amendments. This would imply that only subjects related to minority identity and culture could be taught in minority languages. See: X, “Education Law: breaking promises, provoking conflicts?”, (79) *Minority Issues in Latvia* (2004) at <http://lists.delfi.lv/pipermail/minelres/2004-January/003161.html>.

<sup>65</sup> ECHR, Appl. 36117/02, *Grisankova and Grisankovs v. Latvia*, judgment of 13 February 2003.

<sup>66</sup> ECtHR, *Belgian Linguistics v. Belgium*, judgment of 23 July 1968, Series A, No.6. The ECHR explicitly stated that ‘to interpret the terms “religious” and “philosophical” as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which is not there.’ (*Belgian Linguistics*, para. 6).

<sup>67</sup> *ibid.*, para. 11.

<sup>68</sup> Christian Hillgruber, Matthias Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities* (Köln, 1994), 30.

<sup>69</sup> ECHR, Appl. 36117/02, *Grisankova and Grisankovs v. Latvia*, judgment of 13 February 2003.

Finally, reference has to be made to the EU Charter of Fundamental Rights, which is included as a specific chapter in the Draft Treaty establishing a Constitution for Europe.<sup>70</sup> Article II-14,3 of this document maintains that ‘the right of parents to ensure education and teaching of their children in conformity with their religious, philosophical and *pedagogical* convictions shall be respected.’<sup>71</sup> Whereas this provision echoes Article 1 of protocol 2 to the ECHR, the reference to the parents’ pedagogical convictions is an important addition that could broaden the restrictive interpretation delivered by the European Court of Human Rights in the Belgian Linguistics Case.<sup>72</sup> Apart from the observation that the Draft Constitution has to pass the entire ratification procedure before entering into force, the sentence that this right has to be exercised in conformity with the national legislation in this field limits the scope of this provision. Moreover, Article II-51,1 reveals that the Charter is applicable to the Member States ‘only when they are implementing Union law’. Given the limited Union competences in the area of education, the current meaning of the EU Charter of Fundamental Rights seems to be rather limited for the Russian-speaking minorities in Estonia and Latvia.

Consequently, it can be concluded that under the present situation there seem to be no clear legal grounds to obstruct the implementation of the Latvian Education Law. From a political perspective, however, it is obvious that a strict application of the language legislation increases the danger of social destabilisation. Education reform is one of the most controversial issues, provoking emotional reactions among the Russian-speaking minority. There is a widespread fear that Russian-speakers will face enormous learning difficulties. Furthermore, the lack of sufficiently prepared teachers is a major problem which threatens to undermine the quality of education. It is noteworthy that the Estonian Parliament decided to abolish the automatic switch to Estonian as the language of instruction in Russian public schools from 2007 onwards, referring to a lack of qualified teachers.<sup>73</sup> Taking into account the political sensitivity

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<sup>70</sup> Draft Treaty Establishing a Constitution for Europe, CONV 850/03, Brussels, 18 July 2003 at: <http://european-convention.eu.int>.

<sup>71</sup> Emphasis added.

<sup>72</sup> See Belgian Linguistics Case; Niahm N. Shuibhne, *EC Law and Minority Language Policy. Language, Citizenship and Fundamental Rights* (The Hague, 2002), 243.

<sup>73</sup> X, “Parliament keeps Russian-language Secondary Schools”, *RFE/RL*, 27 Nov. 2003, at <http://www.rferl.org/balticreport>.

of the educational reform, a similar move seems to be unlikely in Latvia. Nevertheless, an important amendment introducing that up to 40 % of the curriculum can be taught in the minority language has been adopted.<sup>74</sup> Furthermore, the Minister for Education and Science announced the possible abolishment of the provision that only private schools with Latvian language of instruction are eligible for subsidies from the state budget.<sup>75</sup>

These evolutions are important in the light of the European Commission recommendations. According to the 2003 monitoring report on Latvia's preparations for EU membership, Latvia is expected 'to ensure *sufficient flexibility* regarding transition to bilingual education in minority schools'.<sup>76</sup> This rather general and unclear provision exemplifies the European Commission's reluctance of active engagement in the discussion on Russian-language minority education in Latvia. This observation can be surprising in the light of the attention paid to the use of minority languages in other Progress Reports and Accession Partnerships.<sup>77</sup> Even more striking is the unambiguous statement of the 1997 Commission Opinion on Estonia's application for EU Membership that state-funded education in the Russian language '*should be maintained without time limit in the future.*'<sup>78</sup> These obvious differences provoked allegations that the EU is using 'double standards' in the field of minority protection.<sup>79</sup>

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<sup>74</sup> X, "Education Reform: Amendments Adopted, Tensions Remain", (73) *Minority Issues In Latvia* (2003), at <http://lists.delfi.lv/pipermail/minelres/2003-September/002935.html>.

<sup>75</sup> *ibid.*

<sup>76</sup> Emphasis added. European Commission, Comprehensive Monitoring Report on Latvia's Preparations for Membership, at [http://www.europa.eu.int/comm/enlargement/report\\_2003/pdf/cmr\\_lv\\_final.pdf](http://www.europa.eu.int/comm/enlargement/report_2003/pdf/cmr_lv_final.pdf).

<sup>77</sup> For instance, the 1999 Accession Partnership on Slovakia referred to the necessity of protecting 'the use of minority languages in the fields of education, culture and the media...' (OJ, 1998, C202/85).

<sup>78</sup> Opinion on Estonia, 15.

<sup>79</sup> See, e.g., Alexander Yakovenko, the Official Spokesman of Russia's Ministry of Foreign Affairs, regarding the Status of the Russian-Speaking Population in the Baltic States, 12 Nov. 2003, at <http://www.mid.ru>.

## 5. Problems of integration on the brink of EU enlargement

### 5.1. *The lack of effective anti-discrimination legislation*

The EU accession of Estonia and Latvia on 1 May 2004 does not imply that all EU legislation has already been implemented. The 2003 European Commission comprehensive monitoring reports on these countries' preparations for membership reveal that in the field of anti-discrimination legislation 'important shortcomings subsist with regard to the full transposition of the *acquis*'.<sup>80</sup> Notwithstanding the fact that both the Estonian and Latvian constitutions as well as a number of specific laws contain provisions prohibiting discrimination on the basis of race or nationality<sup>81</sup>, legal experts have come to the conclusion that this is insufficient to comply with the so-called EU Race Equality Directive.<sup>82</sup> The Directive establishes a general principle of prohibition of any direct or indirect discrimination based on racial or ethnic origin.<sup>83</sup> This prohibition of discrimination applies to a wide range of areas, including employment, vocational training, social protection, education and access to goods and services.<sup>84</sup> It does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals or stateless persons on the territory of Member States. In addition, the Directive does not apply to 'any treatment which arises from the legal status of the third-country nationals and stateless persons'.<sup>85</sup> In other words, the differences between citizens and non-citizens are not perceived as discrimination on

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<sup>80</sup> European Commission, *Comprehensive Report on Latvia's Preparations for Membership*, 35. A similar observation can be found in the *Comprehensive Report on Estonia's Preparations for Membership*, 35.

<sup>81</sup> Article 12 of the Estonian constitution establishes an explicit ban of discrimination: "*Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable*". Article 91 of the Latvian constitution states that "*All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind*".

<sup>82</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ, 2000, L180/22.

For a legal analysis of the implementation of this Directive in Estonia and Latvia, see: Vadim Poleshchuk, *Report on measures to combat discrimination in the 13 candidate countries. Country report Estonia*, May 2003; Gita Feldhune, *Report on measures to combat discrimination in the 13 candidate countries. Country report Latvia*, May 2003, both reports are available at <http://www.migpolgroup.com>.

<sup>83</sup> Art. 1-2 of Directive 2000/43, OJ, 2000, L180/24.

<sup>84</sup> Art. 3,1 of Directive 2000/43, OJ, 2000, L180/24.

<sup>85</sup> Art. 3,2 of Directive 2000/43, OJ, 2000, L180/24.

the basis of race and ethnic origin. Notwithstanding these important restrictions to the scope of the Directive, it lays down minimum requirements aimed at combating discrimination against ethnic minorities.

Member States are under an obligation to ensure effective defence of individual rights.<sup>86</sup> Victims of discrimination must have the right of redress through an administrative or judicial procedure. Once a plaintiff has established facts on the basis of which it can be presumed that there has been discrimination, the burden of proof shifts to the respondent.<sup>87</sup> Plaintiffs are to be protected against victimisation and in particular against dismissal.<sup>88</sup> Finally, Member States have the obligation to disseminate information on the anti-discrimination legislation in cooperation with non-governmental organisations,<sup>89</sup> they have to establish a specialised body for the promotion of equal treatment<sup>90</sup> and should provide for ‘effective, proportionate and dissuasive sanctions’ in case of breaches of the anti-discrimination legislation.<sup>91</sup>

In the framework of the EU pre-accession process, Estonia and Latvia have adopted new legislation in accordance with the Race Equality Directive. The Latvian Labour Law, for instance, contains a general non-discrimination clause which is strengthened by a specific prohibition of differential treatment based on ‘race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances of an employee’.<sup>92</sup> In Estonia, a general law on equality and equal treatment has been drafted.<sup>93</sup> In addition to the drafting of new legislation, governmental bodies have been designed with tasks in the field of anti-discrimination. The Legal Chancellor of Estonia – an independent official, provided by the constitution<sup>94</sup>, who is responsible for ensuring that legal acts adopted by the parliament and the local councils are in conformity with the constitution and the state

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<sup>86</sup> Art. 7 of Directive 2000/43, OJ, 2000, L180/25.

<sup>87</sup> Art. 8 of Directive 2000/43, OJ, 2000, L180/25.

<sup>88</sup> Art. 9 of Directive 2000/43, OJ, 2000, L180/25.

<sup>89</sup> Art. 10-12 of Directive 2000/43, OJ, 2000, L180/25.

<sup>90</sup> Art. 13 of Directive 2000/43, OJ, 2000, L180/25.

<sup>91</sup> Art. 15 of Directive 2000/43, OJ, 2000, L180/26.

<sup>92</sup> Art. 7 and 29 of the Labour Law, adopted 20 June 2001 and entered into force on 1 July 2002. The text of this law is available at <http://www.ttc.lv>.

<sup>93</sup> See Vadim Poleshchuk, *Report on measures to combat discrimination in the 13 candidate countries. Country report Estonia*, May 2003, at <http://www.migpolgroup.com>. At present (January 2004), the law on equality and equal treatment has not yet been adopted, in spite of the fact that September 2003 was the official deadline for adoption.

<sup>94</sup> Chapter XII of the Constitution.

laws – has been empowered to fulfil certain functions of an ombudsman, including the capacity to receive and examine residents’ complaints. A similar function has been given to the Latvian National Human Rights Office.<sup>95</sup>

In spite of these legal and administrative developments, international observers have criticised the lack of effective anti-discrimination provisions. In its 2000 Regular Report on Estonia’s progress towards accession, the European Commission observed that ‘the capacities of the ombudsman, in particular as regards the protection of minorities need to be reinforced.’<sup>96</sup> In 2002, the UN Committee on the Elimination of Racial Discrimination expressed its concern about ‘the limited access to remedies to facilitate complaints over potential discriminatory violations in relation to, *inter alia*, the labour market, housing and education.’ In this regard, the Committee recommended the establishment of an Equality Council ‘as a national human rights institution, with the mandate to advise and monitor relevant legislation and practice, and with competence to deal with individual complaints against acts of discrimination in the public or private sector.’<sup>97</sup> It can be mentioned that Max Van Der Stoel, the OSCE High Commissioner on National Minorities, had referred to the necessity of a special institution to deal with cases of ethnic or linguistic discrimination already in 1993.<sup>98</sup>

In the framework of these international recommendations, the Estonian Parliament has significantly expanded the competences of the Legal Chancellor.<sup>99</sup> The Chancellor will now be able to cover all issues of discrimination by natural and legal persons, both in public and private situations. In addition, his duties concerning the promotion and application of the principle of equal treatment are clearly written down in Article 35 of the Legal Chancellor Act. From 1 January 2004 onwards, the new provisions have entered into force. Whereas the amendments constitute an important step

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<sup>95</sup> See Art. 2 of the Law on the Latvian Human Rights Office, at: <http://www.vcb.lv>.

<sup>96</sup> European Commission, 2000 Regular Report on Estonia’s Progress Towards Accession, 8 Nov. 2000, 21.

<sup>97</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: Estonia, dated 23 Augustus 2002, CERD/C/61/CO/4, para. 15.

<sup>98</sup> “Letter to His Excellency Mr. Trivimi Velliste, Minister for Foreign Affairs of the Republic of Estonia” (1993) by Max van der Stoel, in Hanne-Margret Birckenbach, *Preventive Diplomacy through Fact-Findings. How International Organisations review the conflict over Citizenship in Estonia and Latvia* (Hamburg, 1997), 235-242.

<sup>99</sup> Amendments to the Legal Chancellor Act have been adopted on 11 February 2003 and entered into force on 1 January 2004. The consolidated version of this Act is available at: <http://www.legaltext.ee>.



towards the implementation of the Race Equality Directive, further expansion of the anti-discrimination legislation is necessary to guarantee an effective protection of minority rights. Under the present situation, the Estonian legislation does not comply with the requirements concerning the burden of proof and the protection against victimisation as laid down in article 8 and 9 of the Race Equality Directive.<sup>100</sup> Similar problems have been reported concerning Latvia.<sup>101</sup>

In addition to the remaining challenges in the full transposition of the Directive requirements, there is a clear necessity to improve the dissemination of information on anti-discrimination legislation. Notwithstanding the fact that several sociological studies have reported the existence of indirect discrimination on the Estonian and Latvian labour market, only a limited number of cases have been brought to justice. In this regard, the UN Committee report on the Elimination of Racial Discrimination in Latvia ‘noted with concern that no case of dissemination of ideas of ethnic superiority or hatred, or the use of defamatory language or the advocacy of violence based on such ideas has been brought to justice, and no organisation involved in such activities has been prohibited, although the existence of such cases has been widely reported.’<sup>102</sup>

Whereas the legal possibilities for enforcement of the principle of equal treatment exist, they are almost never used. This observation indicates that further action to disseminate information and public awareness on anti-discrimination legislation is necessary. Additionally, the classical problem of strengthened administrative capacity can be mentioned. The Latvian National Human Rights Office (LNHRO), for instance, has been coping with problems of funding and excessive workload.<sup>103</sup> This ombudsman-like institution is entrusted with the task of promoting the observance of human rights and is entitled to review individual complaints and to strive for a

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<sup>100</sup> See Vadim Poleshchuk, *Report on measures to combat discrimination in the 13 candidate countries. Country Report Estonia*, May 2003, at <http://www.migpolgroup.com>.

<sup>101</sup> Gite Feldhune, *Report on measures to combat discrimination in the 13 candidate countries. Country Report Latvia*, May 2003, at: <http://www.migpolgroup.com>.

<sup>102</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination in Latvia, dated 12 April 2001, CERD/C/304/Add.79., para. 11.

<sup>103</sup> Gite Feldhune, *Report on measures to combat discrimination in the 13 candidate countries. Country report Latvia*, May 2003, at: <http://www.migpolgroup.com>. See also: Expert Review Mission on Latvian Human Rights Office and Ombudsman Functions in Latvia: Considerations and Recommendations, Final Report, 22 May 2001, at: [http://www.un.lv/down/undp\\_public/omb/omb\\_e.pdf](http://www.un.lv/down/undp_public/omb/omb_e.pdf).

friendly settlement. The LNHRO does not have the power to enforce its recommendations or to levy any fines but it can submit a constitutional complaint to the Constitutional Court.<sup>104</sup> In order to solve the existing administrative and operational problems, a presidential working group has been established in 2001. On the basis of this working group's concept paper for the establishment of a specialised ombudsman office, an international expert mission has developed several proposals to strengthen the LNHRO.<sup>105</sup> At present, however, further steps are required to implement these recommendations.<sup>106</sup> It can therefore be concluded that, whereas the bones of a comprehensive anti-discrimination legislation exist in both Latvia and Estonia, there is a need to improve the effectiveness of the legal framework and the dissemination of information in order to comply with the EU standards as laid down in Directive 2000/43.

### *5.2. The problem of statelessness*

The impact of the EU pre-accession strategy upon Estonia's and Latvia's domestic legislation does not exclude the continued existence of numerous problems and uncertainties after EU enlargement. Notwithstanding the measures adopted to facilitate naturalization, a considerable part of Estonia's and Latvia's population remains stateless.<sup>107</sup> The United Nations Human Rights Committee concluded in its recent observations on Latvia and Estonia that this situation has adverse consequences in terms of the enjoyment of the rights and freedoms included in the International Convention on Civil and Political Rights.<sup>108</sup> The reports identified problems concerning the exercise of political rights, the possibility to occupy certain state and public positions, the possibility to exercise certain professions in the private sector, restrictions in the area of ownership of agricultural land, as well as social benefits. In

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<sup>104</sup> See Law on the National Human Rights Office, at <http://www.vcb.lv>

<sup>105</sup> Expert Review Mission on Latvian Human Rights Office and Ombudsman Functions in Latvia: Considerations and Recommendations, Final Report, 22 May 2001, at: [http://www.un.lv/down/undp\\_publ/omb/omb\\_e.pdf](http://www.un.lv/down/undp_publ/omb/omb_e.pdf).

<sup>106</sup> Gite Feldhune, *Report on measures to combat discrimination in the 13 candidate countries. Country report Latvia*, May 2003, at: <http://www.migpolgroup.com>.

<sup>107</sup> According to the latest figures 495.000 non-citizens live in Latvia (21 % of the entire population), whereas in Estonia 172.000 people are stateless (12,5 % of the entire population). Official statistics from Latvia's and Estonia's statistical office (<http://www.cbs.lv> and <http://www.stat.ee>).

<sup>108</sup> Concluding observations of the Human Rights Committee: Latvia, CCPR/CO/79/LVA, dated 6 November 2003 [hereafter: 2003 UN Human Rights Report Latvia]; Concluding observations of the Human Rights Committee: Estonia, CCPR/CO/77/EST, dated 15 April 2003 [hereafter: 2003 UN Human Rights Report Estonia].

contrast to the general and cursory statements of the European Commission regular reports, the concluding observations of the UN Human Rights Committee contain a number of clear and explicit recommendations. Estonia, for instance, is expected to abolish the legislation prohibiting non-citizens from being members of political parties.<sup>109</sup> The report on Latvia pleads for the granting of voting rights to non-citizens in local elections<sup>110</sup>, a right which is explicitly included in the Estonian constitution.<sup>111</sup> Both countries should further strengthen their efforts to reduce the number of stateless persons. Priority has to be given to the situation of children of non-citizens born in Latvia or Estonia after the restoration of independence in 1991. According to the existing legislation children of non-citizens achieve Latvian or Estonian citizenship upon request by their parents.<sup>112</sup> This duty of registration explains the relatively limited results of the amendments to the citizenship laws. The European Commission welcomed this evolution in its 1998 Regular Report on Latvia<sup>113</sup> and the 1999 Regular Report on Estonia.<sup>114</sup> The Commission predicted that respectively 18.000 children in Latvia and 6.000 children in Estonia would benefit from the new provisions.<sup>115</sup> The 2001 Report on Estonia<sup>116</sup> observed that only 338 minors received citizenship on the basis of the amendments to the Law on Citizenship whereas the 2002 Report on Latvia concluded that ‘altogether, 7.156 children had been granted citizenship by June 2002.’<sup>117</sup> In the light of these figures the UN Human Rights Committee recommends further measures to encourage the registration of children as citizens. The Latvian Parliament already rejected the idea of abolishing the registration requirement as proposed by the pro-minority faction ‘For Human Rights in a United Latvia’.<sup>118</sup> Nevertheless, certain amendments to the Citizenship Law are

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<sup>109</sup> 2003 UN Human Rights Report Estonia, para. 17.

<sup>110</sup> 2003 UN Human Rights Report Latvia, para. 18.

<sup>111</sup> According to Article 156,2 of the Estonian Constitution persons who reside permanently in the territory of the local government and have attained eighteen years of age have the right to vote in local elections.

<sup>112</sup> Art. 3 Latvian Law on Citizenship and Art. 5 of the Estonian Citizenship Act.

<sup>113</sup> Regular Report from the Commission on Latvia’s Progress towards Accession, COM(1998) 704, 11.

<sup>114</sup> Regular Report from the Commission on Estonia’s Progress towards Accession, COM(1999) 504, 13.

<sup>115</sup> *ibid.*

<sup>116</sup> Regular Report from the Commission on Estonia’s Progress towards Accession, SEC(2001) 1747, 21.

<sup>117</sup> Regular Report from the Commission on Latvia’s Progress towards Accession, SEC(2002) 1405, 30.

<sup>118</sup> X, “Meeting against the minority education reform: no incidents, no dialogue”, (69) *Minority Issues in Latvia* (2003), at <http://lists.delfi.lv/pipermail/minelres/2003-June/002756.html>.

elaborated in order to make Latvian citizenship easier available for children.<sup>119</sup> The amendments, which could enter into force in June 2004, *inter alia* abolish a number of requirements and administrative obstacles but do not change the principle of registration upon request of the parents. It remains to be seen whether these amendments will significantly change the existing situation.

### 5.3. *The risk of socio-economic divisions*

Whereas all international organisations agree that no evidence can be found of consistent discrimination, differences in legal status entail the risk of creating an ethnically composed group of disappointed and excluded inhabitants. The practical implementation of extensive language and citizenship requirements and its consequences on the availability of employment opportunities to the Russian-speaking and often stateless population is of particular importance in this regard. The UN Human Rights Committee report on Estonia, therefore, encouraged the conduct of a study on the socio-economic consequences of statelessness, including the issue of marginalisation and exclusion.<sup>120</sup> It can be argued that the exclusive approach to citizenship, as defined in the Latvian and Estonian legislation, is in itself already a form of exclusion. Lack of formal citizenship limits the permanent residents' political rights, reduces the opportunities to hold a number of public positions and to become integrated in the welfare state.<sup>121</sup> Furthermore, statistical research concluded that Russian-speaking minorities in Estonia and Latvia have a significantly higher probability of being unemployed compared to the titular population of these countries. It is noteworthy that such an affiliation could not be found in Lithuania.<sup>122</sup> Even more interesting is the observation that Russian-speakers holding citizenship of their country of residence have a significantly lower chance of being unemployed compared to non-citizens or citizens of other countries.<sup>123</sup> It can therefore be

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<sup>119</sup> X, "Citizenship law to be made more beneficial for children", (76) *Minority Issues in Latvia* (2003), at <http://lists.delfi.lv/pipermail/minelres/2003-November/003021.html>.

<sup>120</sup> 2003 UN Human Rights Report, para. 14.

<sup>121</sup> Aadne Aasland and Tone Flotten, "Ethnicity and Social Exclusion in Estonia and Latvia", 53 (7) *Europe-Asia Studies* (2001), 1028.

<sup>122</sup> Aadne Aasland, "Ethnic Groups and Living Conditions: A Study of Unemployment in the Baltic Countries", in Aadne Aasland, *et.al.* (eds.), *The Baltic Countries Revisited: Living Conditions and Comparative Challenges* (Oslo, 1997), 114.

<sup>123</sup> *Ibid.*, 115.

concluded that citizenship has an important impact on job opportunities and integration into the labour market.

On the other hand, however, education and not ethnicity or citizenship has been identified as the most important variable in explaining social exclusion. The better job opportunities of non-titular citizens in comparison to their stateless compatriots would then be the result of their higher education and not of their legal status. It is rather difficult to analyse the relative weight of the factors ‘citizenship’ and ‘education’ in explaining the backward position of stateless persons on the Estonian and Latvian labour market. Both elements are mutually reinforcing because people lacking sufficient education will face more difficulties in passing the naturalization procedure. In addition, they will be less proficient in the national language, which is a basic requirement to acquire citizenship and to apply for many jobs in both the public and the private sector. Consequently, ‘language proficiency’ could also be identified as a main variable in explaining the differences on the labour market. This, in turn, can be related to the discussion concerning the education reform and the difficulties in finding the right balance between the promotion of the national language on the one hand and respect for minority languages on the other. This duality can also be found in the monitoring reports of the European Commission and the UN Human Rights Committee. Whereas the latter focuses on the necessity to guarantee minorities the right to ‘enjoy their own culture and to use their own language’<sup>124</sup>, the Commission reports only insist that the implementation of the language legislation should respect the undefined ‘principles of justified public interest and proportionality’<sup>125</sup>.

The current debate on the education reform in Latvia reveals the sensitivity of a strict language policy. In addition, the existing differences in the legal status between citizens and non-citizens and its socio-economic consequences provoke a feeling of disappointment and discrimination among the Russian-speaking community.<sup>126</sup> This phenomenon could have negative implications for the consolidation of the democratic

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<sup>124</sup> 2003 UN Human Rights Report on Estonia, para. 16. 2003 UN Human Rights Report on Latvia, para. 19.

<sup>125</sup> European Commission, Comprehensive Monitoring Report on Latvia’s preparations for Membership, 19. European Commission, Comprehensive Monitoring Report on Estonia’s preparations for Membership, 18.

<sup>126</sup> Vadim Poleshchuk, “Social Dimension of Integration in Estonia and Minority Education in Latvia”, *ECMI Report*, 2001, 18, at [http://www.ecmi.de/doc/download/report\\_8.pdf](http://www.ecmi.de/doc/download/report_8.pdf), 11.

system and the possibility to use existing human resources for further economic development. It is, therefore, clear that the avoidance of an ethnically and linguistically divided society between ‘haves’ and ‘haves not’ is one of the most important challenges for Latvia’s and Estonia’s integration policy. As the 2002 European Commission reports revealed, the integration policy should ensure the awareness, consultation and involvement of all sections of the population.<sup>127</sup> The lack of a constructive dialogue between minorities and state institutions as well as the limited possibilities of political participation and representation of the Russian-speaking population can be identified as an important obstacle to integration.<sup>128</sup>

#### *5.4. The problem of political participation and representation*

Both in Estonia and Latvia, minorities tend to be underrepresented in state institutions. In 2001, Estonian Russian-speakers made up only nine percent of all judges and six percent of officers within the Ministry of Internal Affairs whereas there were no Russian-speakers working as officials in the Ministries of Justice or Education.<sup>129</sup> In Latvia, statistical research to minority representation in state ministries revealed that ‘minorities are employed by 65 percent less than their ratio among the citizenry’.<sup>130</sup> Minorities are also insufficiently and unevenly represented in municipal councils and administration and are underrepresented in the judiciary.<sup>131</sup>

It seems obvious that, among the less represented groups, the lack of proportionate representation in state institutions contributes to an increasing distrust in the functioning of these institutions. Consequently, additional measures to promote the political representation of minorities should be considered. In order to improve the existing situation, the impact of the so-called ‘revolutionary syndrome’ – which implies that employees of state institutions were chosen among people who had supported the re-establishment of independence rather than on the basis of formal and objective criteria– has to be tackled.<sup>132</sup> In addition, lack of national language

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<sup>127</sup> 2002 European Commission Regular Report on Latvia, 32; 2002 European Commission Regular Report on Estonia, 32.

<sup>128</sup> Open Society Institute (2002), 350.

<sup>129</sup> *ibid.*, 233.

<sup>130</sup> Artis Pabriks, *Occupational Representation and Ethnic Discrimination in Latvia* (Riga 2002), 25.

<sup>131</sup> Open Society Institute (2002), 351.

<sup>132</sup> *ibid.*, 46.

proficiency and citizenship are two major factors restricting the opportunities of a significant share of the minority population. This is particularly the case for representation in elected institutions such as the parliament and city councils. Only after intensive international pressure, Estonia and Latvia abolished the requirement of the highest degree of state language proficiency for candidates in parliamentary and municipal elections (cf. *infra*). At the same time, however, the national constitutions contain important provisions protecting the state language as the only working language of these elected bodies.<sup>133</sup>

Apart from these linguistic barriers, citizenship is the essential precondition for political participation. This is clearly illustrated by Article 48 of the Estonian constitution, which restricts membership of political parties to Estonian citizens. Article 57 of the Estonian constitution and Article 8 of the Latvian constitution limit the right to vote in parliamentary elections and referendums to citizens that have attained the age of eighteen. Whereas Article 156 of the Estonian constitution grants voting rights to all permanent residents in elections to local government councils, Article 101 of the Latvian constitution maintains that ‘local governments shall be elected by Latvian citizens who enjoy full rights of citizenship.’ In the framework of EU accession, Latvia will have to amend this provision in order to allow the participation of EU citizens in accordance with Article 19 EU and Council Directive 94/80/EC of 19 December 1994.<sup>134</sup> The 2003 comprehensive monitoring report on Latvia’s preparations for membership identified this issue as one of the remaining problems.<sup>135</sup> Taking into account that the amendments have to be made before the municipal and European Parliament elections of June 2004, it is rather surprising that the latest Accession Partnership is completely silent on this issue.<sup>136</sup>

Apart from the formal legal requirement to apply the *acquis communautaire*, the prospective constitutional amendment might provoke a public discussion on the granting of voting rights to non-citizens in municipal elections. In the framework of

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<sup>133</sup> Article 52 of the Estonian constitution; Articles 21 and 101 of the Latvian constitution.

<sup>134</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ, 1994, L368/38.

<sup>135</sup> Comprehensive Monitoring Report on Latvia’s Preparations for Membership, 19.

<sup>136</sup> Council Decision of 28 January 2002 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Latvia, OJ, 2002, L44/45.

the 2002 elections to the Latvian Parliament, the International Election Observation Mission concluded that ‘involving non-citizens in local decision-making could represent a tangible step toward eliminating the current democratic deficit’.<sup>137</sup> A similar recommendation can be found in the concluding observations of the UN Human Rights Committee and in declarations of several high-level representatives of the Council of Europe and non-governmental organisations.<sup>138</sup> In spite of this international pressure, the ruling political parties do not support such an extension of voting rights.<sup>139</sup> The argument that this would decrease the motivation for naturalisation is also related to the political situation in Riga where approximately 35 percent of the inhabitants are non-citizens. There is a widespread fear that the participation of these persons would lead to a profound political change in the capital.<sup>140</sup> The situation in Riga perfectly illustrates the existing democratic deficit because more than one third of its population cannot vote in city council elections.

The Latvian integration programme focuses on the promotion of naturalisation and language training but fails to take into account other measures to promote minority representation in the public sphere and in decision-making bodies.<sup>141</sup> The possible implementation of positive discrimination measures and quota has been criticised for having ‘a negative psychological impact on members of various ethnic groups’ and for facilitating ethnic tension.<sup>142</sup> The limited possibilities of political participation for the minority population contribute to a further alienation from the state institutions. The result is a vicious circle of self-segregation, a lack of motivation to pass the nationalisation procedure and the establishment of a serious and long-term democratic deficit. Against this background, fostering of loyalty to the state and diminishing the alienation from the state institutions are two important objectives of the state

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<sup>137</sup> The International Election Observation Mission is a joint effort between the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE). The Conclusions of the Mission are available at: [http://www.osce.org/odihr/elections/field\\_activities/latvia2002/](http://www.osce.org/odihr/elections/field_activities/latvia2002/).

<sup>138</sup> For an overview: Ministry Of Foreign Affairs Of The Russian Federation, *List of main claims and recommendations of international organizations and NGOs to Latvia as regards rights of national minorities*, at: <http://www.ln.mid.ru>.

<sup>139</sup> X, “Electoral rights for non-citizens rejected”, (79) *Minority Issues in Latvia* (2004), at <http://lists.delfi.lv/pipermail/minelres/2004-January/003161.html>.

<sup>140</sup> Valts Kalnins, *Latvia: Regional and Municipal System*, at: [http://www.balticdata.info/latvia/politics/latvia\\_politics\\_administration\\_basic\\_information.htm](http://www.balticdata.info/latvia/politics/latvia_politics_administration_basic_information.htm).

<sup>141</sup> Open Society Institute (2002), 346-352.

<sup>142</sup> Pabriks, 51.



integration programme.<sup>143</sup> The explicit link between integration and state loyalty can be related to the widespread perception that a ‘fifth column’ of Russian-speaking residents disloyal to the Latvian state could potentially undermine the internal stability of the country. From this perspective, the position of Russia, operating as the self-declared kin-state of all Russian-speakers, cannot be neglected in the complex and sensitive framework of minority protection.

## 6. The position of Russia and its geopolitical importance

On several occasions, the Russian Federation has criticized the international community for turning a ‘blind eye’ to the infringement of the rights of the Russian-speaking minorities in Estonia and Latvia.<sup>144</sup> Russian officials voiced concerns about the legal status of the Russian-speaking population after Estonia’s and Latvia’s accession to the EU.<sup>145</sup> The ‘medium-term strategy for the development of relations between the Russian Federation and the European Union (2000-2010)’ identified this issue as one of Russia’s primary interests in the framework of EU enlargement. Moreover, Moscow threatened that, as a ‘reserve option’, it could decide to refuse the extension of the Partnership and Co-operation Agreement to those candidate countries ‘that do not ensure the fulfilment of the generally recognised norms’.<sup>146</sup> This latter statement might be seen as a scarcely concealed threat directed at the Baltic states, and Latvia in particular, which has been described as ‘the frontrunner in discrimination of the Russian-speaking population and in uncertainties for transit’.<sup>147</sup> Russia’s intention to secure that the EU applies its high standards for the admittance of new members will therefore focus in the first instance on the political criteria for accession. In considering the protection of the rights and interests of the Russian-speaking population as its responsibility, Moscow has pushed to have this issue put on

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<sup>143</sup> “The foundation for integration of society is loyalty to the state and awareness that each individual’s future and personal well being are closely tied to the future stability and security of the State of Latvia”, National Integration Programme, 7

<sup>144</sup> See e.g. Letter dated 19 July 1994 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Security Council, A/49/264, 20 July 1994.

<sup>145</sup> X, “Moscow not to interfere in EU enlargement, but Russia’s interests need to be secured”, (95) *Uniting Europe* (2000), 2.

<sup>146</sup> Medium-term Strategy for Development of Relations between the Russian Federation and the European Union (2000-2010) [unofficial translation], at [http://www.europa.eu.int/comm/external\\_relations/russia/russian\\_medium\\_strategy/](http://www.europa.eu.int/comm/external_relations/russia/russian_medium_strategy/).

<sup>147</sup> X, Moscow not to interfere in EU enlargement, ‘but Russia’s interests need to be secured’, (95) *Uniting Europe* (2000), 2.

the agenda of the European Union. In the beginning of 2003, Igor Ivanov, the Russian Minister of Foreign Affairs, has issued a letter to the Greek EU Presidency and the European Commission demanding for additional pressure on Estonia and Latvia in order to enforce further steps towards improving the rights of the Russian speaking minorities before these countries' EU accession on 1 May 2004.<sup>148</sup> The Commission spokesman replied that 'there is ample evidence the Baltic states are ensuring better treatment for ethnic Russians as part of their preparations for EU Membership'.<sup>149</sup> Additionally, he argued that 'the situation should further improve after enlargement when even higher minority protection standards will apply to those two new member countries.'<sup>150</sup> This explicit dismissal of Russia's claims for further EU action on the issue of minority protection in Estonia and Latvia has provoked negative reactions in the Russian Duma. The European Commission has been accused of accepting EU enlargement 'at any price, to the detriment of its high reputation'.<sup>151</sup> In addition, it has been reported that Russia's problems with Estonia and Latvia could potentially undermine the developing EU-Russia partnership. Taking into account the EU's strategic and economic interests in good proximity relations with Russia<sup>152</sup>, it is therefore obvious that the issue of minority protection in Estonia and Latvia deserves particular attention.

## 7. EU Enlargement as a 'deus ex machina'?

The legal status of the Russian-speaking and often stateless community is one of the remaining challenges of the historic EU enlargement project. An important question, for instance, is whether non-citizens will have a right of visa-free travel within the

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<sup>148</sup> David Cronin, "Ethnic Russian status must improve", *European Voice*, 27 February 2003.

<sup>149</sup> *Ibid.* It can be argued that the statement of the Commission spokesman disregards the lack of efficient legal provisions in the field of minority protection under the Treaty on European Union, see Christophe Hillion, "Enlargement of the European Union: The Discrepancy between Membership Obligations and Accession Conditions as regards the Protection of Minorities", 27(3) *Fordham International Law Journal* (2003).

<sup>150</sup> X., "EU dismisses Russian claims for further EU action on minority rights in the Baltics", (217) *Uniting Europe* (2003), 4.

<sup>151</sup> Declaration of the State Duma in connection with major violations of human rights and the rights of national minorities in the Latvian Republic, adopted on 14 October 2003. Unofficial translation at [http://pws.prserve.net/mirusce/duma\\_latv.htm](http://pws.prserve.net/mirusce/duma_latv.htm).

<sup>152</sup> See the European Commission's Country Strategy Paper 2002-2006 and the National Indicative Programme 2002-2003, at: [http://www.europa.eu.int/comm/external\\_relations/russia/csp/02-06\\_en.pdf](http://www.europa.eu.int/comm/external_relations/russia/csp/02-06_en.pdf).

EU.<sup>153</sup> Other issues such as the right of access to job opportunities in other EU Member States and the possibility to take part in European Parliament elections are also of particular importance. These questions have been avoided during the EU accession negotiations. Obviously, the EU proceeded from the assumption that the prospect of accession *as such* would automatically solve the problems of integration of the Russian-speaking population. According to this somewhat naïve eurocentric approach, the non-titular population of the Baltic states is expected to receive a better protection within the EU. In this regard, Jekaterina Dorodnova argued that ‘with the entry of Estonia and Latvia into the EU, the discriminatory treatment of the Russian-speaking minorities by the Estonian and Latvian governments is likely to become less pronounced.’<sup>154</sup> Dmitri Trenin is even more optimistic:

*‘Hundreds of thousand of ethnic Russians will be quickly integrated into the new interethnic communities of the Baltic countries. The Baltic Sea Coasts will see new “Euro-Russians”. (Because of this, the non-titular population of the Baltic states react to the prospect of joining the European Union with greater enthusiasm than the indigenous population.)’*<sup>155</sup>

The latter assumption does no longer reflect the real situation. Statistical research conducted ahead of the accession referenda revealed that the attitudes of Baltic Russians did not differ significantly from those of the titular population.<sup>156</sup> The perceived intensity of ethnic conflict and discrimination did not result in higher levels of support for EU membership among minorities. In contrast, minority perceptions of ethnic tensions and unfair treatment corresponded with more negative attitudes towards the EU. It has therefore been concluded that the Baltic Russians do not regard the EU as a guardian of their rights.<sup>157</sup> This conclusion has been supported by the outcome of different opinion polls. According to survey result analyses in Latvia, conducted in July 2003, only 34 per cent of non-Latvians intended to vote in favour of

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<sup>153</sup> Under the present situation, all EU Member States have signed bilateral agreements establishing visa-free travel with Latvia but only Denmark has extended this regime to include non-citizens.

<sup>154</sup> Dorodnova, 37.

<sup>155</sup> Dmitri Trenin, *Baltic Chance. The Baltic States, Russia and the West in the Emerging Greater Europe* (Washington, 1997), 37.

<sup>156</sup> Piret Ehin, “Determinants of public support for EU membership: Data from the Baltic countries”, 40 (5) *European Journal of Political Research* (2001), 51.

<sup>157</sup> *ibid.*, 53.

EU accession in comparison to, at that time, 53 per cent of Latvians.<sup>158</sup> The last public opinion poll before the referendum reported 63 per cent of ethnic Latvians supporting accession in contrast to only 30,3 per cent of non-Latvians.<sup>159</sup> Non-Latvians without citizenship were even more sceptical as only 27,4 per cent approved accession to the EU. Non-citizens feared negative changes on wages and pensions and did not expect any improvement in their status. In general, they showed a disinterest in information about the EU. This observation can be related to the fact that, according to the Estonian and Latvian constitution as well as corresponding referendum laws, only citizens were entitled to vote on EU accession. Consequently, 18 and 22 per cent of the Estonian and Latvian population was excluded from participation. These figures raise the question of democratic legitimacy. Only that part of the non-titular population that had successfully passed the naturalisation procedure could express its opinion in the accession referendum.

An analysis of the referendum results confirms the suggestion that Russian-speakers tend to be more Eurosceptic. In Latvia, regions with a large proportion of Russian-speakers such as eastern Latgale and Riga reported the lowest number of positive votes. In Daugavpils, a city with almost 40 per cent of non-Latvian citizens, a majority voted against EU accession.<sup>160</sup> A similar pattern could be observed in Estonia. The least amount of yes votes was cast in Ida-Viru (57 per cent in favour and 43 per cent against), not coincidentally the region with the highest number of Russian-speakers.<sup>161</sup> These results reveal that the ethnic minorities are not expecting major improvements in their legal status and even fear a further isolation and marginalisation as a result of EU enlargement. The lenient approach of the European Commission in combination with the continued pressure from Moscow and the remaining uncertainty about the consequences of enlargement can explain this situation.

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<sup>158</sup> Latvian European Integration Bureau, "Attitude in Society Toward Latvia's European Union Membership. Survey Result Analyses", July 2003, at: [http://www.eib.gov.lv/latvija-eiropa/eng/eu\\_report\\_july.doc](http://www.eib.gov.lv/latvija-eiropa/eng/eu_report_july.doc).

<sup>159</sup> Results of the public opinion polls are available at: <http://www.eib.gov.lv>.

<sup>160</sup> The results of the EU Accession referendum in Latvia are available on the website of the Latvian National Electoral Committee: <http://www.tn2003.cvk.lv> See also Daunis Auers, "Referendum Aftermath", *Baltic Times*, 3 Oct. 2003.

<sup>161</sup> The results of the EU Accession referendum in Estonia are available on the website of the Estonian National Electoral Committee: <http://www.vvk.ee>.

## 8. The legal status of Estonia's and Latvia's non-citizens after EU Enlargement

### 8.1. *Non-citizens and third-country nationals*

There are no specific legal acts regulating the status of the large number of Estonian and Latvian non-citizens in the EU. Consequently, these persons will be treated as third country nationals. In this regard, it can be mentioned that Article III-158 of the Draft Treaty Establishing a Constitution for Europe explicitly refers to the fact that stateless persons shall be treated as third-country nationals whereas no references to statelessness can be found in the existing treaties.

According to the ECJ's established case-law, third country nationals –including stateless persons – cannot autonomously rely on the provisions concerning free movement of persons.<sup>162</sup> All rights they have in this area depend on a family relationship with a migrant national of an EU Member State<sup>163</sup> or an employment contract with an in an EU Member State established enterprise providing services in another Member State.<sup>164</sup> On the other hand, third-country nationals and stateless persons are explicitly included in the personal scope of most EC legislation on social security rights.<sup>165</sup> The ECJ confirmed the lawfulness of this situation on the basis of the international obligations of the Member States and the objectives of the social security regulations.<sup>166</sup>

The Treaty of Amsterdam, which entered into force 1 May 1999, introduced important provisions for the development of the legal status of third-country nationals. On the basis of Article 63,4 EC the Council is entitled to adopt 'measures defining the

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<sup>162</sup> ECJ, case 238/83, *Meade*, judgment of 5 July 1984, [1984] ECR 2631, para. 7.

<sup>163</sup> See Art. 10 of Regulation 1612/68 on freedom of movement for workers within the Community, OJ, 1968, L257/2; Art. 1 of Council Directive 73/148 EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ, 1973, L172/14 and Art. 2 of Council Directive 90/364 EEC on the right of residence, OJ, 1990, L180/26.

<sup>164</sup> ECJ, case C-113/89, *Rush Portuguesa*, judgment of 27 March 1990, [1990] ECR I-1417, para 12; ECJ, case C-43/93, *Vander Elst*, judgment of 9 August 1994, [1994] ECR I-3803, para.21.

<sup>165</sup> Regulation No. 3 concerning social security for migrant workers, OJ, 1958, 30/561 and Art. 2 of Regulation 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, OJ, 1971, L149/2.

<sup>166</sup> ECJ, cases C-95/99 to C98/99 and C-180/99, *Khalil and others*, judgment of 11 October 2001, [2001] ECR I-7413, para. 49 and 55.

rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.’ The October 1999 Tampere European Council<sup>167</sup>, which was completely devoted to the new provisions of the Amsterdam Treaty, laid down important guidelines for developing the legal status of third-country nationals. It maintained that the EU ‘must ensure fair treatment of third country nationals who reside legally on the territory of its Member States’ and ‘should aim at granting them rights and obligations comparable to those of EU citizens. The European Council clearly acknowledged that ‘the legal status of third country nationals should be approximated to that of Member States’ nationals.’<sup>168</sup> The Heads of State or Government decided to pay special attention to the situation of third-country nationals settled on a long-term basis:

*‘A person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens’.*

Finally and significantly, the European Council endorsed ‘the objective that long-term legally resident third-country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.’<sup>169</sup> Although not exclusively devised for their specific case, these conclusions of the Tampere European Council, drafted at a time when accession negotiations had already begun with Estonia but not with Latvia, are of particular significance for the legal status of these countries’ stateless population.

The Tampere conclusions led to an important European Commission proposal for a Council Directive concerning the status of third-country nationals who are long-term residents.<sup>170</sup> This document explicitly declares that the concept of third-country nationals also applies to stateless persons.<sup>171</sup> The scope of the proposal is defined in broad terms, applying to ‘all third-country nationals residing legally in a Member

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<sup>167</sup> Presidency Conclusions of the Tampere European Council (15-16 October 1999), *Bull. EU*, 10, 1999, I-2.

<sup>168</sup> *ibid.*, I-6.20.

<sup>169</sup> *ibid.*, I-6.21.

<sup>170</sup> European Commission, Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM (2001), 127 final, 13 March 2001. [Hereafter COM (2001)127 final]

<sup>171</sup> *ibid.*, p.11.

State, irrespective of the grounds on which they were originally admitted...the proposal also covers third-country nationals born in the territory of a Member State and residing there without having acquired its nationality.’<sup>172</sup> The combination of these elements implies that this Directive, formally adopted by the Council on 25 November 2003<sup>173</sup>, is an essential element for defining the future legal status of the large stateless communities in Estonia and Latvia.

## *8.2. Directive concerning the status of third-country nationals who are long-term residents: an effective tool for solving the existing ambiguity?*

In order to guarantee fair treatment of third country nationals and promote their full integration, as called for by the Tampere European Council, Directive 2003/109 lays down criteria for the acquisition of a long-term resident status and determines its connected rights. In addition, the Directive clarifies the terms of residence in Member States other than the one which conferred the long-term resident status. The Member States, with the exception of the United Kingdom, Ireland and Denmark<sup>174</sup>, have to implement these provisions by 23 January 2006 at the latest.<sup>175</sup>

### *8.2.1. Acquisition of long-term resident status*

According to the initial Commission proposal, ‘the chief criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State’. The Commission proposed a legal and continuous period of five years, a suggestion that has been accepted in the final Directive (Art. 4). In the framework of the consultation procedure, the European Parliament insisted on additional requirements:

*‘It seems wrong to make a minimum period of residence the sole criterion for the award of ‘long-term resident’ status. In the interests of the speedy*

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<sup>172</sup> *ibid.*, p.12.

<sup>173</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ, 2004, L16/44. [Hereafter Council Directive 2003/109]

<sup>174</sup> In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland and Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, these countries do not take part in the adoption of measures pursuant to Title IV of the Treaty establishing the European Community and are not bound by or subject to its application.

<sup>175</sup> Council Directive 2003/109, Art. 26.

*integration of third-country nationals with long-term resident status, integration-related requirements should also be imposed.*<sup>176</sup>

This approach implied that ‘an advanced degree of integration into the life of the Member State concerned’ would be an important precondition for the acquisition of the long-term resident status. The European Parliament report explicitly referred to ‘an adequate knowledge of the national language’ as an important criterion for appraising the level of integration. These suggestions found their way into the final text. Article 5, which contains the conditions for acquiring the long-term resident status, clearly states that:

*‘Member States may require third-country nationals to comply with integration conditions, in accordance with national law’.*

This condition, which was not included in the Commission proposal, seems to undermine the requirement contained in the initial document that ‘for the sake of legal certainty, it is essential that the acquisition of the status should not be left to Member States’ discretion where the conditions are actually met.’<sup>177</sup> The Directive does not contain any specifications concerning the permissible national integration conditions. Consequently, it seems that the Member States will retain a large freedom of appraisal. Proceeding from the assumption that the Latvian and Estonian integration conditions reflect the requirements for the acquisition of citizenship, the limits of this Directive for the specific situation of Estonia’s and Latvia’s non-citizens become obvious.

Another good example of the limitations imposed to the scope of the Directive is provided by the Council decision to eliminate the initial idea that for third-country nationals born in the territory of a Member State only the residence requirement of five years was applicable. Under the final Directive all third-country nationals applying for the EC long-term resident status, irrespective their place of birth, have to satisfy the additional conditions of stable and regular resources and sickness insurance. Furthermore, ‘Member States may refuse to grant long-term resident status on grounds of public policy or public security’ (Art.6). The Commission proposal clarified that these terms have to be interpreted according to the criteria laid down in

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<sup>176</sup> European Parliament, Report on the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, A5-0436/2001, 6.

<sup>177</sup> COM (2001)127 final, 7.



Directive 64/221/EEC applicable to EU nationals entitled to freedom of movement.<sup>178</sup> The European Parliament, however, considered such an approach ‘unacceptable and inappropriate’.<sup>179</sup> Instead, it proposed that a departure from the provisions of Directive 64/221/EEC could be justified by ‘overriding security considerations’ and on ‘general crime prevention grounds.’ It seems obvious that the European Parliament report, published on 30 November 2001, has been influenced by the 11 September terrorist attacks. Whereas the Commission proposal, published in March 2001, did not contain any reference to the threat of terrorism, the European Parliament proposed such references in the preamble and Articles 2, 7 and 19 of the Directive. The Council did not include these suggestions in the final Directive but only specified that ‘the notion of public policy may cover a conviction for committing a serious crime.’ It is noteworthy that during the discussions on the Directive proposal, the delegations of the Member States agreed to include in the minutes to the Council the following statement concerning Article 6:

*‘The notion of public policy and public security also covers cases in which a third-country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.’<sup>180</sup>*

Apart from the extended conditions and restrictions in the final Directive, the procedure for acquiring the long-term resident status might hamper the potential effects of this new legislation upon the legal situation of non-citizens in Estonia and Latvia. To acquire this status, the long-term resident has to take the initiative. He/she should lodge an application to the competent authorities of the Member State of residence accompanied by documentary evidence that the necessary conditions of residence duration, stable and regular income, sickness insurance and, eventually, integration into the local community are met (Art. 7). Taking into account the existing problems in the process of naturalisation in Estonia and Latvia, which are mainly due to a lack of information and motivation on the one hand and restrictive integration requirements on the other, it is rather naïve to suggest that the new Directive will solve all problems of statelessness in these countries. Only a small group of well-informed non-citizens can be expected to apply for this status whereas a large

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<sup>178</sup> *ibid.*, 19.

<sup>179</sup> European Parliament, Report on the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, A5-0436/2001, 16.

<sup>180</sup> Council Of The European Union, Brussels, 10 June 2003, 10214/03 MIGR 45, 9.

majority of stateless residents might remain without a clear-cut legal position. On the other hand, it cannot be denied that the EC long-term resident status entails some important provisions protecting the rights of third-country nationals and, consequently, stateless persons. Again, however, the European Parliament and the Council have watered down the initial Commission initiative. A division can be made between a right of equal treatment with the citizens of the Member State, a right of residence in other Member States and enhanced protection against expulsion.

### *8.2.2. Right of equal treatment*

The Presidency Conclusions of the Tampere European Council called for an approximation of the legal status of third-country nationals to that of Member State nationals.<sup>181</sup> In this context, the Commission proposed equal treatment in a wide area of economic and social matters, ranging from access to employment and self-employed activities to education and vocational training and social protection and assistance.<sup>182</sup> The European Parliament noted that a real ‘harmonisation in the form of equal status would do away with any incentive to seek citizenship of the host Member State, a step which third-country nationals should be encouraged to take with a view to fostering integration’.<sup>183</sup> In line with this approach, the Council Working Party on Migration and Expulsion proposed, on the initiative of Germany, to drop the principle of equal treatment in favour of a more restrictive provision granting ‘benefits’ to long-term residents ‘in accordance with the national law of the Member State.’<sup>184</sup> The Commission, France, the Netherlands and Sweden opposed to this far-reaching amendment. Eventually, a compromise formula can be found in the final Directive. The general principle of equality of treatment is included, together with important restrictions limiting the scope of this provision. For instance, paragraph 3 of Article 11 lays down that ‘Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens.’ Given the large number of such reservations in the Latvian and Estonian legislation, this sentence clearly limits the potential benefits of the EC long-term resident status

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<sup>181</sup> Presidency Conclusions of the Tampere European Council, para. 21.

<sup>182</sup> COM (2001)127 final, 18.

<sup>183</sup> European Parliament, Report on the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, A5-0436/2001, 9.

<sup>184</sup> Council of the European Union, 9636/02 MIGR 50, Brussels, 18 July 2002, 7.

for the stateless or population of these countries. A similar remark can be made in connection with the other restrictions contained in the Directive: the fact that ‘Member States may require proof of appropriate language proficiency for access to education and training’ and the possible limitation of social assistance and social protection to core benefits.<sup>185</sup>

### *8.2.3. Right of residence in another Member State*

Apart from the references to equal treatment, an important chapter of the Directive is devoted to the right of residence in other Member States. This right refers to any stay in another Member State for a period exceeding three months (Admission to the territory for a period less than three months is covered by Article 62,3 EC and a forthcoming Council Directive<sup>186</sup>.) It is noteworthy that also the family members of the moving long-term residents have the right of residence in another Member State, even if they do not have a long-term resident permit themselves (Art.16). Article 14 of the Directive distinguishes three possible cases in which long-term residents may exercise the right of residence: i) as workers in an employed or self-employed capacity<sup>187</sup>, ii) as persons pursuing studies or vocational training or iii) without exercising an economic activity but in possession of adequate resources to reside in the second Member State.

No later than three months after entering the territory of the second state, the long-term resident must apply for a residence permit in that Member State (Art. 15). The latter state may ask for evidence, exhaustively listed in paragraphs 2 to 4 of Article 15. In any case, the second Member State may check whether applicants have valid identity documents and a long-term resident’s permit. If the applicants intend to work, an actual or promised employment contract will be required. For self-employed activities evidence has to be provided concerning the available resources together with

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<sup>185</sup> Council Directive 2003/109, Art. 11,3(b) and Art. 11,4.

<sup>186</sup> European Commission, Proposal for a Council Directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of a Member State for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months, Brussels, 10 July 2001, COM (2001) 388 final.

<sup>187</sup> It has to be mentioned that the European Commission has also drafted a specific proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed activities, Brussels, 11 July 2001, COM (2001) 386 final.

a description of the future activity. If the long-term residents want to exercise their right of residence in order to pursue studies or vocational training, enrolment in an accredited establishment, the availability of appropriate resources and sickness insurance can be demanded. If the long-term residents have no plans to work or study, the second Member State may require evidence of resources and sickness insurance.

Parallel to the conditions concerning the acquisition of the EC long-term residence status, the Council introduced the possibility of additional restrictions to the right of residence in another Member State. According to Article 15,3 ‘Member States may require third-country nationals to comply with integration measures, in accordance with national law’ and ‘the persons concerned may be required to attend language courses.’<sup>188</sup> Another important derogation from the principle of free residence is contained in Article 14,4. According to this provision ‘Member States may limit the total number of persons entitled to be granted right of residence, provided that such limitations are already set out for the admission of third-country nationals in the existing legislation at the time of the adoption of this Directive.’ Finally, restrictions to the right of residence are possible on the basis of public policy and domestic security (Art. 17), as well as public health (Art. 18).

As soon as a long-term resident has received a residence permit in the second Member State, he/she shall enjoy equal treatment in same areas and under the same conditions as this was the case in the first Member State. (Art.21) Furthermore, long-term residents have access to the labour market of their state of residence. Again, the final Council Directive introduced an important limitation to this principle. The Member States may decide, in accordance with national law, the conditions of access to an employed or self-employed activity. Eventually, the long-term resident has the possibility to apply for a long-term resident status in the second Member State, subject to the conditions of duration of residence, stable and regular resources, sickness insurance and national integration requirements. (Art.23)

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<sup>188</sup> It has to be mentioned, however, that in order to avoid excessive requirements, these conditions cannot be applied when the third-country nationals already passed an integration test when obtaining the long-term resident status.

#### 8.2.4. Protection against expulsion

A third important aspect of the long-term resident status is related to significant safeguards against expulsion of long-term residents. (Art.12) This protection entails that a decision to expel a long-term resident can only be taken when he/she constitutes an ‘actual and sufficiently serious threat to public order or domestic security.’ Furthermore, this decision cannot be founded on economic considerations. Member States also have to take into account several aspects before taking a decision to expel a long-term resident, including his duration of residence in the territory of the Member State, the age of the person concerned, the consequences of this decision for the person and his family members as well as the links with the country of residence or the absence of links with the country of origin. Finally, this article contains provisions of judicial protection such as the guarantee of a judicial redress procedure and legal assistance to long-term residents lacking adequate resources.

Obviously inspired by the ECJ case-law on free movement of persons, the initial Commission proposal went even further. The Commission document explicitly referred to the ‘personal conduct’ of a long-term resident as a condition for expulsion. In line with the ECJ judgment *Adoui and Cornuaille* personal conduct cannot be considered a sufficiently serious threat if a Member State does not take severe enforcement measures against its own nationals who commit similar offences.<sup>189</sup> Furthermore, criminal convictions as such do not automatically justify an expulsion decision. Explicit references to these effects have been deleted on the instigation of Germany and the Spanish Presidency.<sup>190</sup> In addition, supplementary judicial protection measures such as the prohibition of emergency expulsion procedures and the requirement that judicial redress procedures have suspensory effect have been dropped in the final version of the Directive. It can therefore be concluded that the initial Commission proposal contained much more safeguards protecting the rights of long-term residents lacking EU citizenship. The Council also introduced important limitations to the principle of equal treatment between third-country nationals holding a long-term residence permit and EU citizens. The most problematic amendment,

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<sup>189</sup> ECJ, Joint cases 115 and 116/81, *Adoui and Cornuaille*, judgment of 18 May 1982, [1982] ECR I-1665, para.8.

<sup>190</sup> Council of the European Union, 9636/02 MIGR 50, Brussels, 18 July 2002, p.9 and 15483/02 MIGR 133, Brussels, 20 Dec. 2002, 18.

however, might be the inclusion of additional conditions for acquiring the long-term resident status. In this framework, it is rather doubtful whether the new Directive will solve the existing problems of statelessness and legal uncertainty in Estonia and Latvia.

### 8.3. *Extension of EU citizenship as an instrument of integration?*

Notwithstanding the recognised importance of voting rights and access to nationality as important instruments of integration, the Commission did not address these elements because ‘the EC Treaty provides no specific legal basis for it.’<sup>191</sup> In a recent Communication on immigration, integration and employment, however, the Commission expressed the opinion ‘that granting long-term resident immigrants political rights is important for the integration process and that the Treaty should provide the basis for so doing.’<sup>192</sup> Moreover, the Commission re-introduced<sup>193</sup> the concept of ‘civic citizenship’, defined as ‘guaranteeing certain core rights and obligations to immigrants which they would acquire over a period of years, so that they are treated in the same way as nationals of their host state, even if they are not naturalised.’<sup>194</sup> The European Parliament expressly welcomed the inclusion of this concept, conferring on long-term resident third-country nationals ‘economic, social and political rights and duties, *including a right to vote in local and European elections.*’<sup>195</sup> A similar reaction can be found in the opinion of the European Economic and Social Committee (EESC).<sup>196</sup> Already in its opinion on the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, the EESC maintained that ‘the right to vote in municipal and European elections could be dealt with by European legislation.’<sup>197</sup> The Committee proposed to discuss the idea of extending these voting rights, which are now reserved to EU

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<sup>191</sup> COM(2001)127 final, 8.

<sup>192</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment, COM (2003) 336 final, Brussels, 3 June 2002, 2.

<sup>193</sup> This concept has been introduced for the first time in the Communication from the Commission to the Council and the European Parliament on a Community immigration policy, COM (2000) 757 final, Brussels, 22 November 2000.

<sup>194</sup> COM (2003)336 final, 2.

<sup>195</sup> Emphasis added. European Parliament, Report on the Communication from the Commission on immigration, integration and employment, A5-445/2003, 1 December 2003, para.32.

<sup>196</sup> Opinion of the European Economic and Social Committee on the Communication from the Commission on immigration, integration and employment, SOC/138, Brussels, 10 December 2003.

<sup>197</sup> Opinion of the European Economic and Social Committee on the Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, OJ 2002, C36/60.

citizens, to long-term residents in the framework of the Intergovernmental Conference. In an own-initiative opinion, addressed to the European Convention, the EESC recommended the granting of EU citizenship to third-country nationals with long-term resident status.<sup>198</sup> Several members of the Convention subscribed to the same vision that EU citizenship should not only be linked to nationality of a Member State but also to stable residence in the Union.<sup>199</sup> Such an amendment of Article 17 EC, which now defines EU citizenship as the exclusive privilege of nationals of EU Member States, would solve the existing democratic deficit in Estonia and Latvia where approximately one fifth of the population is excluded from participation in the European Parliament elections and, only in the case of Latvia, also in municipal elections. As a Union citizen, the stateless population would also have a right of diplomatic protection from any Member State authority in third countries in which Estonia or Latvia are not represented. The scope of the freedom of movement and residence, which is another basic right connected to EU citizenship, would not necessarily change as this provision is subject to the limits and conditions as laid down in the treaties and secondary legislation, in this case Directive 2003/109. Other rights enjoyed by Union citizens, such as the right to address a petition to the European Parliament and the right to make complaints to the Community Ombudsman are already extended to resident third country-nationals.<sup>200</sup> It can therefore be concluded that an extension of EU citizenship to long-residing third-country nationals is essentially related to the granting of voting rights to this category of persons. Taking into account the political sensitivity of this issue in many Member States, the EESC proposal has not been accepted by the Convention or by the IGC. Article 8 of the Draft EU Constitution retains the existing definition of EU citizenship.<sup>201</sup> The rights connected to this status are repeated in Part II of the Draft EU Constitution, which incorporates the Charter of Fundamental Rights.

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<sup>198</sup> Opinion of the European Economic and Social Committee on Access to European Union citizenship, Brussels, 14 May 2003, SOC/141.

<sup>199</sup> For an overview of the proposed amendments, see: <http://european-convention.eu.int>

<sup>200</sup> According to Article 194 EC and Article 195 EC respectively.

<sup>201</sup> Draft Treaty establishing a Constitution for Europe, OJ, 2003, C169/9.

## 9. Human Rights Treaties: effective instruments for the protection of Russian-speaking minorities?

### *9.1. EU Charter of Fundamental Rights: protecting the rights of stateless persons?*

Notwithstanding the fact that the Charter of Fundamental Rights forms an integral part of the forthcoming EU Constitutional Treaty, most of the rights enumerated in the Charter are conferred on all persons regardless of their nationality or place of residence. Consequently, the Charter forms an important source for defining the rights of third-country nationals and stateless persons. It has to be mentioned, however, that no explicit references to the problem of statelessness are included in the Charter.<sup>202</sup> Third-country nationals are mentioned only twice: in Article 15,3, which entitles nationals of third countries who are authorised to work in one of the Member States to working conditions equivalent to those of EU citizens; and in Article 45,2, which provides for the possibility of granting freedom of movement and residence to nationals of third countries legally resident in the territory of a Member State. Council Directive 2003/109 lays down the conditions under which third-country nationals can enjoy these rights (cf. *infra*).

The relative absence of clear provisions on minority rights is another surprising observation. Only in Article 21 ‘membership of a national minority’ is identified as one of the grounds on which discrimination is prohibited. This non-discrimination provision seems to be rather limited in comparison to the Copenhagen political criteria for EU Membership, which require ‘respect for and protection of minorities.’<sup>203</sup> Moreover, the Treaty on European Union does not explicitly mention the protection of minority rights, which creates a discrepancy between the EU accession criteria and corresponding membership obligations.<sup>204</sup> For this reason, the Hungarian delegation to the Intergovernmental Conference (IGC) proposed the introduction of a reference to the rights of national and ethnic minorities in Article 2

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<sup>202</sup> Charter of Fundamental Rights of the European Union, OJ, 2000, C364/1.

<sup>203</sup> Jackie Gower, “The Charter of Fundamental Rights and EU Enlargement: Consolidating Democracy or Imposing New Hurdles”, in: Kim Feus (ed.), *An EU Charter of Fundamental Rights, Text and Commentaries* (London, 2000), 233.

<sup>204</sup> Hillion.



of the forthcoming EU Constitution. It is noteworthy that Slovakia and Latvia opposed to such an amendment.<sup>205</sup>

Apart from the rather limited references to the specific situation of third-country nationals and minorities, the absence of a clear enforcement mechanism has been identified as a major flaw of the EU Charter of Fundamental Rights. The Convention Working Group on the incorporation of the Charter into the Draft Treaty establishing a Constitution for Europe did not fundamentally alter the content of the document but strongly supported its incorporation ‘in a form which would make the Charter legally binding and give it constitutional status.’<sup>206</sup> As a result, the text of the Charter has been introduced as a specific part II of the forthcoming European Constitution. The provisions of the Charter are applicable to the institutions, bodies and agencies of the Union and to the Member States when they are implementing EU law. (Art.II-51) A problem, of course, might be the tight conditions of direct access by individuals to the Court of Justice on the basis of Article 203,4 EC. The restrictive notion of ‘direct and individual concern’ has been retained in Article III-270,4 of the Draft Constitution. In addition, it has to be kept in mind that individuals cannot sue Member States before the ECJ. Taking into account that the rights contained in the Charter of Fundamental Rights correspond to a large extent to the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, it can therefore be expected that the European Court of Human Rights will remain the main institution dealing with eventual infringements of minority rights.

## *9.2. European Convention for the Protection of Human Rights: Russian-speakers vs. Latvia*

### *9.2.1. Article 8: Respect for family life*

Russian-speakers have already lodged several complaints against Latvia,<sup>207</sup> mainly relating to alleged violations of Article 8 of the Convention. Art. 8,1 states that ‘everyone has the right to respect for his private and family life, his home and his

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<sup>205</sup> IGC 2003 – Non-institutional issues, Brussels, 24 Oct. 2003, CIG 37/03 PRESID 3, 3.

<sup>206</sup> Final Report of Working Group II ‘Incorporation of the Charter/ accession to the ECHR’, CONV 354/02, p.2.

<sup>207</sup> It is striking that, up to now, there have been no similar complaints against Estonia before the ECHR. For an overview of the ECHR case-law, see: <http://hudoc.echr.coe.int>

*correspondence.*’ The second paragraph of this Article (Art. 8,2) reveals that the public authority can only impose limits to this right ‘in accordance with the law’, in order to protect in a democratic society ‘the interests of national security, public safety or the economic well-being of the country’ and ‘for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.’ The area of tension between the two paragraphs of Article 8 became obvious in the so-called *Slivenko* case.<sup>208</sup> The applicants in this case, Tatjana Slivenko and her daughter Karina, were permanent Latvian residents of Russian origin. Tatjana Slivenko, whose father was an officer in the Soviet army, moved to Latvia when she was one month old. She married Nikolay Slivenko, who served as a Soviet military officer in Latvia. Their daughter, Karina, was born in Riga in 1981. After Latvia regained independence in 1991, Tatjana and Karina Slivenko were entered in the register of Latvian residents as ‘ex-USSR-citizens’. In 1994, however, the Latvian immigration authorities annulled this registration, relying on the fact that Soviet military officers and their families were required to leave Latvia under the terms of the Latvian-Russian treaty on the withdrawal of Russian troops. Consequently, the Slivenko family received a deportation order. Only Tatjana Slivenko’s parents were allowed to stay because the Latvian-Russian treaty did not affect military officers that had retired from office before 28 January 1992, as was the case with Tatjana’s father. The applicants proclaimed that their removal from Latvia had violated their right to respect for their ‘private life’, their ‘family life’ and their ‘home’ within the meaning of Article 8. The Latvian government, on the other hand, maintained that this decision pursued the legitimate aims of the protection of national security and the prevention of disorder and crime in a democratic society.<sup>209</sup> The Court accepted that the Latvian-Russian Treaty and its implementing measures sought to protect the interests of national security. Accordingly, the obligation to leave the country was not in itself objectionable from the perspective of the Convention and Article 8 in particular:

*‘it is evident that the continued presence of active servicemen of a foreign army, with their families, may be seen as being incompatible with the sovereignty of an independent state and as a threat to national security. The*

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<sup>208</sup> ECHR Appl. 48321/99, *Slivenko v. Latvia*, judgment of 9 October 2003.

<sup>209</sup> *ibid.*, para. 77.

*public interest in the removal of active servicemen and their families from the territory will therefore normally outweigh the individual interest in staying.*<sup>210</sup>

However, application of removal orders without any possibility of taking into account individual circumstances is deemed to be incompatible with the requirements of Article 8.<sup>211</sup> The Court referred to the applicant's personal, social and economic ties in Latvia and concluded that they were sufficiently integrated into the Latvian society.<sup>212</sup> These elements were not taken into consideration by the Latvian integration authorities. Moreover, the Latvian government had based its decision on the family links with Tatjana Slivenko's father, who was not himself considered to present a danger to the national security of the country. The Court, therefore, concluded that the Latvian authorities 'overstepped their margin of appreciation' and awarded a compensation amount of 10.000 Euro to each of the applicants.

This decision provoked intensive discussion in Latvia. The Russian-language press reported satisfaction with the outcome of the case and announced a boom of new complaints.<sup>213</sup> The Latvian side, on the other hand, stressed the fact that the ECHR did not challenge the legality of the removal of Russian military personnel as such, but only its strict implementation in this specific case.<sup>214</sup> The sensitivity of this judgment is also related to the interference of Russia<sup>215</sup> and the references made to the illegality of the Soviet occupation. The Latvian government submitted that the issue of the applicant's removal from Latvia 'ought to be examined in the context of the eradication of the consequences of the illegal occupation of Latvia by the Soviet Union'<sup>216</sup>, a statement that has been disputed by Russia.<sup>217</sup> Whereas the ECHR consistently referred to the *restoration* of Latvia's independence, and therefore implicitly confirmed the Baltic thesis on state continuity, it maintained that in the context of the case 'it is not necessary to deal with the previous situation of Latvia

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<sup>210</sup> *ibid.*, para. 117.

<sup>211</sup> *ibid.*, para. 122.

<sup>212</sup> *ibid.*, para. 125.

<sup>213</sup> Viktoria MALYUTINA, "Russia prepares for 20,000 anti-Latvian cases", at <http://www.gazeta.ru/2003/10/10/Russiaprepar.shtml>.

<sup>214</sup> Aaron Eglitis, "Rights Defenders Look to Strasbourg", *Baltic Times*, 10 October 2003. Kristine Kruma, "What can Latvia learn from the Slivenko case?", at <http://www.policy.lv/index.php?id=102059&lang=en>.

<sup>215</sup> Russia *inter alia* stated that 'the applicant's removal had been the result of "ethnic cleansing" by the Latvian authorities' ECHR, 9 Oct. 2003, *Slivenko v. Latvia*, 48321/99, para. 133.

<sup>216</sup> *ibid.*, para. 76.

<sup>217</sup> *ibid.*, para. 110.

under international law.<sup>218</sup> In other words, the Court did not enter into the controversy between Russia and, in fact, each of the Baltic republics on the illegality of the incorporation of the Baltic states into the Soviet Union.<sup>219</sup> Only judge Maruste from Estonia expressly referred to the illegal Soviet occupation in a separate dissenting opinion. In his view, the removal of former Soviet military servicemen and their families has to be regarded as ‘redress for an historical injustice.’ The ECHR effectively accepted this vision but also tried to find a balance between the general principles of national security and sovereignty on the one hand and the individual, concrete situation of those affected by these principles on the other.

In the near future, the Court has to conclude on other complaints lodged by family members of former Soviet military servicemen. Aleksandr Ivanov is one of these persons. He arrived in Latvia together with his parents and also passed his obligatory military service in the Soviet army on Latvian territory. After the restoration of Latvian independence, his mother and father, who had retired from military service in 1987, have been registered as permanent residents of Latvia. Aleksandr Ivanov, however, received a deportation order on the basis of the Latvian-Russian Treaty on the withdrawal of Russian troops. The ECHR has adjourned its decision on the admissibility of the complaint that Latvia violated Article 8 of the Convention in order to give the Latvian government the possibility to submit its written observations on the application.<sup>220</sup> A similar situation applies to Aleksandr Kolosovskiy, who has been refused a permanent resident permit as a result of his family ties with a Soviet military officer. The Latvian authorities also refused the registration of his marriage with a non-citizen and the registration that he is the father of his daughter.<sup>221</sup> In *Sisojeva vs. Latvia*,<sup>222</sup> permanent residency in Latvia was cancelled on the grounds that the family had also registered as residents in Russia. A similar question on the legality of this decision has to be answered in the case of Nina Shevanova<sup>223</sup>, whereas Natella Kaftailova<sup>224</sup> and Ludmila Mitina<sup>225</sup> are both divorced from their Russian husband

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<sup>218</sup> *ibid.*, para. 111.

<sup>219</sup> For an analysis of the controversy and the differences between the Baltic and Russian thesis on state continuity, see: Van Elsuwege, 378-379.

<sup>220</sup> ECHR, 7 June 2001, *Ivanov v. Latvia*, 55933/00.

<sup>221</sup> ECHR, 30 Nov. 2000, *Kolosovskiy v. Latvia*, 50183/99.

<sup>222</sup> ECHR, 28 Feb. 2002, *Sisojeva v. Latvia*, 60654/00.

<sup>223</sup> ECHR, 28 Feb. 2002, *Shevanova v. Latvia*, 58822/00.

<sup>224</sup> ECHR, 23 Oct. 2001, *Kaftailova v. Latvia*, 59643/00.

<sup>225</sup> ECHR, 29 Aug. 2002, *Mitina v. Latvia*, 67279/01.

and applied for a permanent resident permit on the basis on their personnel links with Latvia. In *Kovalenok v. Latvia*<sup>226</sup> the ECHR made clear that the simple fact of renting an apartment on the Latvian national territory, even for a long-term period, is not sufficient to assume a violation of Article 8. In another case, the Court revealed that the Convention does not guarantee to foreigners a right of entrance and residence in another state nor does it imply immunity for expulsion. It is up to the Member States to maintain public order, by exercising their right to control the entry and residence of foreigners.<sup>227</sup> Furthermore, the Convention does not guarantee, as such, socio-economic rights, the right to work, the right to free medical assistance or the right to claim financial assistance from a state to maintain a certain level of living.<sup>228</sup> Finally, it has to be mentioned that the ECHR seems to limit the concept ‘family life’, as mentioned in Article 8 of the Convention, to the ‘core family’ only. In other words, the Court only takes into account the relationship between a couple and their children below the age of majority, excluding adult children and grandparents.<sup>229</sup> This definition has been criticised by judge Kovler in his partly concurring and partly dissenting opinion on the *Slivenko*-case. The judge, *inter alia*, referred to the use of the broader interpretation of the family concept in previous judgments of the Court.<sup>230</sup>

### 9.2.2. *The ECHR and restrictions on electoral rights*

Apart from the numerous cases on the alleged violation of Article 8 of the Convention, the ECHR has dealt with complaints concerning the spelling of names<sup>231</sup> and, more important, the Latvian election legislation. According the 1995 Parliamentary Election Act, candidates who have not completed their primary or secondary education in Latvian require a certificate of knowledge of the official language at the highest level, i.e. the ‘third level’. Ingrida Podkolzina, a Latvian national and member of the Russian-speaking community in Latvia, submitted a copy of this certificate upon registration as a deputy candidate on the list of the pro-minority National Harmony Party for the 1998 Parliamentary elections.<sup>232</sup> An

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<sup>226</sup> ECHR, 15 Feb. 2001, *Kovalenok v. Latvia*, 54264/00.

<sup>227</sup> ECHR, 9 Nov. 2000, *Shebashov v. Latvia*, 50065/99.

<sup>228</sup> ECHR, 28 Oct. 1999, *Pancenok v. Latvia*, 40772/98.

<sup>229</sup> ECHR, 9 Oct. 2003, *Slivenko v. Latvia*, 48321/99, para. 97.

<sup>230</sup> ECHR, 9 Oct. 2003, *Slivenko v. Latvia*, 48321/99, para. 133.

<sup>231</sup> ECHR, 8 Nov. 2001, *Siskina and Siskins v. Latvia*, 59727/00.

<sup>232</sup> ECHR, 9 Apr. 2002, *Podkolzina v. Latvia*, 46726/99.

examiner employed by the State Language Inspectorate of the State Language Centre tested Mrs. Podkolzina's ability to speak Latvian at her workplace. She was asked, among other questions, why she supported the National Harmony Party rather than any other party. The next day, the examiner returned accompanied by witnesses and asked Mrs. Podkolzina to write an essay in Latvian. Being extremely nervous as a result of the unexpected examination, she stopped writing and tore up her work. The examiner reported that Mrs. Podkolzina did not have an adequate command of the official language at the third level, which led to the cancellation of her candidature for the parliamentary elections. Mrs. Podkolzina alleged that the removal of her name from the list of candidates constituted a breach of the right to stand as a candidate in an election, as guaranteed by Article 3 of Protocol 1 of the European Convention on Human Rights.

The Latvian government maintained that the language requirement served a legitimate aim, namely the need to ensure the proper functioning of the Parliament in which Latvian is the sole working language. The Court accepted this vision and avoided to take position on the choice of Latvian as the only working language.<sup>233</sup> Notwithstanding the wide margin of appreciation for the states in this area, measures limiting the right to participate in national elections have to be proportionate to the aim pursued. In the present case, the Court noted that the applicant was in possession of the requested certificate but only failed to pass a supplementary language examination. The additional verification was carried out by one examiner, who was solely responsible for assessing the applicant's linguistic knowledge. The Court, therefore, concluded that:

*'in the absence of any guarantee of objectivity, and whatever the purpose of the second examination was, the procedure applied to the applicant was in any case incompatible with the requirements of procedural fairness and legal certainty to be satisfied in relation to the candidates' eligibility.*<sup>234</sup>

The conviction of Latvia in the Podkolzina-case followed a similar decision of the UN Human Rights Committee. In 1997 Mrs. Antonina Ignatane had been struck off the list of candidates for the 1997 municipal elections on the basis of 'insufficient state

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<sup>233</sup> *ibid.*, para.34.

<sup>234</sup> *ibid.*, para. 36.

language proficiency', notwithstanding the fact that Mrs. Ignatane was in possession of the third level language certificate. At that time, there was no possibility to submit a petition to the ECHR because Latvia had not yet ratified the European Convention on Human Rights. Mrs. Ignatane, therefore, submitted a written communication to the UN Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. The Committee found that Latvia had violated Article 25, in conjunction with Article 2 of the Covenant.<sup>235</sup>

Notwithstanding this double conviction, the Latvian parliament did not show any immediate intention to amend the election law.<sup>236</sup> Only after high-level pressure in the framework of the NATO enlargement process, amendments abolishing the state language requirements for deputy candidates in local and parliamentary elections had been accepted in May 2002. In a strongly worded speech to the Latvian Parliament a few months earlier, NATO Secretary-General George Robertson had warned that the outcome of the debate on amending the election legislation would significantly influence the decision about Latvia's invitation to join NATO.<sup>237</sup> It is therefore not very surprising that the amendments to the Election Act had been accepted few days before the NATO Reykjavik summit, where significant decisions concerning the further expansion of the alliance were on the agenda. In Estonia, a similar amendment had been accepted in November 2001 as an explicit condition for the shutting down of the OSCE observer mission in that country.<sup>238</sup> At the same time, however, legislation was adopted to strengthen the position of Estonian as the only working language in

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<sup>235</sup> Views of the Human Rights Committee under Article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights concerning Communication No. 884/1999, *Ignatane vs. Latvia*. (available at [http://www.minelres.lv/un/cases/UNHRC\\_Ignatane\\_2001.html](http://www.minelres.lv/un/cases/UNHRC_Ignatane_2001.html)).

<sup>236</sup> The pro-minority faction 'For Human Rights in a United Latvia submitted a proposal for the abolition of the language requirements in October 2001 and March 2002 but the Latvian Parliament rejected the draft amendments. (see *Minority Issues in Latvia* No. 38 and 46). In December 2001, the Latvian President, Vaira Vike-Freiberga, also failed to convince the Parliament on the need to abolish the language requirements for deputy candidates. (Jorgen Johannson, "Vike-Feiberga initiates further language changes", *The Baltic Times*, 13 December 2002).

<sup>237</sup> Ieva Raubisko, "NATO: Robertson urges Latvia to amend election laws", *RFE/RL*, 22 February 2002; X, "NATO demands change in law", *Baltic Times*, 28 February 2002; X, "Is NATO appeal for democracy to be heard in Latvia?", (45) *Minority Issues in Latvia*, (2002), at <http://lists.delfi.lv/pipermail/minelres/2002-March/002065.html>.

<sup>238</sup> Vello Pettai, "Political Data in 2001: Estonia", 41 *European Journal of Political Research*, (2002), 947.

the parliament and local councils.<sup>239</sup> Similar provisions were inserted into the Latvian constitution (cf. *infra*).

Notwithstanding the implementation of these counterbalancing measures, the abolishment of the language requirement for deputy candidates perfectly illustrates the impact of NATO and OSCE conditionality provisions on Estonia's and Latvia's domestic legislation. At the same time, it reveals the rather limited influence of the European Commission on this issue. The 1997 Opinions on Estonia's and Latvia's application for EU Membership as well as the 2000 and 2001 Regular Reports on progress towards accession referred to the existence of high-level language requirements for candidates to parliamentary and local elections but did not contain a clear message that these restrictions had to be abolished.<sup>240</sup> Moreover, no references to the election legislation could be found in the Accession Partnerships. In spite of its limited impact on the changing legislation, the 2002 Commission Reports extensively welcomed the amendments.<sup>241</sup> The Commission also referred to the constitutional changes that had been adopted prior to the abolishment of the language requirements for deputy candidates. In order to strengthen the status of the state language, the new provisions introduced that Latvian will be the sole working language of the parliament and of local governments. In addition, Members of Parliament are obliged to swear their loyalty towards Latvia, and promise to strengthen its sovereignty and the status of the Latvian language as the only official language, defend Latvia as an independent and democratic state, fulfil their duties in good faith and observe the Constitution and laws.<sup>242</sup> These clear measures protecting the national language politically compensate the abolition of the state language requirements for deputy candidates.<sup>243</sup> In addition, they have to be seen against the background of the political discussion that emerged

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<sup>239</sup> Vadim Polestsuk, "A new form of language census for deputies in Estonia", at <http://lists.delfi.lv/pipermail/minelres/2001-December/001628.html>.

<sup>240</sup> Opinion on Latvia, 20; Regular Report Latvia 2000, 23; Regular Report Latvia 2001, 26

<sup>241</sup> In the Commission Report on Latvia, for instance, references to the amendments of the election law were made on pages 20, 27, 30, 31, 33, 25, 135 and 141.

<sup>242</sup> Art. 18 of the Latvian Constitution as amended on 30 April 2002 and entered into force on 5 November 2002.

<sup>243</sup> It has been argued that the amendments to the Election Law 'change very little on the ground' because in the Parliament the sole working language will remain Latvian. Steven C. Johnson, "What the amendments mean for Latvia", *Baltic Times*, 16 May 2002.



after a high-ranking OSCE official suggested that Russian should be Latvia's second official language.<sup>244</sup>

The constitutional declaration that Latvian is the only working language in the parliament and city councils confirmed the existing situation. In this regard, the European Commission concluded that 'the amendments essentially do not introduce new substantive changes likely to affect the functioning of either parliament or local government.'<sup>245</sup> On the other hand, it also observed that the statements concerning the sole working language 'represent a potential danger to the opportunities that exist in practice for the use of minority languages in dealings with public authorities.'<sup>246</sup> This, however, did not result in any recommendations on this issue. The Commission also failed to mention the potential danger that the MP's obligation to strengthen the Latvian language as the only official language may limit the rights of parliamentarians to propose amendments extending the use of minority languages.<sup>247</sup>

The abolishment of the state language requirements for deputy candidates does not automatically solve all problems relating to restrictive language and election laws. An important case concerning the Latvian election legislation is still pending before the ECHR.<sup>248</sup> Tatjana Zdanoka, the applicant in this case, has been disqualified from standing for election on account of her former membership of and activities within the Latvian Communist Party. This party has been declared unconstitutional after the restoration of Latvia's independence. Article 5,6 of the Parliamentary Election Law and Article 9,5 of the Municipal Election Law prohibit the inclusion in the candidate lists of persons that 'belong or have belonged to the salaried staff of the USSR, Latvian SSR or foreign state security, intelligence or counterintelligence services.'<sup>249</sup> The Latvian Constitutional Court concluded that this provision is justified in order to protect the integrity of the state but also envisaged a clear time limit for such

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<sup>244</sup> Jorgen Johansson, "OSCE provokes language scandal", *Baltic Times*, 28 March 2002.

<sup>245</sup> 2002 Regular Report on Latvia's Progress towards Accession, 33.

<sup>246</sup> *ibid.* p.34.

<sup>247</sup> This in contrast to reports of the Latvian Centre for Human Rights (see: Human Rights in Latvia in 2002, [http://www.politika.lv/polit\\_real/files/lv/LCESC2002en.pdf](http://www.politika.lv/polit_real/files/lv/LCESC2002en.pdf)) and the International Helsinki Federation for Human Rights (see: [http://www.ihf-hr.org/viewbinary/viewdocument.php?doc\\_id=2256](http://www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=2256)).

<sup>248</sup> ECHR, 6 March 2003, *Zdanoka v. Latvia*, 58278/00.

<sup>249</sup> The English translation of these texts of these laws is available at <http://www.minelres.lv/NationalLegislation/Latvia/latvia.htm>.

restrictions.<sup>250</sup> Three judges formulated a dissenting opinion stressing that the Latvian democratic system is sufficiently stable to allow the abolition of the political restrictions for taking part in the elections.<sup>251</sup> A similar view can be found in the conclusions of the International Election Observation Mission to the October 2002 Parliamentary elections.<sup>252</sup> According to this report, the political restrictions to deputy candidates are inconsistent with Article 7,5 of the OSCE Copenhagen document of July 1990, which calls on all OSCE participating states ‘to respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination.’<sup>253</sup> The ECHR will have to decide whether the political restrictions also infringe the fundamental right to stand for election as laid down in Article 3 of Protocol 1 to the European Convention on Human Rights as well as Articles 10 and 11 of the Convention, dealing respectively with the right to freedom of expression and the freedom of assembly and association. It can be expected that the outcome of this case will be another step in the process of dealing with the Soviet legacy and the clarification of the rights of the Russian-speaking minorities.

## Conclusion

Notwithstanding the fact that the new Council Directive concerning the status of third-country nationals who are long-term residents might help to solve the current uncertainty about the legal status of Estonia’s and Latvia’s stateless population after the accession of these countries to the EU, the conditions for acquiring the long-term resident permit limit the potential benefits of this status to a group of well-informed and well-integrated persons. Taking into account the political sensitivity of immigration policies and against the background of the 11 September terrorist attacks, the Council has introduced important amendments limiting the initial scope of the Commission proposal. In addition, it has to be mentioned that the long-term resident

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<sup>250</sup> Case No. 2000-03-01 of the Constitutional Court of the Republic of Latvia, Riga, 30 Aug. 2000, at <http://www.satv.tiesa.gov.lv/Eng/spriedum.htm>.

<sup>251</sup> Dissenting Opinions of the Constitutional Court Judges Aivars Endzins, Juris Jelagins and Anita Usacka in case No. 2000-03-01, at: <http://www.satv.tiesa.gov.lv/Eng/spriedum.htm>.

<sup>252</sup> The International Election Observation Mission is a joint effort between the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE). The Conclusions of the Mission are available at: [http://www.osce.org/odihr/elections/field\\_activities/latvia2002/](http://www.osce.org/odihr/elections/field_activities/latvia2002/).

<sup>253</sup> *ibid.*, 5-6. The “Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE” is available at <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>.

status will not resolve the exclusion from political participation of the Estonian and Latvian non-citizens. The only option to take part in European Parliament elections and, in the case of Latvia, in municipal elections is to acquire the citizenship of these countries. It can be argued that EU enlargement will provide a new incentive for naturalisation. Whereas the number of applications for citizenship has increased after the positive outcome in the EU accession referenda, the current rate of naturalisations will not allow for a quick solution of the existing problems. As the UN Human Rights Committee reports reveal, additional efforts will be needed to reduce the number of stateless persons. The proposed amendment to the Estonian Citizenship Act under which the state would compensate language-learning expenses to those who pass the citizenship exam is one of the measures in this direction.<sup>254</sup>

Apart from the continuous concerns about the high number of stateless persons, the socio-economic consequences of a strict state language policy in the field of employment and education have to be taken seriously. The discussions on the Education reform in Latvia reveal the sensitivity of this issue and the difficulties of finding the right balance between the requirements of integration and respect for minority identities. Whereas all international organisations agree that no forms of systematic discrimination towards the Russian-speaking and often stateless population can be observed, a lack of attention to these people's rights increases the danger of social destabilisation, which, in turn, can adversely affect international relations (particularly since Russia has declared that respect for the rights of Russian-speaking minorities is a major priority of its foreign policy).

The European Union has a huge responsibility in this area. The process of EU enlargement is expected to bring stability and prosperity on the entire European continent. It is clear that this objective cannot be achieved when the rights of the Russian-speaking minorities in Estonia and Latvia are not observed. The EU pre-accession conditionality has - together with the efforts of other international organisations such the UN, the Council of Europe, NATO and the OSCE - resulted in a number of amendments to laws on education, language and the status of non-citizens, efforts which can be praised as largely eliminating the possibility of ethnic

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<sup>254</sup> RFE/RL Baltic States Report, 27 Nov. 2003, at <http://www.rferl.org/balticreport>.

violence. This, however, does not imply that all problems of integration have been solved or will automatically disappear as a result of EU enlargement. Tackling the high number of stateless persons and the comparatively low number of naturalisations, problems of political participation and the socio-economic impact of restrictive language and citizenship policies remains an importance challenge.

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